

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	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129566
(BALLOT MEASURE 37) OF	)	
Terry and Patricia Caster, CLAIMANTS	)	

Claimants: Terry and Patricia Caster (the Claimants)

Property: Township 6S, Range 1E, Section 24: tax lot 100

Township 6S, Range 1E, Section 25: tax lot 100 and 800

Township 6S, Range 2E, Section 30, Tax lot 300

Marion 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.

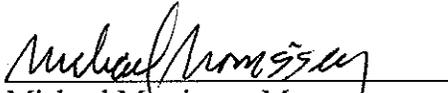
ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

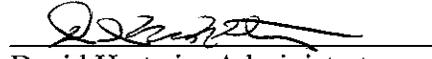
This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the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

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:  
Lane Shetterly, Director

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 15<sup>th</sup> day of December, 2006.



David Hartwig, Administrator  
DAS, State Services Division  
Dated this 15<sup>th</sup> day of December, 2006.

### **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 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)

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

December 15, 2006

**STATE CLAIM NUMBER:** M129566

**NAMES OF CLAIMANTS:** Terry and Patricia Caster

**MAILING ADDRESS:** 11990 S Butte Creek Road  
Scotts Mills, Oregon 97375

**PROPERTY IDENTIFICATION:** Township 6S, Range 1E  
Section 24: tax lot 100  
Section 25: tax lot 100 and 800

Township 6S, Range 2E, Section 30  
Tax lot 300  
Marion County

**OTHER CONTACT INFORMATION:** Wallace W. Lien, P.C.  
1775 32nd Place NE, Suite A  
Salem, Oregon 97301

**DATE RECEIVED BY DAS:** June 23, 2006

**180-DAY DEADLINE:** December 20, 2006

**I. SUMMARY OF CLAIM**

The claimants, Terry and Patricia Caster, seek compensation in the amount of \$1,037,160 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 180-acre subject property into 5-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 11990 S Butte Creek Road, near Scotts Mills, in Marion County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is not valid because the claimants have not established their ownership of the subject property or when they acquired a right to use the subject property in a manner that is prohibited by state land use regulations. (See the complete recommendation in Section VI of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On October 23, 2006, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, six written comments were received in response to the 10-day notice.

Four comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law.

Two comments are relevant to whether the claimants are owners and when the claimants became the present owners of the subject property. The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(5), requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on June 23, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660 and the statewide planning goals as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### 1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

### Findings of Fact

Claimant Terry Caster acquired a fractional interest in the subject property from his father, Eldred Caster, on October 31, 1973, as reflected by a quitclaim deed included with the claim. The record reflects that in 1980, under Marion County Circuit Court Case No. 108,412, Eldred Caster sued Terry Caster to adjudicate Terry Caster's interest in the subject property. The record includes a copy of a Stipulation wherein in settlement of said suit the parties agreed that Eldred Caster would convey the subject property to Terry Caster in exchange for a promissory note secured by a mortgage in favor of Eldred Caster in the subject property.

In apparent compliance with the Stipulation, the record reflects that Eldred Caster conveyed the subject property to Terry Caster by deed dated November 7, 1980, and Terry Caster and Patricia Caster executed a promissory note and mortgage in favor of Eldred Caster on November 24, 1980. The record further reflects that on January 14, 1981, Eldred Caster again sued the claimants under Marion County Circuit Court Case No. 124,349 for judgment on the promissory note and foreclosure of the mortgage. On May 18, 1981, an Order for Partial Summary Judgment was entered in said action in favor of Eldred Caster against the claimants. Among other things, the Order provided that "Defendants and every person whose conveyance or encumbrance is recorded subsequent to the filing of the notice of the pendency of this action, be forever foreclosed of all right, claim, lien, and equity redemption in the mortgaged premises."

During the pendency of said action, the record reflects that Terry and Patricia filed an application to partition the property. The Marion County Planning Department granted the application. Eldred Caster appealed under Case No. 81-9 on the basis that the County lacked jurisdiction because Terry and Patricia Caster no longer had an ownership interest in the property. On July 27, 1981, the Marion County Hearings Officer, Wallace Lien, reversed the decision of the Planning Department and denied the claimants' partition application. The Hearings Officer held that the Casters were not "owners" of the property under Marion County Ordinance No. 540, Section II(23). In so holding, the Hearings Officer concluded in part that the Casters' "only interest in the property is a right to redemption and as such, it is not an ownership interest, but rather a statutory right which they may or may not exercise in the future. The redemption right is not a sufficient interest in the property to justify a land use action as substantial as partition. If the applicant does exercise his statutory right and regains an ownership interest, a motion to reactivate this application would be appropriate."

The claimants appealed to the Board of County Commissioners. By order dated August 19, 1981, the Board upheld the Hearings Officer's order and denied the appeal. The record before the department is silent as to if and when the claimants re-acquired an interest in the property or the right to use the subject property in a manner that is prohibited by state land use regulations. The record contains a warranty deed dated October 12, 1981, wherein claimant Terry Caster

purports to convey an interest in the subject property to claimant Patricia Caster. However, the legal affect of said conveyance cannot be ascertained from the documents in the record at this time.

## **Conclusions**

The claimants, Terry and Patricia Caster, have not established that they are “owners” of an interest in the subject real property as that term is defined in ORS 197.352(11)(C). In the alternative, even if claimants are owners of an interest in the subject real property, based on the record, that interest does not include the right to divide the property into 5-acre parcels and develop a dwelling on each parcel, because the claimants’ interest has been determined by Marion County to be insufficient to support their submission of a land use application. If claimants have subsequently acquired some additional interest in the subject property, they have not provided the department with evidence of when that occurred or what that interest is. As a result, the department recommends that this claim be denied on the basis that the claimants’ do not own an interest in the subject property that includes rights that have been restricted by a state land use regulation.

### **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

As explained in Section V.(1), the claimants, Terry and Patricia Caster, are not “owners” of an interest in the subject property that has been restricted by a state land use regulation. Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants’ rights to use the private real property.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

As explained in Section V.(1), the claimants, Terry and Patricia Caster, are not “owners” of an interest in the subject property that has been restricted by a state land use regulation. Therefore, no state land use regulation has had the effect of reducing the fair market value of the claimants’ interest (if any) in the subject property.

### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

As explained in Section V.(1), the claimants, Terry and Patricia Caster, are not “owners” of an interest in the subject property that has been restricted by a stand land use regulation. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the record, the department finds that the claim is not valid because the claimants are not owners of an interest in the subject property that has been restricted by a state land use regulation. The claimants have not established when, if ever, they acquired the right to use the subject property in a manner that is restricted by state land use regulations.

### **Conclusions**

Based on the record before the department, the claimants, Terry and Patricia Caster, have not established that they are entitled to relief under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on November 24 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants’ authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.