



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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September 26, 2007



To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130857

Claimants: Clyde A. Freeborn, Mary C. Freeborn, Scott A. Freeborn and Jennifer A. Freeborn

Enclosed is a Revised Final Order that the department has issued in connection with the above-referenced Ballot Measure 37 claim.

The Revised Final Order has been issued to correct an error that appeared in the original Final Order. In all other respects, the terms of the Final Order are the same as previously issued. The Final Staff Report has not been revised.

No response from you to this Revised Final Order is required.

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)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
Clyde A. Freeborn, Mary C. Freeborn,)
Scott A. Freeborn and Jennifer A. Freeborn, CLAIMANTS)

REVISED FINAL ORDER
CLAIM NO. M130857

Claimants: Clyde A. Freeborn, Mary C. Freeborn, Scott A. Freeborn and
Jennifer A. Freeborn (the Claimants)

Property: Township 7S, Range 4W, Section 34, Tax lot 200, Polk County (the Property)

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

Claimants 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 revised 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 revised 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 the claimants' division of the 100.68-acre subject property into 1- to 5-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Clyde Freeborn acquired the property on June 10, 1973, and Mary, Scott and Jennifer Freeborn acquired the property on June 18, 2003. The department acknowledges that the relief to which Mary, Scott and Jennifer Freeborn are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Clyde Freeborn acquired the property on June 10, 1973, and when Mary, Scott and Jennifer Freeborn acquired the property on June 18, 2003. On June 18, 2003, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 claimants first obtain 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.


4. Any use of the subject property by the claimants 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 claimants to use the subject property, it may be necessary for them 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 claimants 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 subject property by the claimants.


6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

This Revised Order is entered by the Manager for the Measure 37 Services Division 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 Director 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:
Cora R. Parker, Acting Director


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 26th day of September, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Division
Dated this 26th day of September, 2007.

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 197.352, 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.”