

W.18.C.

AGENDA COVER MEMO

DATE: June 29, 2005

TO: BOARD OF COUNTY COMMISSIONERS

FROM: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

RE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-5165, Robert Ericsson)

I. MOTION: Move to Adopt Order

II. ISSUE OR PROBLEM

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulations to the subject property to allow Robert Ericsson to use the property for a use permitted at the time he acquired the property?

III. DISCUSSION

A. Background

On November 2004 the Oregon voters passed Ballot Measure 37 (M37) which in brief summary requires payment to landowners if certain land use regulations enacted or enforced by a public entity restrict the use and have the effect of reducing the fair market value of private real property.

As a general matter, when processing a claim under Measure 37, an agency must confirm that:

- the individual making the claim is the owner of the private real property for which the claim is made;
- the land use regulation has been enforced and has restricted the lawful use of the property in a manner that has the effect of reducing its fair market value; and
- the restrictive land use regulation does not fall within one or more of the exceptions provided by the measure.

When a claim is made, the property owner shall be paid just compensation unless the land use regulation is no longer applied to the property within 180 days of the date the property owner makes a written claim for compensation. Just compensation shall be

equal to the reduction in fair market value of the property resulting from enforcement of the restrictive land use regulation as of the date the owner makes a written demand for compensation. The measure allows local governments to choose to pay just compensation or to “modify, remove or not ... apply” the restrictive land use regulation in lieu of providing just compensation.

B. Lane County Measure 37 Claim Process

On December 1, 2004, the Lane County Board of Commissioners adopted a Real Property Compensation Claim Application Process codified in LC 2.700 through 2.770(Ordinance No.18-04) with requisite fees in LM 60.842 (Order No. 04-12-1-12). The ordinance enacted provisions require applicants to provide certain information necessary for the County to evaluate a Measure 37 claim. A specific list of required information is found in LC 2.720. Upon receipt of a claim providing the necessary information, LC 2.740 states that the County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the criteria of LC 2.740(1) are met. (Refer to Analysis Section, below, for an assessment of the Ericsson claim.)

C. Application to Lane County for Measure 37 Claim

Applicant: Robert J. Ericsson

Owner: Robert J. Ericsson

Address: P.O. Box 58
Post, OR 97106

Legal Description of Property: Map 19-02-10.3.2, tax lot 100 &
Map 19-02-10.3.3, tax lot 200
Green Bluff Estates subdivision, Lots 3 & 6

Acreage: Lot 3 - 10.00 acres, Lot 6 - 10.17 acres

Current Zoning: Marginal Lands (ML/RCP)

Date Property Acquired: on or about August 28, 1973

Land Use Regulations in Effect at Date of Acquisition: Agriculture, Timber and Grazing (AGT) Ordinance 65-027 adopted April 7, 1965, and LC Chapter 13 regulated subdivisions

County land use regulation which restricts the use and reduces the fair market value of claimant's property: LC 16.214 Marginal Lands (currently)

Specific Relief Sought: \$1,500,000 or waiver of all land use regulations to allow any development that would have been allowed as of the date of purchase.

On January 4, 2005, Robert Ericsson submitted a M37 claim to Lane County for compensation or waiver of land use restrictions. On January 21, 2005, the County Administrator sent a response to Mr. Ericsson indicating that the claim was incomplete and identified the additional information required for Lane County to process a M37 claim.

On March 4, 2005, Mr. Ericsson paid the application processing fee deposit but has not provided all of the additional requested information which includes current title report, copies of deed information establishing the date of acquisition, land use regulations in effect at the time of acquisition and a property appraisal.

D. Lane Code Submittal Requirements

The following section highlights the documentation that the applicant has provided to address the LC 2.720 submittal requirements. (Refer to application for details)

- 1) An application following the county form has been provided.
- 2) Payment of the initial deposit for fees and costs has been provided by the applicant.
- 3) Contact information of the property owner filing the application has been provided but no indication if there are other owners of the subject property.
- 4) Legal description of the property has been provided.
- 5) A current title report for property that includes the subject property has not been provided. A title report dated September 4, 1973, has been provided. No copies of deed records have been submitted.

- 6) General identification of the land use regulations restricting the use of the property that allegedly cause a reduction in the fair market value has been provided.

However, the applicant has not specifically identified the land use regulations that allegedly cause a reduction in the fair market value.

- on August 28, 1973, when Mr. Ericsson acquired the property it was zoned Agriculture, Timber and Grazing (AGT) by Ordinance 65-027 adopted April 7, 1965.
- the property was zoned Farm-Forestry 20 District (F-F20) enacted on June 9, 1976
- the property was zoned Impacted Forest Land (F-2/RCP) in 1984
- at the request of Mr. Ericsson, the property was rezoned to Marginal Lands in 1995.

The F-2/RCP land use regulations allow minimum land divisions of 80 acres and qualifying parcels may build a single family dwelling. The approved amendment to Marginal Lands allows minimum land divisions of 10 acres and a single family dwelling is an outright permitted use. The Marginal Lands regulations have lessened the restrictions from those of the F-2 zone and increased the fair market value of the property by allowing more parcelization and dwelling development than was allowed in the F-2 zone.

- 7) An appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the M37 and LC 2.720 requirements has not been provided.
- 8) A written statement addressing the criteria listed in LC 2.740(1)(a)-(d) has not been provided.
- 9) A statement by the applicant specifies a \$1,500,000 claim of value reduction but does not provide the analysis of the value of the property before and after application of the challenged land use regulation.
- 10) The Green Bluff Estates CC&R's impose restrictions on the use of the property.

E. Analysis

Application Review and Referral Determination

An application qualifies for compensation consideration if the applicant has shown that all of the following LC 2.740(1) criteria are met:

- a) *The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;*

Robert Ericsson states that the property was purchased on or about August 28, 1973, but has provided no deed records to confirm. At that time the property would have been subject to the AGT zone requirements of LC 10.110 and Lane Code Chapter 13 subdivision regulations. In 1976, the property was zoned Farm-Forestry 20 District (F-F20). In 1984, the property was zoned Impacted Forest Land (F-2/RCP).

On October 23, 1991, the subject properties were part of a larger 70 acre ownership on which Mr. Ericsson received approval from the Board of Commissioners for a Plan amendment/zone change from Forest Land (F-2/RCP) to Marginal Lands (ML/RCP) (Ordinance No. PA 1007). On November 9, 1995, Mr. Ericsson received final approval for the Green Bluff Estates subdivision which divided the 70 acre property into seven 10 acre lots (subject to recorded CC&R's) of which 5 have been sold and developed with single family dwellings. The subject lots 3 and 6 remain vacant.

