

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M118464
(BALLOT MEASURE 37) OF)	
Lonnie Feigner, CLAIMANT)	

Claimant: Lonnie Feigner (the Claimant)

Property: Tax lot 102, Township 10S, Range 14E, Section 9
Tax lot 700, Township 10S, Range 14E, Section 4,
Jefferson County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Lonnie Feigner's division of the 80-acre portion of the subject property into two 40-acre parcels for residential development: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33 enacted after February 27, 1981. These land use regulations will not apply to claimant's use of his property only to the extent necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on February 27, 1981.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report, subject to the standards in effect on February 27, 1981. On that date, the property was subject to Goal 3 and applicable provisions of ORS 215 then in effect.

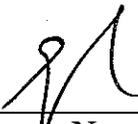
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

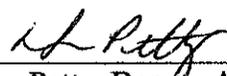
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 28th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 28th day of March, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. **Judicial review under ORS 183.484:** Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. **A cause of action under ORS 197.352 (Measure 37 (2004)):** If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

March 28, 2006

STATE CLAIM NUMBER: M118464

NAME OF CLAIMANT: Lonnie Feigner

MAILING ADDRESS: 3132 Northeast Farrell Road
Madras, Oregon 97741

PROPERTY IDENTIFICATION: Township 10S, Range 14E, Section 9
Tax lot 102
Township 10S, Range 14E, Section 4
Tax lot 700
Jefferson County

OTHER CONTACT INFORMATION: Bob Harris
380 Southwest 5th PBB 122
Madras, Oregon 97741

OTHER INTEREST IN PROPERTY: Michael and Laura Feigner
4019 Northeast Fern Lane
Madras, Oregon 97741

Darryl and Caron Smith
3495 Northeast Fern Lane
Madras, Oregon 97741

DATE RECEIVED BY DAS: May 19, 2005

180-DAY DEADLINE: April 3, 2006¹

I. SUMMARY OF CLAIM

The claimant, Lonnie Feigner, seeks compensation in the amount of \$150,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide an 80-acre portion of a 160-acre parcel into two parcels of 40 acres each for residential development. The

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

property has no street address and is located at locational coordinates listed above, near Madras, in Jefferson County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Lonnie Feigner's division of 80 acres of the subject property into two parcels for residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660, division 33 enacted after February 27, 1981. These laws will not apply to Lonnie Feigner only to the extent necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property in 1981. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 16, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352 (Ballot Measure 37). Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law. (See comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Ballot Measure 37 (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Ballot Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or

the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 19, 2005, for processing under OAR 125, division 145. The claim identifies “all zoning” that restricts the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Ballot Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004; the effective date of Ballot Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimant, Lonnie Feigner, acquired the subject property on February 27, 1981, as reflected by a Warranty Deed included with the claim. A copy of a preliminary title report dated April 21, 2005, indicates that Lonnie Feigner is the current owner of the subject property.²

Conclusions

The claimant, Lonnie Feigner, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of February 27, 1981.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the

² A Jefferson County ORS 197.352 staff report notes that the subject property is part of a 160-acre legal parcel containing two other tax lots created only for assessment purposes. Tax lots 100 and 101 were conveyed to other owners in 1998 and 2002, but are not legally lawfully created separate parcels, “thus the four tax lots are single parcel for development purposes.”

property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claim states that the claimant's objective is to waive "All zoning and other ordinances that have been enacted since February 27, 1981, that effects [sic] the value of this property."

The claim is based, generally, on Jefferson County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU A-1, as required by Goal 3, in accord with OAR 660, division 33 and ORS 215 because the claimant's property is "agricultural land" as defined by Goal 3.³ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimant acquired the property on February 27, 1981, when it was zoned A-2-20 General Agriculture by Jefferson County. Under the A-2-20 zone, as subject to restrictions of the County's A-1 EFU zone by LCDC order 1-30-1980, there was a 40-acre minimum parcel size for the creation of new lots or parcels. However, the County's A-2-20 zone that applied to the property at that time was not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and

³ The claimant's property is "agricultural land because it contains NRCS (Natural Resources Conservation Service) Soils. More than half the property is irrigated, and is composed of predominantly class IV soils if irrigated, and class VI soils if not (Cullius loam, 30A, 30B and 30 C), that are not high-value farmland.

197.251. The Commission acknowledged the Jefferson County Comprehensive Plan and land use regulations as complying with the statewide planning goals on June 2, 1983. Since the Commission had not acknowledged Jefferson County's comprehensive plan and land use regulations, including the A-2-20 zone, when Lonnie Feigner acquired the property on February 27, 1981, the statewide planning goals, and Goal 3 in particular, applied directly to property on the date of acquisition.⁴ In 1981, the State standards for a land division involving property where the local zoning was not acknowledged were that the resulting parcels must be of a size that are "appropriate for the continuation of the existing commercial agricultural enterprise in the area" (Statewide Planning Goal 3). Further, ORS 215.263 (1975 edition) required that all divisions of land subject to the provisions for EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy).

Thus, the opportunity to divide the property when Lonnie Feigner acquired it in 1981 was limited to land divisions done consistent with Goal 3, which required the resulting farm or non-farm parcels to be: (1) "appropriate for the continuation of the existing commercial agricultural enterprise in the area;" and (2) shown to comply with the legislative intent set forth in ORS 215.243. (See endnote¹.)

