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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MARION

6 DALLAS MARCKX and ELAINE
7 MARCKX,

8 Plaintiffs,

9 v.

10 STATE OF OREGON, by and through the
11 DEPARTMENT OF LAND
12 CONSERVATION AND DEVELOPMENT,

13 Defendant.

Case No. 05C19654

Honorable Jamese Rhoades

STATE OF OREGON'S TRIAL
MEMORANDUM

Date: October 25, 2006

Time: 9:30 a.m.

Ctrm: 2A

14 INTRODUCTION

15 Plaintiffs Dallas and Elaine Marckx petition for judicial review of the Final Order issued
16 by the State of Oregon by and through the Department of Land Conservation and Development
17 on plaintiffs' Measure 37 demand to the State. The Order approved the demand and granted
18 relief "in lieu of" compensation. Based on the uncontested finding that plaintiffs acquired the
19 property on November 6, 1975, the State "waived" certain state land use regulations, enacted or
20 enforced after that date, to allow plaintiffs to use the property for a use permitted at the time of
21 acquisition.

22 Plaintiffs challenge only the statement in the Order informing plaintiffs that, on the date
23 of acquisition, "the property was subject to statewide Goal 3" (Petition, ¶¶ 10-21). This
24 statement is correct as a matter of law. Therefore, the petition is without merit and the Order
25 should be affirmed.

26 Plaintiffs also contend that the alleged error regarding application of Goal 3 entitles
plaintiffs to just compensation under Section 6 of Measure 37 (Petition, ¶¶ 22-26). Plaintiffs are

1 not entitled to compensation under Measure 37 as a matter of law for the reasons set forth in the
2 State' separately filed motion to dismiss. The parties anticipate arguing the motion immediately
3 before commencement of trial on the Petition.¹

4 MEASURE 37 BACKGROUND

5 The court is familiar with Measure 37, enacted by Oregon voters through the initiative
6 process in 2004 and codified at ORS 197.352. A copy of the statute is attached hereto as
7 Attachment A for the court's convenience. Measure 37 generally provides a statutory scheme
8 whereby owners of private real property may seek compensation for reduction in fair market
9 value caused by certain land use regulations. As an alternative to payment, public entities "may
10 modify, remove, or not to [sic] apply" certain regulations. ORS 197.352 (1), (8), (10). The
11 alternative relief commonly is referred to as "waiver."

12 STATEMENT OF MATERIAL FACTS

13 The Petition does not challenge any of the State's factual findings relating to plaintiffs'
14 demand. Identification of the property, plaintiffs' present ownership, plaintiffs' acquisition date,
15 and the timeliness of the demand and the Petition are uncontested. The only other facts
16 necessary for the court to determine whether the Final Order correctly stated that "Goal 3
17 applied" on the date of acquisition are: (1) the soils classification of the property,² (2) the
18 effective date of Goal 3,³ and (3) the acknowledgment date of the Marion County comprehensive
19 plan.⁴ These facts also are undisputed.

20

21

22 ¹ Alternatively, and in the event the court does not dismiss the compensation claim, the State contends that the
23 court's decision on plaintiffs' Petition renders the compensation claim moot.

24 ² *Record*, § 2, p 28 (property comprises class II and III soils), copy attached (Att B).

25 ³ Goal 3, along with the other original goals, became effective on January 25, 1975 (Att C). A full copy of the
26 original goals is available at http://www.oregon.gov/LCD/docs/history/original_goals_012575.pdf.

⁴ See ORS 197.040 (2); 197.175 (2). The Land Conservation and Development Commission acknowledged the
county's plan and implementing measures as in compliance with the goals on June 10, 1982. A copy of the
Compliance Acknowledgement Order is attached to this memorandum as Attachment D.

1 In the interim between the effective date of the goals in January 1975 and
2 acknowledgment of Marion County's comprehensive plan in May 1982, the County was required
3 to apply the statewide goals. *Alexanderson*, 289 Or at 434. Oregon appellate decisions
4 repeatedly have confirmed this interpretation of SB 100, which makes sense in the context of the
5 overall land use planning scheme. State law required local plans and ordinances to conform to
6 the goals, and the acknowledgement process empowered LCDC to assure compliance. After
7 acknowledgement, there would be no need for separate consideration of the goals, because of the
8 prior determination that local regulations were consistent with the goals.

