

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. M119478
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Virginia Corey and)
Bergis Road, LLC, CLAIMANTS)

Claimants: Virginia Corey and Bergis Road, LLC, Bernita Johnston (the Claimants)

Property: Tax Lot 600 and 690, T.2S, R.1E, Section 15B, W.M., Clackamas 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 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 paying just compensation under Measure 37, the State of Oregon will not apply the following laws to Virginia Corey’s division of the property or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goals 3 and 14 that were enacted after December 11, 1978; the applicable provisions of ORS 215.263, 215.283, 215.284, 215.705 and 215.780 that were enacted after December 11, 1978; and the applicable provisions of OAR 660-033-0130 and 660-033-0135 that were enacted after December 11, 1978. These land use regulations will not apply to Ms. Corey’s use of the property only to the extent necessary to allow her to use the property for a use permitted at the time she acquired an interest in the property.
2. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Bergis Road, LLC division of the property or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goals 3

and 14 that were enacted after August 12, 2004; the applicable provisions of ORS 215.263, 215.283, 215.284, 215.705 and 215.780 that were enacted after August 12, 2004; and the applicable provisions of OAR 660-033-0130 and 660-033-0135 that were enacted after August 12, 2004. These land use regulations will not apply to Bergis Road, LLC's use of the property only to the extent necessary to allow it to use the property for a use permitted at the time it acquired an interest in the property. The department acknowledges that the relief recommended in this report will not allow the Bergis Road, LLC to use the property in the manner set forth in the claim.

3. The action by the State of Oregon provides the state's authorization to Ms. Corey to use the property subject to the standards in effect on December 11, 1978. On that date, the property was subject to Statewide Planning Goal 3 and applicable provisions of ORS chapter 215 (1975 editions).

4. The action by the State of Oregon provides the state's authorization to Bergis Road, LLC to use the property subject to the standards in effect on August 12, 2004. On that date, the property was subject to Statewide Planning Goal 3 and applicable provisions of ORS chapter 215 and OAR 660 Division 33.

5. 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 Claimants 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.

6. 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.

7. Without limiting the generality of the foregoing terms, in order for the Claimants to use the Property, it may be necessary for the Claimants 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 Claimants 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 Claimants.

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 125, division 145, and by the Deputy 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
DLCD

Dated this ___ day of _____, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:

Dugan Petty, Deputy 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."