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6 **BEFORE THE BOARD OF COMMISSIONERS**
7 **FOR LINCOLN COUNTY, OREGON**

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9 In the Matter of) **ORDER NO. 6-07-622**
10) **AMENDING**
11 *The Ballot Measure 37 Claim of Betty Coates*) **ORDER NO. 5-07-566**
12 *Case File No. 112-LURCC-06*)

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14 WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot Measure
15 37. The measure amends ORS Chapter 197 to require, under certain circumstances, actions to
16 address claims of owners of real property if government land use regulations reduce fair market
17 property value; and

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

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24 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures
25 with certain limitations; and

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

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

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

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8 WHEREAS on December 1, 2006, Betty Coates filed a Measure 37 claim seeking
9 compensation for, or the modification or removal of, land use restrictions that limit land divisions and
10 the placement of dwellings in the A-C (Agricultural Conservation) zone. The property is 47.21 acres
11 in size and located at 1584 Moonshine Park Road. It is identified as tax lot 202 on Lincoln County
12 Assessor's Map #9-9-28 and tax lot 1200 on Lincoln County Assessor's Map #9-9-29. County
13 records and the filed claim are found in Lincoln County Planning Department File No. 112-LURCC-
14 06 and by this reference are incorporated into this order as if fully set forth; and

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16 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-120,
17 a hearing was held on April 5, 2007, on the claim before the County Counsel as Hearings Officer, for
18 the purpose of receiving facts and evidence related to determining the validity of the claim. At the
19 hearing, the claimant's representative provided testimony in support of the claim. There was no
20 testimony in opposition to the claim; and

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22 WHEREAS the Planning Director has issued his Department's Staff Report and
23 Recommendation that is attached to this order as Exhibit "A" and by this reference incorporated
24 herein. That report finds and concludes that the claim when submitted was valid, and recommends
25 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the
26 subject land use regulations; staff therefore recommends that the Board choose the non-application of
27 land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that
28 the Board direct that the minimum parcel size requirements and the restrictions on dwellings in the
29 A-C zone not be applied to the subject property. This would allow the claimant to divide the subject
30 property into three- to five-acre parcels, each with a single-family dwelling, as requested by the
31 claimant and as permitted at the time of acquisition of the subject property. This would allow the
32 owner to use the property for a use permitted at the time of the owner's acquisition in accordance
33 with the requirements of ORS 197.352 (8); and

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35 WHEREAS the Board has considered the report and recommendations of the Planning
36 Director and County Counsel, including the implications known at this time concerning ambiguous
37 provisions in Measure 37 which are and will continue to be subject to judicial clarification for the
38 foreseeable future. Given that status, the Board desires to proceed cautiously with processing this
39 Measure 37 claim. Therefore, the Board will decide this Measure 37 claim after placing the claimant
40 on notice of possible future court decisions and interpretations. In addition, the Oregon Legislature is
41 considering changes to Measure 37 that may impact these claims; and
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1 WHEREAS based on what is known at this time, the Board finds it is in the public interest,
2 due to the lack of resources to pay compensation, to modify, remove or choose not to apply the
3 challenged land use regulation to the subject property and issue the “waiver” to claimant.

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5 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

6 1. Claimant is placed on notice that Oregon courts continue to interpret provisions in
7 Measure 37 which may change the way claims are treated. Claimant proceeds in this matter
8 knowing that any action taken by the Lincoln County Board of Commissioners could be null and
9 void if a court of competent jurisdiction interprets Measure 37 in any fashion which alters the
10 Board’s approval. In addition, the Oregon Legislature is currently considering changes that may
11 impact these claims. Lincoln County does not waive any rights or remedies under law by granting a
12 “waiver” under the law.

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14 2. The Measure 37 claim of Betty Coates, Lincoln County Case File No. 112-LURCC-06,
15 was a valid claim when filed on December 1, 2006. The Board of Commissioners declines to pay
16 just compensation for the claim. In lieu of compensation, the Board elects to modify, remove or not
17 apply the current restrictions on minimum parcel size and dwellings in the A-C zone to the subject
18 property. This allows the claimant to divide the subject property into three-to five-acre parcels,
19 each with a single-family dwelling, as requested by the claimant and as permitted at the time of
20 acquisition of the subject property. This waiver is to the effect as follows:

- 21 • The non-application of regulations would be limited to the minimum parcel size
22 requirements and restrictions on dwellings provided for in LCC 1.1373. All other
23 provisions of the Lincoln county code would continue to apply.
- 24 • Establishment of additional land parcels, each with one single-family dwelling, on
25 the subject property would be subject to all applicable public health and safety
26 regulations, including but not limited to land division procedures, building codes,
27 on-site sewage disposal rules and requirements, flood hazard area regulations, and
28 county road approach permit requirements.

29
30 3. A State of Oregon “waiver” under Measure 37 may be required for the development or use
31 of the subject property. Lincoln County lacks authority to waive state regulations or laws. This
32 order does not affect any land use regulations of the State of Oregon. The claimant is responsible
33 for seeking compensation or “waiver” from the state of any applicable state laws. The Planning
34 Director shall send notice of the Board’s decision to the Director of the Department of Land
35 Conservation and Development. If a State Measure 37 claim is required, no use, development,
36 permits or other development applications will be processed or approved by Lincoln County unless
37 the state has issued, if appropriate, its own “waiver”.

1 4. This "waiver" provision is void if the property owner or property owner's successors are
2 compensated by another governmental agency, including the state, for a reduction in value resulting
3 from the same or similar land use regulations on the subject property.
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5 5. Excepting new land use regulations imposed after the date of this decision, and subject to
6 applicable review rights as permitted under Measure 37, this final decision bars a subsequent
7 Measure 37 claim against Lincoln County as to the subject property.
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9 6. Transferability of the "waiver" granted by the County under this decision is unknown
10 under the current status of Measure 37. Transferability of the "waiver" is allowed to the extent
11 permitted by law. Granting of this "waiver" does not commit the County to issuance of
12 development or building permits, if those actions are not allowed under law.
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14 7. This order be recorded in the Lincoln County Deed Records maintained by the Lincoln
15 County Clerk without payment of recording fees.
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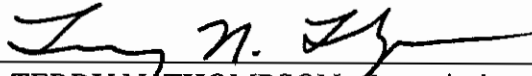
17 8. Copies of this order be provided to the Planning Director, County Counsel, claimant and
18 claimant's agent.

DATED this 27th day of June, 2007.

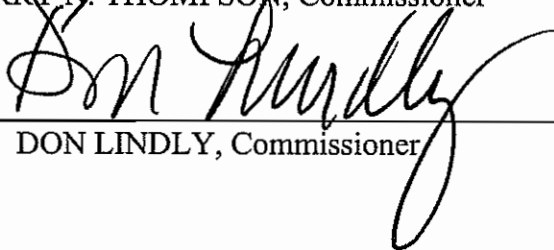
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