9 The leading cases on this issue are *Sunnyside Neighborhood v. Clackamas Co. Comm.*,
10 280 Or 3 (1977) and *Alexanderson, supra*. In *Sunnyside*, the Supreme Court held that a site-
11 specific amendment to a county comprehensive plan must comply with goals. 280 Or at 15-16.
12 In *Alexanderson*, the Court construed SB 100. The context and legislative history of the statute
13 persuaded the Supreme Court that the goals were intended to apply directly to local land use
14 decisions. The Court explained:

15 "The legislative history shows that in the major reexamination and
16 revision of the land use laws in 1977, the question whether the state-wide
17 planning goals did or did not apply directly to individual 'land conservation and
18 development actions' was a major point of contention between witnesses who
19 favored and those who were critical of LCDC's statewide authority over land use.
20 The applicability of the goals to individual 'actions' grew into a crucial issue
21 when it became clear that satisfactory local comprehensive plans could not be
22 completed in one year but would take several years. The issue had not been
23 decided under the existing law. Moreover, while the legislature was in session,
24 LCDC published its policies for attaching conditions to planning grants and to the
25 extensions of the time allowed local governments for completing their plans. In
26 this setting, there were proposals to have the 1977 legislation expressly affirm that
state-wide goals govern 'actions' directly until a comprehensive plan was
completed and acknowledged, and proposals to have it expressly negate this. All
such amendments failed. What emerged from the committee discussions instead
was consensus to leave the law on the issue as it was, whatever that might be.
The phrase 'would have constituted violations of the statewide planning goals'
was placed in ORS 197.252, somewhat elliptically, to mean 'would have'
assuming the goals applied. If ever legislative history shows the enactment of a
statute with a firm purpose not to legislate on an issue, the history of ORS
197.252 is it.

1 “Thus the question whether the state-wide goals would govern ‘land
2 conservation and development actions’ after the expiration of the time allowed to
3 bring local plans into compliance with the goals stands where it stood before the
4 1977 legislation. At that time, and at the time relevant to the present case, LCDC
5 was authorized to review any ‘land conservation and development action’ alleged
6 to conflict with the statewide goals. ORS 197.300 (1) (b) (1977). [fn omitted]
Also ORS 197.275(2), quoted above, provides that *after* a compliance
acknowledgment, ‘the goals shall apply to land conservation and development
actions . . . only through the acknowledged comprehensive plan and implementing
ordinances.’ The implication is that before acknowledgment, the goals apply to
such actions not only in this indirect way but directly.”

7 289 Or at 432-434. Other cases follow the Supreme Court’s interpretation.

8 In *1000 Friends v. Benton County*, 32 Or App 413 (1978), the court applied the goals to a
9 1975 subdivision of agricultural land, and in *Jurgenson v. Union County Court*, 42 Or App 505
10 (1979), the court found that the goals applied to the partition of agricultural land. The *Jurgenson*
11 court recognized that “[i]t would be somewhat incongruous to state that local legislation
12 governing partitions generally must comply with the goals, but that specific application of such
13 ordinances need not comply with the goals.” 42 Or App 509.

14 Citing *Sunnyside*, the court in *Jurgenson* agreed that interpretation of SB 100 requires
15 direct application.

16 “Although local governments have been allowed time to bring their
17 land-use legislation into compliance with the goals, ORS 197.250 and
18 197.251 (2), and their existing land-use legislation remains in force until
19 revised, ORS 197.275, one basic thrust of ORS ch 197 is that specific land-
use decisions *during this transition period* must be consistent with the
goals.”

