

1 **BEFORE THE BOARD OF COMMISSIONERS**  
2 **FOR LINCOLN COUNTY, OREGON**

3  
4 In the Matter of )  
5 )  
6 *The Ballot Measure 37 Claim of* ) **ORDER NO. 3-06-73**  
7 *D. C. Lunstedt and L. H. Lunstedt* )  
8 *File No. 23-LURCC-05* )  
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11 WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot  
12 Measure 37. The Measure amends ORS Chapter 197 to require, under certain circumstances,  
13 actions to address claims of owners of real property if government land use regulations reduce fair  
14 market property value; and

15  
16 WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property  
17 must make a “written claim for compensation” to the government entity enacting, enforcing or  
18 applying a land use regulation that allegedly restricts the use of the owner’s property and has the  
19 effect of reducing its fair market value; and

20  
21 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims  
22 procedures with certain limitations; and

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24 WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim  
25 that reduces fair market value of real property or, in the alternative and in lieu of payment of just  
26 compensation, allows the County to modify, remove or not apply the land use regulation allegedly  
27 supporting a claim reducing a property’s fair market value; and

28  
29 WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for  
30 compensation and make decisions on those claims. A determination to modify, remove or not  
31 apply a land use regulation or compensate a property owner must be based on substantial factual  
32 information and analysis; and

33  
34 WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and  
35 ambiguous provisions and that future litigation or legislative action will be necessary to clarify the  
36 measure’s terms. The County, therefore, adopted procedures in Board of Commissioners Orders  
37 12-04-318 and 4-05-120 to assess claims in a timely manner and to require factual and analytical  
38 information as part of the claim so the County will have a rational basis for its decision on each  
39 claim; and

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41 WHEREAS on September 8, 2005, D. C. Lunstedt and L. H. Lunstedt, filed a Measure 37  
42 claim seeking compensation or the modification, removal or non-application of land use  
43 regulations (“waiver”) that restrict land divisions and uses in the RR-5 and Coastal Shorelands

1 overlay zones which applies to the subject property. The property is 14.33 acres in size is located  
2 on the Siletz River at 1148 Siletz Highway and is identified as tax lot 803 on Lincoln County  
3 Assessor's map 8-11-12, and tax lot 400 on Lincoln County Assessor's map 8-11-13-BA. County  
4 records and the filed claim are found in Lincoln County Planning Department File No. 23-  
5 LURCC-05 and by this reference are incorporated into this Order as if fully set forth; and  
6

7 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-  
8 120, a hearing was held on December 8, 2005 on the claim before the Planning Director as  
9 Hearings Officer, for the purpose of receiving facts and evidence related to determining the  
10 validity of the claim. The claimants' representative provided testimony in support of the claim.  
11 There was no testimony in opposition to the claim; and  
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13 WHEREAS the Planning Director has issued his Department's Staff Report and  
14 Recommendation that is attached to this order as Exhibit "A" and by this reference incorporated  
15 herein. That report finds and concludes that the claim when submitted was valid and recommends  
16 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the  
17 subject land use regulations: staff recommends that the Board direct that the minimum parcel size  
18 and use restrictions of the RR-5 zone (LCC 1.1355) and the C-S overlay (LCC 1.1381) zone not  
19 be applied to the subject property. This allowance would, in accordance with the requirements of  
20 Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at  
21 the time of the owners' acquisition of the subject property in 1964; and  
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23 WHEREAS the Board has considered the report and recommendations of the Planning  
24 Director and County Counsel, including the implications known at this time concerning  
25 ambiguous provisions in Measure 37 which are and will continue to be subject to judicial  
26 clarification for the foreseeable future. Given that status, the Board desires to proceed cautiously  
27 with processing this Measure 37 claim. Therefore, the Board will decide this Measure 37 claim  
28 after placing the claimants on notice of possible future court decisions and interpretations; and  
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30 WHEREAS based on what is known at this time, the Board finds it is in the public interest,  
31 due to the lack of resources to pay compensation, to modify, remove or choose not to apply the  
32 challenged land use regulation to the subject property and issue the "waiver" to claimants;  
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34 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

35 1. Claimants D. C. Lunstedt and L. H. Lunstedt are placed on notice that Oregon courts  
36 continue to interpret provisions in Measure 37 which may change the way claims are treated.  
37 Claimants proceed in this matter knowing that any action taken by the Lincoln County Board of  
38 County Commissioners could be null and void if a court of competent jurisdiction interprets  
39 Measure 37 in any fashion which alters the Board's approval. Lincoln County does not waive  
40 any rights or remedies under law by granting a "waiver" under the law.  
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1           2. The Measure 37 claim of D. C. Lunstedt and L. H. Lunstedt, Lincoln County Case File  
2 No. 23-LURCC-05, was a valid claim when filed on September 8, 2005. The Board of  
3 Commissioners declines to pay just compensation for the claim. In lieu of compensation,  
4 Lincoln County Code Sections LCC 1.1355 (RR-5 Zone) and the LCC 1.1381 (Coastal Overlay  
5 Zone).are modified, removed or not applied for D. C. Lunstedt and L. H. Lunstedt against the  
6 subject property to the following effect:

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- 8           • The non-application of minimum lot size and use regulations would be limited to  
9 the RR-5 zone and C-S overlay zone restrictions.
  - 10
  - 11           • Establishment of additional land parcels, dwellings, and other uses on the subject  
12 property would be subject to all applicable public health and safety regulations,  
13 including but not limited to land division procedures, building codes, on-site  
14 sewage disposal rules and requirements, flood and geologic hazard area  
15 regulations, and state or county road approach permit requirements.
  - 16

17           3. A State of Oregon “waiver” under Measure 37 may be required for the development or  
18 use of the subject property. Lincoln County lacks authority to waive state regulations or laws.  
19 This Order does not affect any land use regulations of the State of Oregon. The claimants are  
20 responsible for seeking compensation or “waiver” from the State of any applicable State laws.  
21 The Planning Director shall send notice of the Board’s decision to the Director of the  
22 Department of Land Conservation and Development. If a State Measure 37 claim is required, no  
23 use, development, permits or other development applications will be processed or approved by  
24 Lincoln County unless the State has issued, if appropriate, its own “waiver.”

25

26           4. This “waiver” provision is void if the property owners or property owners’ successors  
27 are compensated by another governmental agency, including the State, for a reduction in value  
28 resulting from the same or similar land use regulations on the subject property.

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30           5. Excepting new land use regulations imposed after the date of this decision, and subject  
31 to applicable review rights as permitted under Measure 37, this final decision bars a subsequent  
32 Measure 37 claim against the County as to the subject property.

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34           6. Transferability of the “waiver” granted by the County under this decision is unknown  
35 under the current status of Measure 37. Transferability of the “waiver” is allowed to the extent  
36 permitted by law. Granting of this “waiver” does not commit the County to issuance of  
37 development or building permits, if those actions are not allowed under law.

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39           7. This Order be recorded in the Lincoln County Deed Records maintained by the Lincoln  
40 County Clerk without payment of recording fees.

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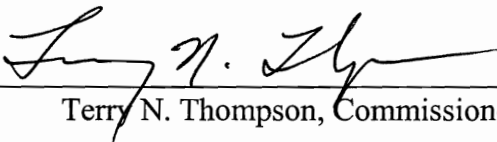
1 8. Copies of this Order be provided to the Planning Director, County Counsel, claimants'  
2 representative, and claimants.

DATED this 1st day of March, 2006.

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
Don Lindly, Chair

  
\_\_\_\_\_  
Bill Hall, Commissioner

  
\_\_\_\_\_  
Terry N. Thompson, Commissioner

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