

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 120362  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
Michael Harris, Joan Harris Forrest, )  
Gail Lee Wilson, Matthew Wilson, )  
Jan E. Harris-Kimball and Kanoa Kimball, )  
CLAIMANTS )

Claimants: Michael Harris, Joan Harris Forrest, Gail Lee Wilson, Matthew Wilson, Jan E. Harris-Kimball and Kanoa Kimball (the Claimants)

Property: Tax Lots 201, 300, 301, and 302, T.11S, R.5W, Section 16, W.M., Benton 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 (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 compensation under Measure 37, the State of Oregon will not apply the following laws to Joan Harris Forrest’s division and development of Tax lots 300 and 302: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6, enacted after she acquired her interest on March 25, 1959.
2. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Gail Lee Harris’s, Jan E. Harris-Kimball’s, Michael Harris’s, Kanoa Kimball’s, and Matthew Wilson’s division and development of Tax lot 201: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6, enacted after Gail Lee Harris, Jan E. Harris-Kimball, and Michael Harris acquired their interests on

December 18, 1973; and applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6, enacted after Kanoa Kimball and Matthew Wilson acquired their interests on September 18, 1985.

3. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Gail Lee Harris's, Jan E. Harris-Kimball's, and Michael Harris's division and development of Tax lot 301: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6, enacted after Gail Lee Harris, Jan E. Harris-Kimball, and Michael Harris acquired their interests on July 8, 1993.
4. These land use regulations will not apply to the claimants' use of their property only to the extent necessary to allow these claimants a use permitted at the time each claimant acquired his or her interest in the property on March 25, 1959, December 18, 1973, September 18, 1985 or July 8, 1993, respectively. The department acknowledges that the relief to which Kanoa Kimball and Matthew Wilson are entitled under Measure 37 will not allow them to use Tax lot 201 in the manner set forth in this claim. The department acknowledges that the relief to which Michael Harris, Jan E. Harris-Kimball and Gail Lee Harris are entitled under Measure 37 will not allow Michael Harris, Jan E. Harris-Kimball and Gail Lee Harris to use Tax lot 301 in the manner set forth in this claim.
5. The action by the State of Oregon provides the state's authorization to Joan Harris Forrest to use Tax lots 300 and 302 to the standards in effect on March 25, 1959. The action by the State of Oregon provides the state's authorization to Michael Harris, Jan E. Harris-Kimball, and Gail Lee Harris to use Tax lot 201 subject to the standards in effect on December 18, 1973. On that date, Tax lot 201 was subject to applicable provisions of ORS 215, including the Interim Planning Goals set forth in ORS 215.215, and Benton County RU zoning then in effect. The action by the State of Oregon provides the state's authorization to Kanoa Kimball and Matthew Wilson to use Tax lot 201 to the standards in effect on September 18, 1985. On that date, Tax lot 201 was subject to applicable provisions of Statewide Planning Goal 4, ORS 215, OAR 660, division 6, and Benton County FC-40 zoning then in effect. The action by the State of Oregon provides the state's authorization to Michael Harris, Jan E. Harris-Kimball, and Gail Lee Harris to use Tax lot 301 subject to the standards in effect on July 8, 1993. On that date, Tax lot 301 was subject to applicable provisions of Statewide Planning Goal 4, ORS 215, OAR 660, division 6, and Benton County FC zoning then in effect.
6. 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.

7. 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.
8. 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 Benton County or other jurisdiction 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 Benton County or other 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 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, 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.”