20 *Id.* (emphasis added). Consequently, the court held that “the county was correct to apply the
21 Statewide Planning Goals to this partition request.” *Id.*

22 PETITION—ERRONEOUS INTEPRETATION OF LAW

23 Plaintiffs allege that the State erred by misinterpreting Measure 37. Specifically,
24 plaintiffs contend that the State’s conclusion that Goal 3 applied is contrary to Measure 37 (Pet, ¶
25 11). This contention is without merit because Measure 37 does not alter any existing land use
26 regulations. Although Measure 37 amended Oregon’s land use planning statutes by adding a

1 new section to ORS chapter 197, it did not otherwise amend or repeal other statutes, land use
2 planning goals or rules. *MacPherson v. DAS*, 340 Or 117, 132 (“[n]o law is ‘suspended’; all
3 laws not amended remain in effect”).

4 The State approved plaintiffs’ demand as a result of concluding that land use regulations
5 have restricted plaintiffs’ use relative to the date of acquisition, and some reduction in value
6 resulted. ORS 197.352 (1); *Record*, § 6, pp 8-9. The State granted waiver relief in lieu of
7 compensation. ORS 197.352 (8), (10). Plaintiffs do not allege that any regulations that should
8 have been waived were not waived, and the court’s conclusion as to the applicability of Goal 3
9 will not change the nature or scope of relief to which plaintiffs were entitled, and received, under
10 Measure 37. Plaintiffs cannot demonstrate that anything in the Final Order constitutes an
11 improper interpretation of Measure 37.

12 Plaintiffs also allege that only Marion County zoning ordinances applied directly to the
13 property on the date of acquisition because the authorities on which the State relies “became
14 law” after that date (Pet, ¶ 12). This argument also lacks any basis in the State’s interpretation of
15 Measure 37. Moreover, plaintiffs’ contention is wrong as a matter of law. When the Oregon
16 Supreme Court construes a statute, as it did in *Alexanderson*, that construction becomes a part of
17 the statute as if it had been written in at the time of enactment. *Stephens v. Bohlman*, 314 Or
18 344, 350 n 6 (1992) (“Statutory interpretation particularly implicates the rule of *stare decisis*.”).

19 **PETITION—VIOLATION OF MEASURE 37**

20 The Petition also alleges that the State violated Measure 37 by failing “to provide the
21 relief sought in the claim and as provided for in Measure 37” (Pet, ¶ 17). This allegation is
22 without merit because the State granted relief to plaintiffs “as provided for in Measure 37.” For
23 valid claims, Measure 37 requires public entities pay just compensation, or “modify, remove, or
24 not to apply the land use regulation or land use regulations to allow the owner to use the property
25 for a use permitted at the time the owner acquired the property.” ORS 197.352 (8). In this case,
26 the State issued a Final Order providing relief in accordance with Section 8 of the statute:

1 exceptions to existing laws without repealing or suspending those laws. In the context of the
2 statute, the proper interpretation of “a use permitted” is “a lawful use.”

3 Plaintiffs are mistaken to the extent they intend to argue that the agency, and this court,
4 must determine what Marion County would have done in 1975 as a matter of fact. The proper
5 application of Measure 37 requires only a conclusion as to whether state land use regulations,
6 subsequently enacted, restrict use and reduce value. Measure 37 does not require the State to
7 determine, for example, whether Marion County would have permitted a particular use by
8 mistake or whether Marion County in fact permitted a use to others in violation of law.
9 Implementation of a specific “use permitted” at the time plaintiffs acquired the property is
10 beyond the scope of Measure 37 and is not part of the Final Order.


11 **CONCLUSION**

12 The statement in the State’s Final Order that “the property was subject to statewide Goal
13 3” on November 6, 1975 is correct as a matter of law. The Order should be dismissed and
14 judgment entered for the State.

15 DATED this 20 day of October, 2006.

16 Respectfully submitted,

17 HARDY MYERS
18 Attorney General

19 
20 _____
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22 Senior Assistant Attorney General
23 Trial Attorney
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Of Attorneys for State of Oregon

Land Conservation and Development, other state agencies and local governments shall give the goals equal weight in any matter in which the goals are required to be applied.