As for dwellings allowed under EFU zoning as required by Goal 3 on the date of acquisition in 1981, farm dwellings were allowed if determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1979 edition). ORS 215.213(3) (1979 edition) authorized a non-farm dwelling only where the dwelling is compatible with farm uses, consistent with the intent of ORS 215.243, does not interfere seriously with accepted farming practices on adjacent lands, does not materially alter the stability of the land use pattern for the area, and is situated on land that is generally unsuitable for production of farm crops and livestock. ORS 215.213(3) (1979 edition).⁵ Before a farm dwelling could be established on agricultural land, the farm use to which the dwelling relates must "be existing."⁶ Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use.

⁴ Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions where site specific goal provisions applied prior to the Commission's acknowledgment of the County's Goal 3 program on February 9, 1979 (*Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den*, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985)). After the county's plan and land use regulations were acknowledged by Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions, (*Byrd v. Stringer*, 295 Or 311 (1983)). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁵ When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3) or 215.283(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

⁶ *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984) *affirmed without opinion*, 70 Or App 179 (September 14, 1984,) and *Newcomer v. Clackamas County*, 92 Or App 174, *modified* 94 Or App 33 (November 23, 1988).

No information has been provided showing that the claimant's desired use complies with either the Goal 3 standard for lot size for farm parcels or the standards for new parcels under ORS 215.263 (1979 Edition). Nor has any information been provided concerning whether dwellings comply with the approval standards for dwellings under ORS 215.213, in effect at the time Lonnie Feigner purchased the property in 1981.

Conclusions

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, adopted since the claimant acquired the property in 1981, do not allow the division of the property into parcels less than 80 acres in size or allow the approval of dwellings as may have been possible in 1981. However, it is unclear whether the claimant's requested level of development complies with the standards in effect when he acquired the property on February 27, 1981. In 1981, the property was subject to the direct application of Goal 3 and ORS 215.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an informal estimate of \$150,000 as the reduction in the property's fair market value due to current regulations. No basis for this estimate is given. The claimant estimates value of the subject eighty acres, as currently zoned, as \$50,000.

Conclusions

As explained in Section V.(1) of this report, the current owner is Lonnie Feigner who acquired the property on February 27, 1981. Under ORS 197.352, Lonnie Feigner is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant acquired the property restrict division of the subject property. The claimant estimates the reduction in value due to the restrictions to be \$150,000.

Without an appraisal or other documentation, and without verification of whether to what extent the claimant's requested level of development would have been permitted when he acquired the property in 1981, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on land use regulations that restrict the use of the property relative to what may have been allowed in 1981, when the property was acquired by Lonnie Feigner. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, which Jefferson County has implemented through its EFU zone. These laws are not exempt under ORS 197.352(3)(E), to the extent they were enacted or adopted after the claimant acquired the property in 1981. Provisions of Goal 3 and ORS 215 enacted or adopted before February 27, 1981 are exempt under ORS 197.352(3)(E), which exempts laws in effect at the time the claimant acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It does appear that the general statutory, goal and rule restrictions on division and use of farm land apply to the claimant's use of the property, and these laws are not exempt under ORS 197.352(3)(E), to the extent they were enacted or adopted after the claimant acquired the property. Provisions of Statewide Planning Goal 3 and ORS 215 in effect when the claimant acquired the property in 1981, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the property are also exempt under ORS 197.352(3)(E), and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. Similarly, this

report only addresses the exemptions provided for under ORS 197.352(3), that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to divide the 80-acre portion of the subject property into two, 40-acre parcels for residential development. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$150,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, and without verification of whether to what extent the claimant's requested level of development would have been permitted when he acquired the property in 1981, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Lonnie Feigner to use the subject property for a use permitted at the time he acquired the property on February 27, 1981.

Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Lonnie Feigner's division of the 80-acre portion of the subject property into two 40-acre parcels for residential development: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33 enacted after February 27, 1981. These land use regulations will not apply to claimant's use of his property only to the extent necessary to allow

him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on February 27, 1981.

2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report, subject to the standards in effect on February 27, 1981. On that date, the property was subject to Goal 3 and applicable provisions of ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 13, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

ⁱ The Goal 3 standard for the review of land divisions or the establishment of a minimum lot size states:

"Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area."

On August 20, 1977, the Commission distributed a policy paper explaining the meaning of the Goal 3 minimum lot size standard (see "Common Questions about Goal #3; Agricultural Lands" (August 30, 1977, as revised and added to July 12, 1979). Further interpretation of the Goal 3 minimum lot size standard can be found in *Meeker v. Clatsop County*, 287 Or 655 (1979), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den*, 290 Or 137 (1980) and *Thede v. Polk County*, 3 Or LUBA 336 (1981).

In 1982, the policy paper and court decisions were incorporated into an administrative rule to guide the interpretation and application of the Goal 3 minimum lot size standard (see OAR 660 division 5, specifically rules 15 and 20 effective July 21, 1982).

For further guidance on the interpretation and application of this standard and rule see: *Kenagy v. Benton County*, 6 Or LUBA 93 (1982); *Goracke v. Benton County*, 8 Or LUBA 128 (1983); 68 Or App 83 (1984); 12 Or LUBA 128 (1984); 13 Or LUBA 146 (1985); 74 Or App 453 (1985), *rev den*, 300 Or 322 (1985); and OAR 660-05-015 and 020 as amended effective June 7, 1986 (repealed effective August 7, 1993).

The 1982 administrative rule (OAR 660-05-015 and 020) was further amended to incorporate the holdings of these cases (effective June 7, 1986, and repealed effective August 7, 1993).