Currently, the property is zoned Marginal Lands (ML/RCP). The ML zoning regulations (LC 16.214) authorize a dwelling on a vacant legal lot. The ML zoning regulations also establish the minimum land division size at 10 acres. The subject property, lots 3 and 6 are 10 acres each. Under the current 10 acre minimum land division requirement the lots cannot be further divided. Robert Ericsson has not indicated the development he desires. Other regulations in the ML zone and other sections of Lane Code do not seem to restrict the use of property for home sites and should remain applicable until shown otherwise.

Conclusion: At the time Mr. Ericsson acquired the property he was subject to the AGT zone requirements of LC 10.110 and LC Chapter 13 subdivision regulations. Currently, the ML zone dwelling provisions (LC 16.214) would restrict the allowance of a dwelling on a lot if the lot upon which the dwelling would be located already has a dwelling on it. Because Lots 3 and 6 are vacant, the property is not restricted from having a dwelling on each lot. However, the minimum area land division requirements are restricted to 10 acres (LC 16.214(6)), so the applicant would be unable to partition the property and comply with minimum area requirements. Other regulations in the ML zone and other sections of Lane Code that do not restrict use of the property for a home site should remain applicable until shown otherwise. Prior to the written demand under M37, the applicant had not made any formal application for siting a single family dwelling or additional partition requests or received written notification of Lane County enforcement of restrictive ML regulations since M37 went into effect. The provisions in the ML zone for single family dwelling on a vacant lot are not restricting development of these two vacant lots. However, the minimum 10 acre land division requirement may provide sufficient evidence those regulations are restrictive and have been enforced. In addition, the ML dwelling and minimum area

requirements come from state statute (ORS 215.317, ORS 215.327, and 197.247 (1991 Edition)). Mr. Ericsson has filed a claim with the State and the Oregon Department of Land Conservation and Development Draft Staff Report dated June 10, 2005, has determined the claim is valid and recommends in lieu of compensation the requirements of certain applicable state laws enforced by the Land Conservation and Development Commission or the department, specifically Statewide Planning Goal 4 (Forest Lands) and OAR Division 660, Division 6, not apply to the subject property to the extent necessary to allow Mr. Ericsson to divide the property and establish a dwelling on each lot or parcel to the extent those uses were permitted at the time he acquired the property. The Board will need to conclude the ML minimum area land division regulations have been enforced against the applicant in order to give rise to a claim under M37 against Lane County.

b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;

The applicant has not provided any detailed analysis of the decreased property value resulting from application of the land use restrictions.

The applicant has received approval for the Green Bluff subdivision development as platted and subject to the recorded CC&R's. Five of the seven subdivided lots have been sold and developed with a single family dwelling. The remaining two 10 acre lots are vacant. A single family dwelling is an outright permitted use in the ML zone. The ML zone is more permissive than the previous F-2 zone the property was designated. Even though no appraisal information has been provided, it appears that the approval of the Plan amendment/zone change to ML has had the effect of increasing the fair market value of the property because the land uses allowed are less restrictive than the regulations of the prior F-2 zone.

At the time Mr. Ericsson acquired the property, however, the AGT zone requirements governed land divisions. The minimum area requirements were dependent upon when the property was zoned AGT and could have been divided into less than 10 acres in size.

Given the uncertainty of the outcome of application of the AGT zone requirements, the Marginal Lands minimum land division requirements of 10 acres and the M37 impact on the market for dwelling sites, it is difficult to determine what the exact nature of the fair market value reduction, if any, would be for these properties. The existence of CC&R's that preclude further division of the platted lots make it even more difficult to determine any value reduction from the ML regulations.

Conclusion: It seems reasonable to conclude that there might be some reduction in properties fair market value as a result of the restrictions of the ML zone if the property could have been divided into lots smaller than 10 acres. Given the uncertainty of the impacts M37 will have on fair market value and the CC&R limitations on further division, it has not been conclusively shown that there has been a fair market value reduction on this property caused solely by the ML regulations. To

the extent the owner has some ability to modify the CC&R's, there may be some value reduction caused by the ML regulations. The Board will need to conclude the ML regulations have the effect of reducing the fair market value of the applicants' property to conclude Mr. Ericsson complies with this criteria and is entitled to just compensation under M37.

c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and

Robert Ericsson states that he first acquired the properties on or about August 28, 1973, but has provided no deed records to confirm. The previous and more restrictive limitations on dwellings and land division regulations in the FF20 and F-2 zones were made applicable to the property after Mr. Ericsson acquired an interest the property. However, the current land use regulations limiting the minimum land division size to 10 acres was applied to the property at Mr. Ericsson's request in 1991.

Conclusion: At the time Mr. Ericsson acquired the property it was subject to the AGT zone requirements of LC Chapter 10.110 and the subdivision regulations of LC Chapter 13. Mr. Ericsson applied in 1991 to Lane County for a Plan amendment zone change to have the ML provisions apply to his property and received approval for a 7 lot subdivision in 1995. The Board will need to conclude the ML regulations have been enforced against Mr. Ericsson on the two vacant 10 acre subdivision lots in order to give rise to a claim under M37 and find compliance with this criteria.

d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

The provisions of LC 16.214(2) establish the dwelling approval requirements in the ML zone. The dwelling authorization requirements are not part of the exempt regulations addressing public nuisances, public health and safety, federal law, or restrictions to prohibit use of the property for pornography or nude dancing. The parts of the ML zone and other sections of Lane Code that do not restrict the use of the property for a home site and reduce the value of the property should remain applicable until shown otherwise.

LC 16.214(6) establishes the minimum area requirements for land divisions. Those minimum area requirements are not part of the exempt regulations addressing public nuisances, public health and safety, federal law, or restrictions to prohibit use of the property for pornography or nude dancing. The parts of the ML zone and other sections of Lane Code that do not restrict the use of the property for a home site and reduce the value of the property should remain applicable until shown otherwise.

Conclusion: This criterion does appear to be met because these regulations are not part of the exempt regulations defined in LC 2.710.

Final Conclusion: This application does appear to qualify for compensation consideration because the criteria of LC 2.740(1)(a)-(d) have generally been met, particularly if the Board reaches the conclusion the restrictive land use regulations have

been enforced against the applicant and the Board accepts the applicant's reduction in value analysis.