(2) The commission and the department shall consider and recognize regional diversity and differences in regional needs when making or reviewing a land use decision or otherwise applying the goals. [1981 c.748 §20; 1987 c.729 §1; 1995 c.521 §2]

197.350 Burden of persuasion or proof in appeal to board or commission. (1) A party appealing a land use decision or limited land use decision made by a local government to the board or Land Conservation and Development Commission has the burden of persuasion.

(2) A local government that claims an exception to a goal adopted by the commission has the burden of persuasion.

(3) There shall be no burden of proof in administrative proceedings under ORS chapters 195, 196 and 197. [1981 c.748 §10a; 1983 c.827 §43; 1991 c.817 §26]

197.352 Compensation for loss of value due to land use regulation. The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 2004, that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this section.

(3) Subsection (1) of this section shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this section;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this section shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made 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.

(6) 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 this section, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this section in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this section.

(8) Notwithstanding any other state statute or the availability of funds under sub-

section (10) of this section, in lieu of payment of just compensation under this section, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this section shall not be considered a land use decision as defined in ORS 197.015 (10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this section. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this section. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans; zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this section is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [2005 c.1]

EXPEDITED LAND DIVISIONS

197.360 "Expedited land division" defined; applicability. (1) An expedited land division:

(a) Is an action of a local government that:

(A) Includes land that is zoned for residential uses and is within an urban growth boundary.

(B) Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.

(C) Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:

(i) Open spaces, scenic and historic areas and natural resources;

(ii) The Willamette River Greenway;

(iii) Estuarine resources;

(iv) Coastal shorelands; and

(v) Beaches and dunes.

(D) Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.

(E) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site.

(b) Is a land division that:

(A) Will create three or fewer parcels under ORS 92.010; and

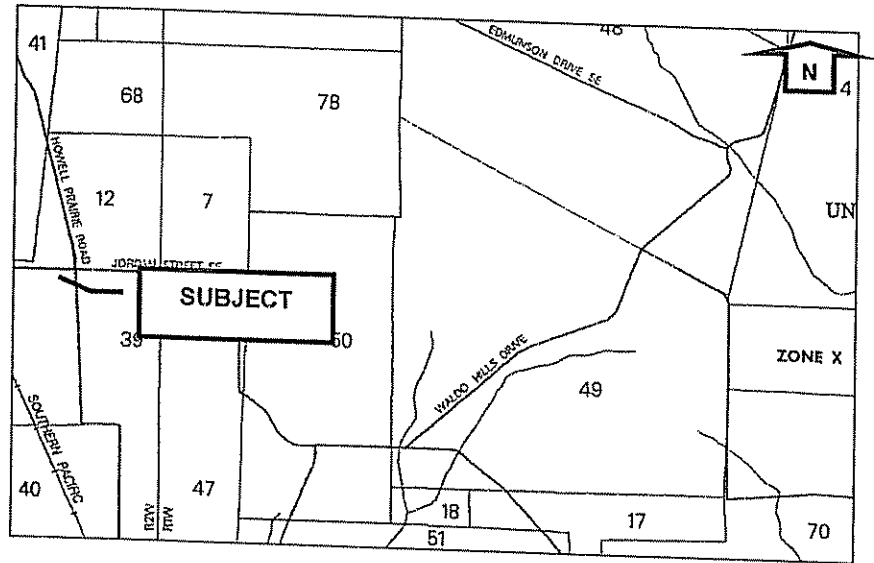
(B) Meets the criteria set forth for an action under paragraph (a)(A) to (D) of this subsection.

(2) An expedited land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all elements of a local gov-

DESCRIPTION (continued)

Floodplain



According to the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Map (FIRM), Community-Panel No. 41047C0400G, dated January 19, 2000, the subject site lies in Zone X, an area outside of the floodplain.

