

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 119558  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
Candace Ewalt, Tim Ewalt, Erik Koue, )  
and Jennifer Koue, CLAIMANTS )

Claimant(s): Candace Ewalt, Tim Ewalt, Erik Koue, and Jennifer Koue (the Claimants)

Property: Tax Lot 100, T.14S, R.13E, Section 20, W.M., Deschutes County

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 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 (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 denied as to Jennifer Koue and approved as to Candace Ewalt, Tim Ewalt, and Erik Koue, 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 paying just compensation under Measure 37, the State of Oregon will not apply the following laws to Candace Ewalt's, Tim Ewalt's, and Erik Koue's division of the Property into 2.5-acre lots or parcels or to the establishment of a dwelling on each lot or parcel: those provisions of ORS 215.281, 215.284 and 215.780, and OAR 660-033-0130 and 660-033-0135 that restrict the division of the Property into lots or parcels or the establishment of a dwelling on each lot or parcel, except for the provisions of each of these laws that were in effect when Ms. Ewalt and Mr. Koue acquired their interests in the Property on January 25, 1993, and when Mr. Ewalt acquired his interest in the Property on March 23, 1994.
2. The relief granted by this order does not authorize Candace Ewalt and Erik Koue to use the Property for a use that was not permitted when they acquired their interests in the Property. The use of the Property permitted in 1993 was governed by state laws that include, but are not limited

to: the provisions of ORS 92, Statewide Land Use Planning Goal 3, and ORS 215 that existed at that time.

3. The relief granted by this order does not authorize Tim Ewalt to use the Property for a use that was not permitted when he acquired his interest in the Property. The use of the Property permitted in 1994 was governed by state laws that include, but are not limited to: the provisions of ORS 92, Statewide Land Use Planning Goal 3, ORS 215, and OAR 660, division 33, that existed at that time.

4. 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 Candace Ewalt, Tim Ewalt, and Erik Koue 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 215.412 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.

5. Any use of the Property by Candace Ewalt, Tim Ewalt, and Erik Koue 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.

6. Without limiting the generality of the foregoing terms, in order for Candace Ewalt, Tim Ewalt, and Erik Koue to use the Property, it may be necessary for Candace Ewalt, Tim Ewalt, and Erik Koue to obtain a decision under Measure 37 from Deschutes County or other jurisdiction that enforces land use regulations applicable to the Property. Nothing in this order relieves Candace Ewalt, Tim Ewalt, and Erik Koue 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 Candace Ewalt, Tim Ewalt, and Erik Koue.

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 Measure 37, OAR 660-002-0010(8), and OAR 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 125, division 145 and ORS 293.

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

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By: George Naughton, Deputy Director  
DLCD

Dated this \_\_\_ day of \_\_\_\_\_, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

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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."