F. Ultimate Referral Determination

If an application meets all of the criteria in LC 2.740(1)(a)-(d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion at LC 2.760(3)(whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulations to the subject property), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property to allow the owner to use the property for a use permitted at the time the owner acquired the property. The following referral determination is provided for Board consideration:

The application appears to meet all of the criteria in LC 2.740(1)(a)-(d), particularly if the existence of the zoning and apparent clear limitation on land divisions is sufficient evidence those regulations were enforced and the value reduction analysis meets the requirements of Measure 37. Based on that evidence and affirmative answers to those issues, the County Administrator recommends referral to the Board for the Board to confirm the application qualifies under Measure 37 and determine whether to compensate the applicant for the reduction in the fair market value of the subject property resulting from the enactment of the dwelling requirements and minimum land division requirements in the Marginal Lands zone, or modify, remove, or discontinue application of the restrictive land use regulations to the subject property to allow Mr. Ericsson to use the property as authorized by Measure 37.

G. Policy Considerations for the Board of Commissioners

There are a number of issues raised and left unanswered by the text of Measure 37. Some of those issues were discussed when the Board enacted Ordinance No. 18-04 to establish the provisions of LC 2.700 through 2.770 (reasonableness of fees; creating a private cause of action for neighbors; and "waiver" transferability). The county regulations provide for some County Administrator and Board discretion to reach most of those issues and resolve them in the context of an individual M37 claim. Of course, those resolutions and interpretations of Measure 37 could be challenged and the reviewing courts may disagree with the Board. In any event, any Board Order acting on a specific M37 claim can resolve all the issues as necessary to reflect the Board consensus on the best way to resolve the risks inherent in the claim. In this particular case, the issues described above and the following additional policy considerations are presented to the Board:

- A) A written appraisal has not been provided by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. The applicant has not provided a market value analysis demonstrating the reduction of Fair Market Value as required in LC 2.720(6). Does the statement provided by the applicant adequately address the code requirements or Measure 37 in lieu of an appraisal?

- B) Does the Board want an independent review of comparable property value information?
- C) The applicant requests that the county “waive” the minimum land division area regulations to allow further subdivision and development of the property. There are two concerns with this request: 1) land divisions may not be considered a “use” that can be “waived” under M37 although land division ordinances are included in the definition of “land use regulations” contained in the measure, and 2) there is significant question in the language of M37 as to the status of any use authorized pursuant to a M37 “waiver” after the property owner entitled to the “waiver” sells the property. The Board established policy direction addressing some of these issues in the Tendick and Gee claims.

H. Conclusion/County Administrator Recommendation

After careful consideration of the application and other evidence in the record, the County Administrator is to determine the amount of compensation due the applicant for the reduction of the property’s fair market value resulting from the affect of the land use regulation on the property. The County Administrator is to compare the public benefits from application of the land use regulation to the applicants’ property with the public burden of paying the required compensation to the owner if the “waiver” of the land use regulation is not granted.

The amount of just compensation resulting from the restrictive land use regulations applied to the subject property is not specifically determined in this analysis, but has been alleged by the applicant to be \$1,500,000. Lane County has not appropriated funds for compensation for M37 claims and has no funds available for this purpose. The public benefit from application of the land use regulation to the applicants’ property seems to be outweighed by the public burden of paying the required compensation.

If “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a “waiver” or modification of the land use regulation that will avoid owner entitlement to compensation, grant a “waiver” or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a “waiver” or modification of the land use regulation and pay the compensation to which the owner is entitled.

The applicant requests either compensation in the amount of \$1,500,000 or that the regulations in effect at the time the applicant acquired the property apply. Measure 37 gives the option to Lane County to “waive” certain land use regulations rather than pay compensation. The applicants request that the current land use regulations not apply to the property, but that different land use regulations apply. The applicant wants the 1973 AGT regulations in effect when he acquired the property to apply so that he can develop his land as those regulations would have allowed.

The County Administrator recommends the Board “waive” the ML minimum land division regulations and allow land divisions and development consistent with regulations

in effect when the applicant acquired the property. All other sections of Lane Code should remain applicable unless it can be shown they restrict the use and have the effect of reducing the fair market value of the Ericsson property.

V. ALTERNATIVE/OPTIONS

1. Recommend the County Administrator conclude the application is not a valid claim and issue a final written decision denying the Claim.
2. Recommend an independent review of comparable property value information and/or the applicant to provide additional information.
3. Recommend the application appears valid and adopt an order reflecting the Board of County Commissioners agreement with the County Administrator referral recommendation and determining the final disposition of the Ericsson Measure 37 claim.

VI. RECOMMENDATION

Alternative 3.

VII. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final Board determination that “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator will provide notice of the Board of County Commissioners final decision pursuant to LC 2.760.

VIII. ATTACHMENTS:

1. Order
2. June 10, 2005, DLCD Draft Staff Report
3. CC&R's for Green Bluff Estates
4. 1973 AGT zone (LC10.110)
5. January 4, 2005, M37 Claim and letter of March 4, 2005
6. February 24, 2005, Oregon Attorney General Opinion
7. Measure 37/LC 2.700 through 2.770

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Robert Ericsson / PA05-5165)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Robert Ericsson (PA05-5165), the owner of real property commonly known as lots 3 and 6 of the Green Bluff Estates subdivision near Pleasant Hill, Oregon and more specifically described in the records of the Lane County Assessor as map 19-02-10.3.2, tax lot 100 and 19-02-10.3.3, tax lot 200, each parcel consisting of approximately 10 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the Board has confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, on June 29, 2005, the Board conducted a public hearing on Robert Ericsson's Measure 37 claim (PA05-5165) and determined that the restrictive Marginal Land minimum area land division requirements of Lane Code 16.214(2), (6) and (7) that were enforced and made applicable to the property prevent Robert Ericsson from further dividing and developing his property as would have been allowed under the AGT regulations of Lane Code 10.110 in effect at

the time Mr. Ericsson acquired the property and that the public benefit from application of the Marginal Land regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Robert Ericsson requests either \$1,500,000 compensation or waiver of all land use regulations that would restrict development that would have otherwise been allowed at the time he acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the ML zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Mr. Ericsson to develop the subject property as he would have been able to under the regulations in effect when he acquired the property; and

WHEREAS, the Oregon Department of Land Conservation and Development Draft Staff Report dated June 10, 2005, has determined the claim is valid and recommends in lieu of compensation the requirements of certain applicable state laws enforced by the Land Conservation and Development Commission or the department, specifically Statewide Planning Goal 4 (Forest Lands) and OAR Division 660, Division 6, not apply to the subject property to the extent necessary to allow Mr. Ericsson to divide the property and establish a dwelling on each lot or parcel to the extent those uses were permitted at the time he acquired the property; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Robert Ericsson made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that he acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment the Ericsson request shall be granted and the restrictive minimum area provisions of Lane Code 16.214(6) that limit the division of land shall not apply to Robert Ericsson, so that he can develop the property commonly known as lots 3 and 6 of the Green Bluff Estates subdivision near Pleasant Hill, Oregon, in a manner consistent with the AGT zone (Lane Code 10.110) and other land use regulations in effect when he acquired the property.