Soils

Subject soils consist primarily (65 percent) of McAlpin silty clay loam (MaA) with slopes of 0 to 3 percent. These soils are **Class II** and support a wide variety of crops including small grains, hay, pasture, and grass grown for seed. Drainage is needed for deep-rooted crops. Approximately 20 percent of the site consists of Nekia silty clay loam with 2 to 7 percent slopes. This is a Class II soil well suited for commonly grown crops such as small grains, orchard, pasture, hay, and grass grown for seed. Small acreages are used for strawberries, field corn, caneberries, and specialty crops. When irrigated, this soil is used for pole beans and sweet corn.

A small portion of the site (roughly 15 percent) contains **Class III** soils. Approximately 10 percent is Hazelair silt loam (HaB) with 2 to 6 percent slopes. This soil is also used mainly for small grains, pasture, hay, and grass grown for seed. It is not suitable for fruit trees and deep-rooted crops, unless irrigated. Roughly 5 percent at the northwest corner of the site is Waldo silty clay loam (Wa), which typically occupies narrow strips along small streams and in drainage ways. The soil is used mainly for small grains, pasture, and grass grown for seed.

ATTACHMENT

B

Section 2
Page 28

§ § § § § § §

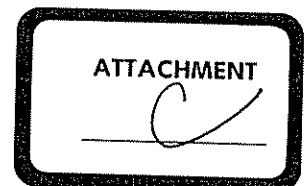
LCDC ORDER #1

- Adopted by LCDC: December 27, 1974
- Filed with Secretary of State: December 31, 1974
- Effective on: January 25, 1975

DESCRIPTION:

Established the original statewide planning goals, numbers 1 through 14

§ § § § § § §



RECEIVED

DEC 31 8 59 AM '74

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
SECRETARY OF STATE

In the Matter of the Adoption)	
by the Land Conservation and)	
Development Commission)	
)	ORDER ADOPTING STATEWIDE
of)	GOALS AND GUIDELINES
)	
Statewide Planning Goals and)	
Guidelines.)	

Whereas the Land Conservation and Development Commission held a series of workshops throughout the State of Oregon to receive public input as to what citizens of Oregon believe should be accomplished by statewide planning goals and guidelines; and

Whereas, as a result of the citizen comments received from those initial workshops the Department of Land Conservation and Development prepared a first draft of Goals and Guidelines; and

Whereas that draft of goals and guidelines was submitted throughout the State of Oregon at a second series of workshops for citizen review and comment; and

Whereas on October 24, 1974, the Commission adopted a second draft of its Goals and Guidelines based on the input the Commission had received at its second round of workshops; and

Whereas the Commission, after publishing formal notice as required by ORS 197.235, held ten public hearings throughout the State of Oregon on such second draft, in order to receive citizen comments thereon; and

Whereas as a result of such hearings and the citizen comments received therein, the Commission on November 30, 1974

adopted a third revised draft of the goals and guidelines;
and

Whereas the Commission on December 13, 1974 held its final hearing on its third revised draft of its Goals and Guidelines, at room 20 of the State capitol, after having published the notice thereof required by ORS 197.240; and

Whereas, as a result of such hearing and the citizen comments it received therein, the Commission on December 20 developed a final draft of its Goals and Guidelines; and

Whereas the Commission on this 27th day of December, 1974 has considered this final draft of Statewide planning Goals and Guidelines, attached hereto as exhibit A and is satisfied that they should be adopted subject to the further corrections and revisions either made or directed to be made,

NOW THEREFORE, it is hereby

ORDERED

1. That the Land Conservation and Development Commission's Statewide Planning Goals and Guidelines, Appendix A, hereto, is adopted subject to the further revisions already ordered by the Commission being inserted;

2. That the operative date of such goals and guidelines shall be January 1, 1975.

3. That the Director of the Department of Land Conservation and Development shall as soon as the final corrections and revisions are completed file a certified true copy of the Statewide Planning Goals and Guidelines with the Secretary

of State's office for inclusion in the publication entitled
"Oregon Administrative Rules."

Dated this 27th day of December, 1974.

