

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

IN THE MATTER OF THE CLAIM) FINAL ORDER
FOR COMPENSATION UNDER) CLAIM NO. M 118961
BALLOT MEASURE 37 (CHAPTER)
1, OREGON LAWS 2005) OF)
John and Julie Benton, CLAIMANT)

Claimant(s): John and Julie Benton (the Claimant)

Property: Tax Lot 1200, T.2N, R.10E, Section 1, W.M., Hood River County

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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCDC) 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 DLCDC (the DLCDC Report) attached to and by this reference incorporated into this order.

ORDER

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

1. In lieu of paying just compensation under Measure 37, the State of Oregon will not apply the following laws to the Benton’s division of the Property into lots or parcels or to the establishment of a single-family dwelling on each lot or parcel: those provisions of Statewide Land Use Planning Goal 3, ORS 215.263, ORS 215.284, ORS 215.780 and OAR chapter 660, division 33 that restrict the division of the Property into lots or parcels or the establishment of a single-family dwelling on each lot or parcel, except for the provisions of each of these laws that were in effect when the Benton’s acquired their interest in the Property on August 3, 1977.
2. The relief granted by this order does not authorize the Benton’s to use the Property for a use that was not permitted when they acquired their interest in the Property. The use of Property permitted in 1977 was governed by state laws that include, but are not limited to: the provisions of ORS chapter 92, Statewide Land Use Planning Goal 3, and ORS chapter 215 that existed at that time.

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, this order does 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 215.412 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 Claimants under the terms of this order remains 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of Measure 37.

5. Without limiting the generality of the foregoing terms, in order for the Claimant to use the Property, it may be necessary for the Claimant to obtain a decision under Measure 37 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 Measure 37 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 Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR chapter 125, division 145 and ORS chapter 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD

Dated this ___ day of _____, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:

David Hartwig, Administrator
DAS, State Services Division

Dated this ___ day of _____, 2005.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. 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 and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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.”