IT IS HEREBY FURTHER ORDERED that Robert Ericsson will need to receive approval of a partition or replat to allow creation of any new parcels and construction of any additional dwellings under other land use regulations applicable to dividing land or placing dwellings on the property that were not specifically identified or established as restricting Mr. Ericsson's use of the property for development. To the extent necessary to effectuate the Board action to not apply the division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of divisions and any new dwellings to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that has the effect of reducing the fair market value of the property, the

County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to Robert Ericsson’s use of his property does not constitute a waiver or modification of state land use regulations and does not authorize immediate land divisions or construction of additional dwellings. The requirements of state law may contain specific standards regulating land divisions and development and the applicant should continue seeking state action on his Measure 37 claim and provide evidence of final state action before seeking county land use approval. Other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicants to divide and build another dwelling can be transferred to another owner.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

June 10, 2005



Kent Howe, Director
Lane County Land Management Division
125 East Eighth Avenue
Eugene, Oregon 97401

REC'D JUN 14 2005

Re: *Ballot Measure 37 Claim Number M119280*

Claimant: Robert Ericsson

Dear ^{Kent}Mr. Howe:

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (Chapter 1, Oregon Laws 2005), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than ten (10) calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97310, and will be deemed timely filed if either postmarked on the tenth day or actually delivered to DAS by the close of business on the tenth day.

This department will review any responses submitted and a final order on the claim will be issued after such review.

Thank you for your courtesies.

Yours very truly,


LANE SHETTERLY
Director

Enclosure

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Draft Staff Report and Recommendation

June 10, 2005

STATE CLAIM NUMBER: M119280

NAME OF CLAIMANT: Robert Ericsson

MAILING ADDRESS: P.O. Box 58
Post, Oregon 97752

P.O. Box 730
Banks, Oregon 97106

IDENTIFICATION OF PROPERTY: Township 19S, Range 02W, Section 32
Tax Lot 100, Lane County

Township 19S, Range 02W, Section 33
Tax Lot 200, Lane County

DATE RECEIVED BY DAS: January 3, 2005

180-DAY DEADLINE: July 2, 2005

I. CLAIM

Robert J. Ericsson, the claimant, seeks compensation in the amount of \$1,500,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the property for sale and residential use. The two parcels, each totaling approximately 10 acres, are located at Tax Lots 100 and 200 of the Green Bluff Estates subdivision, Lane County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid and department staff recommends that, in lieu of compensation, the requirements of certain applicable state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, specifically Statewide Planning Goal 4 (Forest Lands) and OAR 660, Division 6, not apply to the subject property to the extent necessary to allow

Mr. Ericsson to divide the property and establish a dwelling on each lot or parcel to the extent those uses were permitted at the time he acquired the property that is the subject of this claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On April 4, 2005, pursuant to 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, evidence or information were received in response to the 10-day notice. The comments received are not specific to the criteria required under Measure 37 for the department's review of this claim. Because no funds are available to pay compensation, comments regarding the possible impact of the proposed or intended development of the claimants' property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim, and cannot be considered by the department.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 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 the measure (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 the measure (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 criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on January 3, 2005 for processing under OAR 125, Division 145. The claim refers to "All state statutes, administrative rules...including but are not limited to, ORS Chapters 197, and 215, OAR 660 including OAR Division 6, Goal 4 Forest lands, the F-2 impacted forest land designations, ORS 215.316-215.327 marginal lands criteria ..." Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimant, Robert Ericsson, acquired the subject properties on August 28, 1973. The properties, consisting of two non-adjointing parcels, are located in Lane County and are identified as lots 3 and 6 of the Green Bluff Estates subdivision. Lot 3 is further identified on the tax assessor’s map as 19 02 10 33—tax account # 1553872. Lot 6 is further identified as 19 02 10 32—tax account # 1553831. A title report issued by Pioneer National Title Insurance on September 4, 1973, indicates a transfer of property in Lane County to H. Lloyd Ericsson and his son, Robert Ericsson, the claimant. According to the claimant, his father is since deceased. He further says that the purchase was for a larger 97-acre parcel, of which the two subject parcels (about 10-acres each) are portions. Lane County property tax statements indicate that Mr. Ericsson is the current owner of the subject properties.

Conclusions

The claimant, Robert J. Ericsson, is an “owner” of the subject properties as of August 28, 1973, as that term is defined by Section 11(C) of Ballot Measure 37.

2. The Laws that Are the Basis for the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the claimant’s 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 claimant or a family member acquired the property.

Findings Fact

The claim states that:

“Essentially, should he desire to do so, owner desires to be allowed to develop the property to the full extent he would have been able to develop the property when it was purchased in 1973.” Claimant states he would have been to develop one acre lots with dwellings at that time.

The claim identifies “all state statutes...restricting the use of land (and includes a wide range of state and county regulation), as restricting his use of subject property. Claimant specifically identifies “all state statutes, administrative rules...including but are not limited to, ORS Chapters 197, and 215, OAR 660 including OAR Division 6, Goal 4 Forest lands, the F-2 impacted forest land designations, ORS 215.316-215.327 (marginal lands criteria).” (See the department’s claim file for a complete list of laws cited by the claimant.)

The subject properties are currently planned and zoned under the Marginal Lands provisions of the Lane County Code under ORS 197.247 (1983 edition, repealed by Chapter 792, Or Laws 1993), ORS 215.317 to 215.337 as allowed by Statewide Goals 3 and 4. Under these provisions, a dwelling is allowed on any parcel created prior to July 1, 1983, or any new parcel created under ORS 215.327. These provisions were acknowledged by the Commission on September 13, 1984 (Acknowledgment Order 84-ACK-201 dated October 3, 1984). Because the claimants property is planned and zoned under the provisions of the Marginal Lands statutes, and since the County’s comprehensive plan has been acknowledged by the Commission, Statewide Planning Goals 3 and 4 and the related provisions of OAR 660 Divisions 6 and 33 do not currently apply directly to the property.