For the Commission:

/s/ L. B. Day
L. B. Day, Chairman

STATE-WIDE PLANNING GOALS AND GUIDELINES

Adopted by the
Land Conservation and Development Commission

Commission Members:

L. B. Day, Chairman
Steve Schell, Vice Chairman
Dorothy Anderson
Albert Bullier, Jr.
Paul Rudy
James Smart
Richard Gervais

Department of Land Conservation
and Development:

Arnold Cogan, Director

Date of Adoption: December 27, 1974
Operative Date: January 1, 1975

(The preparation of this report was financed in part through a Comprehensive Planning Grant from the Department of Housing and Urban Development under the provisions of Section 701 of the Housing Act of 1954, as amended.)

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3 - AGRICULTURAL LANDS

GOAL:

To preserve and maintain agricultural lands.

Agriculture lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. 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.

Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural land to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

AGRICULTURAL LAND--in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

FARM USE--is as set forth in ORS 215.203 and includes the non-farm uses authorized by ORS 215.213.

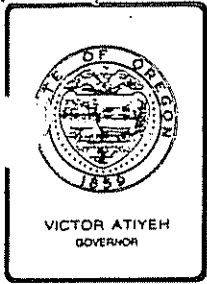
GUIDELINES:

A. PLANNING

1. Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.
2. Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION:

1. Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) should be minimized to allow for maximum agricultural productivity.
2. Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213.
3. Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203 and 215.213, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.
4. Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural growth. The interchange of such lands should not be subject to tax penalties.



Land Conservation and Development Commission

1175 COURT STREET N.E., SALEM, OREGON 97310

June 10, 1982

I certify that the foregoing is a true
and correct copy of the original
Date 10-20-2006 pgs. 5
Name Larry J. French
Department of Land
Conservation and Development

The Honorable Gary Heer, Chairman
Marion County Board of Commissioners
Marion County Courthouse
Salem, OR 97301

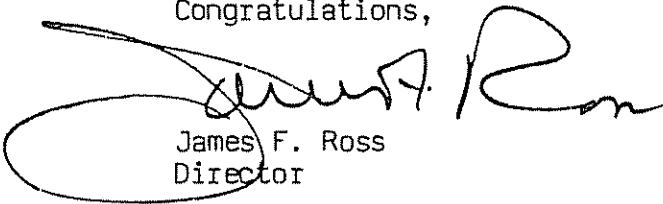
Dear Chairman Heer:

It gives me a great deal of pleasure to confirm that the Land Conservation and Development Commission, on May 20-21, 1982, officially acknowledged the comprehensive plan and implementing ordinances of Marion County as being in compliance with the Statewide Planning Goals. The acknowledgment signifies a historic step for the County's land use planning efforts.

Attached is a maintenance grant offer of \$6,658. The maintenance grant program provides state funds annually to help keep your comprehensive plan current. This assures the plan will actively guide growth and development in the future. Full payment will be sent to you after return of the agreement. One copy is for your file.

I would like to commend the local officials, staff, and citizens of your County for their hard work and foresight in the field of land use planning.

Congratulations,



James F. Ross
Director

JFR:TMC
4937A/3C/9633A/9B

Enclosure

cc: Pam Brown, Coordinator
Craig Greenleaf, Field Representative
Dick Wilson, Real Estate Division
Ron Eber, Lead Reviewer
Jim Knight, DLCD
DLCD Library
Portland Field Office
Objectors and Commentors
LUBA



I certify that the foregoing is a true and correct copy of the original

Date 10-20-2006 pgs.

Name Larry French

Department of Land Conservation and Development

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF)
MARION COUNTY'S COMPREHENSIVE)
PLAN AND IMPLEMENTING MEASURES)

COMPLIANCE ACKNOWLEDGMENT
ORDER

1. Marion County's request for acknowledgment of compliance has been reviewed by the Commission twice before on October 31, 1980 and September 25, 1981 pursuant to ORS 197.251 and the Commission Acknowledgment Rule, OAR 660-03-000 to 660-03-035. For each of these reviews, the Commission found that Marion County's Comprehensive Plan and land use regulations did not comply with certain specified Statewide Planning Goals and Continued the County's request for Acknowledgment (Continuance Orders of December 16, 1980 and October 19, 1981, Exhibits A and B). The findings previously adopted by the Commission as part of these Continuance Orders which explain why Marion County's plan and land use regulations comply with all or part of certain Statewide Planning Goals are readopted by this Order as findings of the Commission.
2. On May 20, 1982, the Commission again considered Marion County's request for Acknowledgment of Compliance with the Statewide Planning Goals. The Commission reviewed the attached written report of the staff of the Department of Land Conservation and Development regarding compliance of Marion County's Comprehensive Plan and land use regulations with the Statewide Planning Goals. Section IV of this report (May 6, 1982) constitutes additional findings of the Commission (Exhibit C).

