

IN THE COURT OF APPEALS OF THE STATE OF OREGON

HARRY T. LARSEN and ALBERTA M. LARSEN
Plaintiffs-Appellants,

v.

STATE OF OREGON, by and through the Oregon Department of Land Conservation
and Development,
Defendant-Respondent.

Jefferson County Circuit Court
06CV0048

A136715

ORDER DENYING RECONSIDERATION

By order dated June 19, 2008, the court dismissed this Measure 37 appeal in light of the Supreme Court's decision in *Corey v. Department of Land Conservation and Development*, 344 Or 457, 184 P3d 1109 (2008). In so doing, the court concluded appellants were required to participate in the process established pursuant to Measure 49 to pursue their claims and that their case, brought pursuant to Measure 37, was no longer viable. At issue is appellants' petition for reconsideration arguing this court misapplied *Corey*. Specifically, they contend their claim was for compensation under Measure 37 and the application of *Corey* is limited to cases involving waivers, not compensation. Thus, they assert, *Corey* is not applicable.

In *Corey* the court held that Measure 49 completely replaced Measure 37 and is to be applied retroactively. It specifically stated that the clear intent behind the new law was "to extinguish and replace the benefits and procedures that Measure 37 granted to landowners." *Id.* at 465. Furthermore, "Measure 49 by its terms deprives Measure 37 waivers – and *all* orders disposing of Measure 37 claims – of any continuing viability[.]" *Id.* at 466-67. The single possible exception to this rule is where a Measure 37 claimant has obtained a waiver and claims a vested right to continue the use described therein. To the extent that a Measure 37 plaintiff has complaints about the application of Measure 49 to their claim or arguments about the proper scope of Measure 49, these must be addressed in the forum provided pursuant to that law. In sum, unless there is an issue of vested rights, all Measure 37 cases are made moot by Measure 49 as discussed in *Corey*.

Here plaintiffs have not argued they are entitled to claim a vested right as

ORDER - Page 1 of 2

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described in Measure 49. Rather, they say that they sought compensation, and claims for compensation, as opposed to waiver claims, are not affected by Measure 49 as interpreted in *Corey*. Plaintiffs are incorrect. As discussed above, Measure 37 has been completely replaced by Measure 49. All claims, of whatever kind, must now be brought in accordance with the procedure established by Measure 49. Thus, the fact that plaintiffs sought compensation rather than a waiver has no impact on the result.

Reconsideration denied.

SEP 15 2008

DATE



DAVID V. BREWER, CHIEF JUDGE

c: Edward P. Fitch
Denise G. Fjordbeck

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS
SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALEM, OR 97301-2563

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ORDER - Page 2 of 2

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