The claimant acquired the property on August 28, 1973, which is prior to the requirements of Senate Bill 100, effective October 5, 1973 (Chapter 80, Or Laws 1973) and the Statewide Planning Goals effective January 25, 1975 (OAR 660-015-0000). The provisions of ORS 92 prohibiting the sale of land without the prior approval of a partition or subdivision plat generally date from prior to 1973, when the claimant acquired the property.

The zoning history for the subject 10-acre parcels, beginning with their inclusion in a larger 90-acre tract, according to the claimant, is as follows:

Date	Zoning	Other
1973 (purchase)	Unzoned Area	County development permits and subdivision regulations apply
1976	Farm Forestry 20 district	
1984	Impacted Forest Land, 80-acre	
1991	Marginal Lands, 10-acre	Zoned marginal lands at claimant’s request. Upzone
1995		Claimant creates Green Bluff Estates, Planned Development, divides property into 10-acre parcels

Conclusions

The minimum lot size and dwelling standards established by the Marginal Lands provisions under ORS 197.247 (1983 edition, repealed by Chapter 792, Or Laws 1993), and ORS 215.317 to 215.337, as allowed by Statewide Goals 3 and 4, were all adopted after the claimant acquired his property in 1973, and do not allow the division of the property into parcels less than 10 acres

in size with dwellings on them. Except for the provisions of ORS 92, which generally were in effect when the claimant acquired the property, the cited land use laws, adopted since 1973, restrict the use of the property relative to what was permitted when the property was acquired in 1973.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(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.”

Findings of Fact

The claimant asserts that the fair market value of the subject property has been reduced and that the just compensation due is \$1,500,000. His rationale for this figure states “The demand for compensation has been determined by experience as well as consultation with various real estate market professionals. If the amount of compensation is not agreed, court action is available and appropriate probative evidence will then be submitted.”

The 2004 tax statement from Lane County indicates that the properties’ real market value is \$462,410.

The claimant states that his intent is to develop the properties to the maximum extent allowable at time of purchase in 1973. He has verbally indicated that he thinks at that time he could have developed 1-acre lots. The Lane County staff report on the claim indicates it is difficult to assess what level claimant could have developed to under the unzoned designation of the property at that time. (See the department’s claim file.)

The County report further notes that the property was upzoned to marginal lands designation at claimant’s request in 1988. This had the effect of relaxing the minimum lot size standards from 80 acres to 10 acres, and arguably increasing the value of claimant’s property.

Conclusions

As explained in section V.(1) of this report, the current owner is Robert J. Ericsson, who acquired the property on August 28, 1973. Thus, under Ballot Measure 37, Mr. Ericsson is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The 2004 tax statement from Lane County shows that the current value of the two approximately 10-acre parcels is \$462,401.

Without an appraisal based on the value of 20, one-acre lots or other explanation, and without substantiation that, in fact, one-acre lots would have been allowed under the unzoned designation in 1973, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, on the assumption that the remaining portions of the claimant’s properties’ value in an unzoned designation today would be greater than in their current Marginal lands 10-acre minimum designation, the department determines that it is more likely than not

that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim includes both specific and general references to particular state and County laws, and a general claim based on any state land-use regulations that restrict the use of the property relative to what would have been allowed in 1973, when the property was acquired. Most state laws that qualify as "land use regulations" under the Measure were adopted after 1973, with the exception of some subdivision and partitioning laws in what is now ORS 92, and versions of ORS 215 that applied to property zoned as farm land prior to 1975.

Conclusions

It does appear that the general statutory, goal and rule restrictions on residential development and use of forest land apply to the owner's anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37.

The restrictions in ORS 92, however, on the sale of land prior to the approval and filing of a plat, which generally predate 1973, as well as provisions of ORS 215 applicable in 1973, will continue to apply to the property. There may be other specific laws that are exempt and continue to apply under one or more of the exemptions in the Measures, because they were not identified in the claim or because they are not covered by the Measure.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or department has enforced a law that restricts 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 a law 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 must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusion set forth in this report, laws enforced by the Commission or the department restrict the division of the subject properties into parcels or lots, and the use of the property for residential purposes. The claimant cannot create the desired lots out of the subject 10-acre properties, and sell or develop those lots for residential use. The laws enforced by the Commission or department reduce the fair market value of the 10-acre properties to some

extent. The claim asserts this amount to be \$1,500,000. However, because the claim does not provide a specific explanation of how the specified restrictions reduce the fair market value of the properties or what level of development that would have been allowed in 1973, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow, Mr. Ericsson to use the subject property for a use allowed at the time he acquired the property on August 28, 1973.

Conclusions

Based on the current record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to the claimant's use of the subject property: the Marginal Lands provisions under ORS 197.247 (1983 edition, repealed by Chapter 792, Or Laws 1993), ORS 215.317 to 215.337, Statewide Land Use Planning Goal 4, and the Goal 4 implementing rules in OAR 660, Division 6 to the extent necessary to allow the claimant to divide the properties and establish one or more dwellings on each lot or parcel, all to the extent permitted at the time he acquired the two parcels that are the subject of this claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the two subject parcels, subject to those standards in effect on August 28, 1973. Those standards include the provisions of ORS 92 and ORS 215 in effect at that time.
3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the 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 the claimant first obtains 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 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimant 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 Measure 37 including, without limitation, those laws excepted under section (3) of the measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under Measure 37 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 the claimant from the necessity of

obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department, and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimant or the claimant's 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. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses shall be delivered to the Oregon Department of Administrative Services (DAS), Risk Management - State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Comments shall not be submitted electronically or by facsimile.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
GREEN BLUFF ESTATES

This Declaration of Covenants, Conditions and Restrictions is applicable to Green Bluff Estates, a planned community in Lane County, Oregon.

Robert J. Ericsson (hereinafter "Declarant") is the owner in fee simple of certain real property located in Lane County, Oregon, which is more particularly described on Exhibit 1 attached hereto (hereinafter "Property") and is known as Green Bluff Estates.

Declarant declares that all of the Property shall be held, sold and conveyed subject to the County of Lane ordinances, any other applicable governmental ordinances, and the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding, except as provided herein, on all parties having any right, title or interest in the Property or any portion thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, IT IS HEREBY DECLARED AS FOLLOWS:

A. DEFINITIONS.

1. "Association" means the Green Bluff Estates Homeowners Association. The Association shall initially be an unincorporated association; upon approval of a vote of the majority of owners after the Turnover Date, the Association may be incorporated under the Oregon non-profit corporation laws.