3. The Commission finds that Marion County's Plan is in compliance with the Statewide Planning Goals. There appear to be arguable deficiencies in the plan for certain areas (particularly exception areas: Ankeny and Talbot Interchanges, Chinook Phase 5, Drury, Steel Bridge and White Cloud), if measured in isolation against the Goals. However, in view of the complexities of the problems, the extent of involvement in good faith planning, the relatively small proportion of land at issue and the positive achievements of the plan in resource protection, the Commission finds that the plan, viewed as a whole, complies with the Goals, including Goal 2, and that discrepancies are of a de minimus nature, so that acknowledgment is warranted.

The Commission conclusion is further supported by the Commission obligation in ORS 197.230(1) to "consider existing comprehensive plans of local governments...in order to preserve functional aspects of land conservation and development," and in ORS 197.230(4) to allow a reasonable degree of flexibility in the application of Goals." While these requirements are written as considerations in adoption process, the Commission believes they must be relied upon in applying the Goals as well. This view is reinforced by the obligation of "the Commission, the department, and local governments to give the Goals equal weight in the planning process" (ORS 197.340).

The Commission (in ORS 197.040(b)) is required to recognize differences among local governments. "In designing its administrative requirements, the Commission shall allow for the diverse administrative and planning capabilities of local governments."

The Commission cautions other jurisdictions not to take parts of the plan or the report out of context and use them as standards because the determination of acknowledgment is limited to the facts in this case.

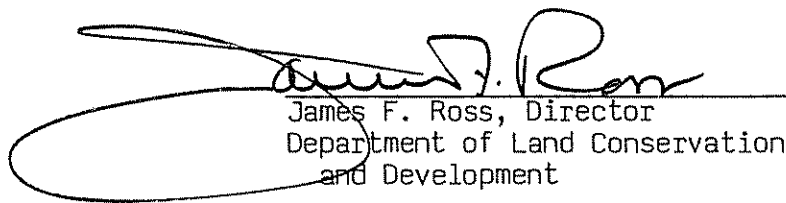
4. The Commission, based upon all three acknowledgment reviews and having fully considered Marion County's Comprehensive Plan and land use regulations, comments and objections of interested parties and the Department's reports, adopted as part of the Commission's previous Continuance Orders of December 16, 1980 and October 19, 1981 and the Department's report of May 6, 1982 finds that Marion County's Comprehensive Plan and land use regulations now comply with the Statewide Planning Goals adopted by this Commission pursuant to ORS 197.225 and 197.250.

THEREFORE, IT IS HEREBY ORDERED THAT:

The Land Conservation and Development Commission acknowledges that Marion County's Comprehensive Plan and land use regulations comply with the Statewide Planning Goals.

DATED THIS 10TH DAY OF JUNE 1982.

For the Commission:


James F. Ross, Director
Department of Land Conservation
and Development

NOTICE: You are entitled to Judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final Order. Judicial review is pursuant to the provisions of ORS Ch. 183.482 and ORS 197.650.

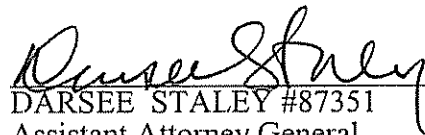
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1 **CERTIFICATE OF SERVICE**

2 I certify that on October 20, 2006, I served the foregoing *State of Oregon's Trial*
3 *Memorandum* upon the parties hereto by the method indicated below, and addressed to the
4 following:
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