

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. M120337  
BALLOT MEASURE 37 (CHAPTER )  
1, OREGON LAWS 2005) OF )  
Marvin F. and JoAnn Winters, CLAIMANTS )

Claimants: Marvin F. and JoAnn Winters (the Claimants)

Property: Tax Lot 800, T.2S, R.2W, Section 19; and Tax Lot 100, T.2S, R.3W, Section 24, W.M., Washington County

Claim: The demand for compensation and any supporting information received from the Claimant 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 under Measure 37, the State of Oregon will not apply the following laws to Marvin and JoAnn Winters' division of tax lot 800 into 17 to 35 lots and the development of dwellings on 15 to 33 of the new lots: Statewide Planning Goal 3 and OAR 660, division 33 and applicable provisions of ORS 215 enacted after September 10, 1972. These land use regulations will not apply to Marvin and JoAnn Winters' use of tax lot 800 only to the extent necessary to allow the claimants a use permitted at the time they acquired the property on September 10, 1972.

In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Marvin and JoAnn Winters' division and development of tax lot 100: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33, enacted after June 29, 1988. These land use regulations will not apply to Marvin and JoAnn Winters' use of tax lot 100 only to the extent necessary to allow the claimants a use permitted at the time they acquired the property on June 29, 1988.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 800 subject to the standards in effect on September 10, 1972, and to use tax lot 100 subject to the standards in effect on June 29, 1988. On September 10, 1972, tax lot 800 was subject to applicable provisions of ORS 215 then in effect. On June 29, 1988, tax lot 100 was subject to applicable provisions of Goal 3, ORS 215, OAR 660, division 5, and the County's acknowledged AF-20 District then in effect.

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, 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 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 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37 from a city and/or county 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 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 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:  
For Lane Shetterly, Director

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George Naughton, Deputy Director  
DLCD

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

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

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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."