2. "Committee" means the committee empowered to govern the affairs of the Association.

3. "Declarant" means Robert J. Ericsson, or any successor who or which is designated "successor declarant" by Declarant. All references to Declarant shall include a Successor Declarant.

4. "Owner" means the legal owner or contract purchaser of any lot which is part of the Property, but does not include a contract vendor, mortgagee, or other person who has an interest in the lot merely as security for the performance of an obligation.

5. "Roadways" means the private roadways created by easements and described in Section F of this Declaration.

6. "Turnover Date" means the date on which Declarant turns control of the Association over to the other Owners. The Turnover Date shall occur on the date on which

Declarant notifies the Owners in writing that it is turning control of the Association over to the Owners.

7. "Property" shall mean, unless the context clearly requires otherwise, the Green Bluff Estates subdivision as a whole.

B. ASSOCIATION.

1. Creation. The Association shall be created automatically upon recordation of this Declaration.

2. Members. Each Owner shall be a mandatory member in the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a lot in the Property. Transfer of ownership of a lot automatically transfers membership in the Association. The Owner of a lot shall have one vote per lot. Until the Turnover Date, the Declarant shall have 20 votes per lot.

3. Powers of Association. The Association shall have such powers as may be granted or delegated to it by law, this Declaration, and those enumerated in ORS 94.630.

C. COMMITTEE.

1. Authority. The Committee shall have the authority to carry out the powers, duties, and responsibilities of the Association; without limiting the foregoing, the Committee shall have the authority specified in this Declaration.

2. Composition. Until the Turnover Date, the Committee shall consist of one representative, appointed by Declarant. Declarant may, at any time until the Turnover Date, remove the appointee and appoint a successor. After the Turnover Date, the Committee shall consist of the Owners of each of the lots in the Property. If a particular lot has more than one Owner, any one of the Owners of such lot may, from time to time, serve on the Committee and vote on matters before the Committee in the absence of protest of the other Owners of the lot.

3. Meetings; Notice; Voting. After the Turnover Date, the Owners of any two or more lots in the Property may call for a meeting of the Committee by sending written notice of the time, place, and purpose to all Owners not less than thirty (30) days prior to the date scheduled for the meeting. Attendance of the meeting by an Owner shall be a waiver of notice by him or her of the time, place, and purpose thereof. The Committee may vote, at the meeting, on the matters stated in the notice as being the purpose of the meeting. The Committee may also vote, without a meeting, by written instrument circulated among the Owners. The Owners of each lot shall be entitled to one vote. As used in this Declaration, approval by: a "majority vote" means approval by at least 50% of the votes entitled to be cast; a "super majority vote" means approval by at least 75% of the votes entitled to be cast. The Committee may elect such officers as it deems appropriate and may delegate duties and functions to one or more of its members. The Committee may open and maintain a bank account in the name of the Association.

D. ARCHITECTURAL CONTROL; CONSTRUCTION.

1. General. No building, fence, wall, patio, deck, or other structure or improvement shall be commenced, erected, or maintained on any lot in the Property, nor shall any addition, change or alteration be made to any exterior of a structure or improvement, nor the

landscaping or any portion of a lot be commenced, maintained, or altered until plans and specifications have been submitted to and approved in writing by the Committee. With respect to any improvement or structure, the Committee may require that the applicant submit plans, specifications, and a proposed site plan, showing the nature, shape, heights, elevations, materials (including samples), colors, and proposed location of the structure, improvement or alteration for the Committee's consideration. With respect to landscaping, the Committee may require that the applicant submit a proposed site plan setting forth the areas to be covered with lawn, the planting areas, and the location of existing and future trees and improvements. The Committee may approve, disapprove, or require changes to the plans, specifications, and/or site plan submitted to them, in the Committee's sole discretion, by majority vote; however, the Committee shall not, except as otherwise provided below, permit a material variance from a specific requirement set forth in this Section D without super majority vote.

2. Committee Procedure. All approvals or disapprovals shall be in writing. In the event the Committee fails to render its approval or disapproval within thirty (30) working days after complete plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully satisfied.

3. Liability. Neither the Committee, nor any member thereof, shall be liable to any owner, occupant, builder, developer or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Committee, or a member thereof, provided that the Committee or member has, in accordance with actual knowledge possessed by him, acted in good faith.

4. Nonwaiver. Consent by the Committee to any matter proposed to it and within its jurisdiction under these covenants shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval, or take different actions, as to any matter thereafter proposed or submitted to it for consent.

5. Effective Period of Consent. The Committee's consent to any proposed work shall automatically be deemed revoked six months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

6. Building Type. Only single family residential dwellings with garages for a minimum of two cars, barn, out buildings, and related amenities shall be constructed or permitted to remain on any lot. The foregoing provisions shall not exclude construction of a private greenhouse, storage unit, private swimming pool, or other structure approved by the Committee, provided the location of the structure is in conformity with the applicable governmental regulations, and the structure is compatible in design and exterior appearance with the residence constructed on the lot.

7. Size of Residences. One-story residences shall be not less than 1,800 square feet; two-story or multi-level residences shall not be less than 2,800 square feet. All calculations are exclusive of open porches and garages. No residence shall exceed 10,000 square feet. The Committee may, in its sole discretion, by majority vote reduce or increase the requirements set forth in this paragraph if it finds that the design has exceptional architectural merit.

8. Altering the Land; Cutting Trees. There shall be no construction, clearing, grading, tree cutting, land filling on a lot, or other change to a lot, without prior written approval of the Committee. The Committee shall approve the cutting of trees or shrubs if diseased or dangerous.

9. Exterior Materials; Finish; Colors. Roofing materials must be cedar shingle, shake, tile, or a roofing material of similar quality approved by the Committee. Anodized aluminum windows are not permitted; all windows shall be wood or wood encased in vinyl. Exterior siding shall be cedar, natural wood, brick, stone, or a siding of similar quality approved by the Committee. T-1-11, fiber board, strand board, plywood or similar siding is not permitted. The exterior of all improvements on any lot shall be designed, built, finished, and maintained in such a manner as to blend in with the exterior of existing structures and landscaping within the lot of the Property, with compatible and harmonious exterior colors, all to be approved by the Committee. Exterior trim, fences, doors, railings, decks, eaves, gutters and other exterior finish of garages and other necessary buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin, all to be approved by the Committee.

