

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) REVISED FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M124844
(BALLOT MEASURE 37) OF)
Thomas C. Orth and)
W. John McKay, CLAIMANTS)

Claimants: Thomas C. Orth and W. John McKay (the Claimants)

Property: Township 7S, Range 11W, Section 1, Tax lot 100, Lincoln County (the Property)

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 ORS 197.352. 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 ORS 197.352, the State of Oregon will not apply the following laws to Thomas Orth and W. John McKay's division of the 79.37-acre subject property into 31 to 35 two- or three-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after each claimant acquired the subject property. These laws will not apply to Thomas Orth and W. John McKay only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Thomas Orth acquired the property on August 29, 1989, and when W. John McKay acquired the property on October 11, 2004. The department acknowledges that it is unlikely that the relief to which Thomas Orth is entitled under ORS 197.352 will allow him to use the subject property for the claimants' desired use and the relief to which W. John McKay is entitled under ORS 197.352 will not allow him to use the subject property for the claimants' desired use.

2. The action by the State of Oregon provides the state's authorization to Thomas Orth and W. John McKay to use the subject property for the use described in this report, subject to the

standards in effect on August 29, 1989, for Thomas Orth and October 11, 2004, for W. John McKay. On August 29, 1989, the property was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lincoln County's acknowledged forest zone. On October 11, 2004, the property was subject to the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 Thomas Orth and W. John McKay 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

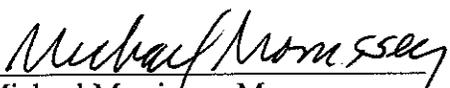
4. Any use of the subject property by Thomas Orth and W. John McKay under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the Thomas Orth and W. John McKay to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 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 Thomas Orth and W. John McKay from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to their use of the subject property.

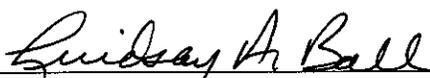
This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Director for the Department of Administrative Services as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:

Lane Shetterly, Director


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Effective Date October 2nd, 2006.
Signed this 5th day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Lindsay A. Ball, Director
DAS
Effective Date October 2nd, 2006
Signed this 5th day of October, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. 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 or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(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."