

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. M119868
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Carolyn and Adam Bergey, CLAIMANTS)

Claimants: Carolyn and Adam Bergey

Property: Tax Lot 1502, Township 1S, Range 2W, Section 15, W.M., Washington 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 compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, will not apply to allow Carolyn Bergey to apply to Washington County for approval of a dwelling on the property: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands); ORS 215.213, 215.284, and ORS 215.317; and OAR 660, division 033 that took effect after Carolyn Bergey acquired her interest in the property on October 9, 1984. These laws will not apply to the claimant to the extent necessary to allow Carolyn Bergey a use of the subject property permitted at the time she acquired the property on October 9, 1984. The department acknowledges that the relief recommended in this report may not allow Mrs. Bergey to use the property in the manner set forth in the claim.

In lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, will not apply to allow Adam Bergey to apply to Washington County for approval of a dwelling on the

property: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands); ORS 215.213, 215.284, and ORS 215.317; and OAR 660, division 033 that took effect after the present owner Adam Bergey acquired his interest in the property on June 25, 2001. These laws will not apply to the claimant to the extent necessary to allow Adam Bergey a use of the subject property permitted at the time he acquired the property on June 25, 2001. The department acknowledges that the relief recommended in this report will not allow Mr. Bergey to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the State's authorization to the claimant Carolyn Bergey to use the property subject to the standards in effect on October 9, 1984. On that date, the property was subject to the provisions of ORS 215 that were in effect, Statewide Planning Goal 3 (Agricultural Lands), and the standards for farm and non-farm dwellings in effect on that date, specifically, the standards in OAR 660, division 5.

The action by the State of Oregon provides the State's authorization to the claimant Adam Bergey to use the property subject to the standards in effect on June 25, 2001. On that date, the property was subject to the provisions of ORS 215 that were in effect, Statewide Planning Goal 3 (Agricultural Lands), and the standards for farm and non-farm dwellings in effect on that date, specifically, the standards in OAR 660, division 033, including OAR 660-033-0135(7).

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 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.

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 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."