10. Fences, Hedges and Walls. No planting or structure obstructing vision at roadway intersections or driveways is allowed. Fences that border the roadways, or the perimeter of a lot, shall be constructed of wood, consistent with existing fencing of other lots in or the entrance to the Property. Except where already existing and until repaired or replaced, barbed wire or other wire field fencing is not permitted adjacent to the roadways or on the perimeter of any lot. Cross fencing need not be approved by the Committee so long as it is aesthetically pleasing.

11. Mail and Paper Delivery Boxes. The location, color, size, design, lettering and other particulars of mail or paper delivery boxes shall be subject to the approval of the Committee.

12. Commencement and Completion of Construction. The construction of a residence on any lot must commence within one (1) year from the date of the closing of the purchase of the lot from the Declarant. All exterior improvements (especially exterior cleanliness), including private lot drainage, painting, and all exterior finish shall be completed within eight (8) months from the beginning of construction. In the event of undue hardship because of weather or other reasonable conditions, this provision may be extended for a reasonable length of time upon written approval from the Committee obtained prior to the expiration of the time requirements. Failure to comply with the requirements of this paragraph 12 shall allow a Court to enter all appropriate orders to require the construction as noted in these provisions and to enter all other affirmative orders otherwise requiring compliance with these provisions.

13. Utilities; Septic Systems. Except to the extent existing at the time of final approval of the subdivision or as designated and performed by Declarant or his agent, all new utilities, cables, or conduits of any description, must be installed underground. All sewage disposal shall be by means of septic tanks in accordance with the regulations of the Oregon State Board of Health; all mound systems shall be constructed to minimize the slope of sides in order to make mounds more aesthetically pleasing. Nothing herein shall prevent the connection to a municipal sewer line if one becomes available.

E. USE RESTRICTIONS; MAINTENANCE.

1. Window Coverings. Window coverings, other than commercially produced curtains, shutters, drapes or blinds, shall not be permitted to be visible from any roadway in the Property at any time after occupancy of a dwelling.

2. Temporary Structures; Prefabricated or Mobile Homes; Trailers; Machinery; Recreational Vehicles. No structure of a temporary character, motor homes, or prefabricated

homes commonly referred to as a mobile home, shall be erected or maintained on any lot or parcel or used at any time for living quarters. All recreational vehicles, motor homes, boats, motorcycles, machinery, trailers, and similar items shall be kept in garages, barns, or other structures, when not in use.

3. Farming and Animals. Domestic animals --such as a horse, cow or llama --are allowed, provided that they are for the personal use of the Owners of the lot and that the pasture is fenced as provided in this Declaration. There shall be no commercial raising or boarding of any animals. All animals, including dogs and cats, shall be properly controlled and shall not be permitted to run free or otherwise become a nuisance or source of annoyance to other residents in the Property.

4. Signs. No sign shall be erected or displayed upon any lot or building, except a single standard real estate "For Sale" sign or decorative address signs.

5. Clothes Lines; Apparatus; Garbage Disposal. Clothes drying lines or other apparatus shall be screened from the view of the public and the residences of other Owners. Garbage and other waste shall be kept in sanitary containers away from the view of the public and residences of other Owners, and shall be regularly disposed of.

6. Business and Commercial Uses. The use of the lots is private residential. No oil or gas well, mine or quarry, or equipment thereof and no appliance or structure for business purposes shall be located or operated on any lot out of doors of the residence or other permitted structure. Neither the residence nor other permitted structure shall be rented to persons or entities other than the Owner of the lot. No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot (out of doors of the residence or other permitted structure), nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any lot. The provisions of this paragraph shall not be construed so as to prevent or prohibit an Owner from maintaining a home business, his professional personal library, keeping his personal business or professional records of accounts, handling his personal business or professional telephone calls, or occasionally conferring with business or professional associates, clients or customers in his home. The provisions of this paragraph shall not be construed to prevent or prohibit Declarant or other homebuilders from constructing and selling residences and other structures on the lots or from storing construction equipment and materials on the lots in the normal course of construction.

7. Offensive Activities. No obnoxious or offensive activity, noise or disturbance shall be carried on upon any lot, nor shall anything be done or placed upon any lot which materially interferes with or jeopardizes the peaceful enjoyment of the residents of the other lots within the Property.

8. Parking or Other Obstruction of Roadways. Neither parking nor other obstruction or impediment to unhindered free travel shall be allowed on any part of the roadways.

9. Vehicles in Disrepair. No owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any lot or any roadway within the Property for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when because of its continued inability to operate or significant damage it offends the residents of Green Bluff Estates.

10. Dividing or Combining Lots. No Owner or other person shall have the right to divide a lot or to combine one lot with another. Nothing herein shall prevent a person from owning more than one lot so long as each lot contains a single family residence on it. No provision of this paragraph 10 shall apply to Declarant.

11. Maintenance of Structures, Improvements and Lot. Each Owner shall maintain in good repair the exterior of any structure or improvement on his or her lot and shall clean and/or repaint the exterior of structures and other improvements as needed to preserve an attractive appearance. Each Owner shall reasonably maintain the unimproved portions of his lot free of noxious weeds, dead or diseased plant life, trash and other debris.

F. ROADWAY EASEMENTS.

1. Creation of Access Easements. As indicated on the plat of the Property, a portion of each of the lots is hereby declared to be encumbered by easements for private roadways to provide access for pedestrians and vehicles to all lots in the Property. The Owners of each of the lots shall, at the request of Lane County Public Works, execute and record specific dedications or easements for those portions of their lots encumbered by the easements as indicated on the plat. The easements created hereby are perpetual, nonexclusive, and appurtenant to the land and inure to the benefit of the Owners of all lots in the Property, and to said Owners' invitees. In addition, the easements shall inure to the benefit of the owner and his or her invitees of the parcel of real property described in the easement instrument recorded on 25 August, 1995, at Reel Number 2090R Book, reception number 9547420, in the Lane County Records (hereinafter "Easement Agreement"). The owner of said parcel of real property shall either be Declarant (individually or jointly with others) or shall be a third party. A third party owner is hereinafter referred to as "Easement Owner."

2. Maintenance of Roadways. After the roadways have been initially graded and graveled by Declarant, as provided in paragraph 2 above, the roadways thereafter shall be maintained and improved, as determined by the Committee, at the expense of the Owners and Easement Owner as provided in this Section F. As used in this Section F, the term "maintenance" or "maintain" means the periodic regrading and regravelling of the roadways as needed to keep the roadways in good condition and repair, including periodic grading for snow removal if necessary for vehicular use of the roadways; the term "improvement" or "improve" means the improvement of the roadways over the condition initially improved by Declarant, such as the widening of the roadways or the surfacing of the roadways with asphalt or blacktop.

3. Committee Decision. All determinations by the Committee to maintain the roadways shall be approved by majority vote of the Committee. All determinations by the Committee to improve the roadways shall be approved by super majority vote of the Committee. As part of the determination of the need for either maintenance or improvement, the Committee shall use reasonable efforts to accurately estimate the cost of the anticipated work and then shall add a contingency of up to fifteen percent (hereinafter "total estimated cost"). The Committee also shall determine the assessment to be levied against each Owner (as well as the Easement Owner, if applicable). Except as otherwise provided in this paragraph, each Owner's assessment shall be determined by dividing the total estimated cost by the number of lots in the Property. However, after the Easement Owner has constructed or owns a residence on the parcel of real property described in the Easement Agreement, the Easement Owner thereafter shall share in the costs of maintenance and improvement of the roadways, and each Owner's assessment shall be determined by dividing the total estimated cost of the work by the number of lots in the Property plus the parcel of real property described in the Easement

Agreement. Notwithstanding the foregoing, the Committee may, by super majority vote, approve an additional individual assessment against one or more Owners (or against the Easement Owner) if a super majority of the Committee reasonably believes that such persons have caused the need for certain repairs because of the special or peculiar use (for example, use by heavy equipment for construction of improvements) that such persons or their invitees have made of one or more of the roadways since the last time maintenance or improvement was made to the roadways; provided, that in no case shall the additional individual assessment exceed the assessment simultaneously made against each of the Owners by more than one hundred percent. If the Committee approves additional individual assessments as set forth herein, each Owner's assessment (other than the additional individual assessment) shall be determined by subtracting the additional individual assessments from the total estimated cost and dividing the remainder by the number of applicable lots as set forth in this paragraph. In no event shall the Declarant (or others who own jointly with Declarant) be subject to assessment for the parcel of real property described in the Easement Agreement, whether or not it has been improved with a residence.

4. Assessment Notice. Promptly following the Committee's determination to maintain or improve the roadways and related determinations set forth above, the Committee shall send an assessment notice to the Owners, which notice shall inform the Owners of the determination for maintenance or improvement, the total estimated cost, the assessment against each Owner (including additional individual assessments, if any), when the assessment is due, and the name and address of the person to whom it is to be sent; if applicable, the Committee simultaneously shall send an assessment notice to the Easement Owner. All Owners (and the Easement Owner, if applicable) shall pay the assessment by the due date specified in the assessment notice.

5. Performance of and Payment for Work. As soon as the Committee has collected sufficient funds to pay for the maintenance or improvement, the Committee shall contract with one or more contractors to perform the maintenance or improvement work and shall appoint one of its members to oversee the performance of the work. Upon completion of the work, the Committee shall pay the contractors pursuant to the contracts and shall reimburse the Committee member who oversaw the work for his or her actual out-of-pocket expenses, if any; the balance of the funds collected may be held in the Association's bank account as a reserve for future maintenance or improvement or may be reimbursed to the Owners (and Easement Owner, if applicable) who paid the funds to the Committee.

6. Public Maintenance. Nothing in this Section F shall be construed to prevent the Owners from turning maintenance of the roadways over to Lane County or other similar governmental entity if such entity will accept maintenance of the roadways.

G. UTILITY EASEMENTS.

1. Creation of Utility Easements. As indicated on the plat of the Property, a portion of the lots are hereby declared to be encumbered by easements for installation and maintenance of all utilities, for the benefit of the Owners of all lots in the Property. The Owners of the lots shall, at the request of a utility provider, execute specific easements within the areas indicated on the plat. The easements created hereby are perpetual, non-exclusive, and appurtenant to the land and inure to the benefit of the Owners of all lots in the Property and to said Owners' invitees. In addition, the easements shall inure to the benefit of the Declarant and the Easement Owner. Within these easements, no activity, structure, fencing, planting or materials shall be placed or permitted to remain which may damage or interfere with the utility conduits or maintenance of same.

2. Maintenance of Utilities. Except to the extent that a utility is maintained by the utility provider, the Owner of the lot shall maintain the easement and conduits therein within the Owner's lot; provided, however, that any Owner who installs or directs the installation of a utility conduit across the lot of another for the benefit of his or her lot shall be responsible for returning the surface of the easement area on the other's lot to substantially its original condition when the utility conduit has been installed.

H. WELL AND WATER EASEMENTS.

1. Creation of Easement. Each Owner of a lot has an easement over adjacent and nonadjacent lots in the Property for the purpose of installing and maintaining a well and underground water conduits to provide an adequate domestic water supply to the Owner's lot; provided, however, that an Owner is not entitled to drill a well or install conduits on another Owner's lot unless and until said Owner has been unsuccessful in obtaining an adequate domestic water supply for his or her lot after drilling three wells to a depth of not less than 200 feet on his or her own lot; and, provided further, that the specific location of the well and conduits is subject to the prior written consent of the Owner of the lot on which they will be located, which consent shall not be unreasonable withheld or delayed. Once installed, no structure, plantings, or other materials shall be placed or permitted to remain which would damage or interfere with the well, conduits, or maintenance of the same. A well yield of five gallons per minute, or such lesser amount as is allowed by financing institutions or by law, shall be deemed an adequate domestic water supply for purposes of this paragraph. This paragraph shall not prevent Declarant from drilling on one lot to supply water to another lot after drilling only one or no well on the lot to be supplied with water.

2. Costs and Maintenance. The costs of installing and maintaining the well, pump, and conduits shall be borne solely by the Owner benefitting from the well. Further, such Owner shall be responsible for restoring the surface of the land to substantially its original condition after the initial installation of the conduits or after each subsequent disturbance thereof for maintenance.

3. Other Arrangements. Nothing herein shall prevent the Owners of more than one lot from agreeing to the joint installation and use of one well to serve more than one lot.

I. DECLARANT'S EASEMENTS.

Notwithstanding any other provision to the contrary in this Declaration, the Declarant shall have the following rights and easements until the later of the date on which Declarant no longer owns any lot in the Property, or the date on which Declarant has completed its obligations in the Property:

1. Easement for Access. Declarant shall have an easement for access over, under, through, and across all lots as reasonably necessary for the purpose of installing utilities within the utility easements, developing and improving the roadways, and creating drainage systems and well and water systems for one or more lots and for otherwise exercising the privileges and rights of the Declarant.

2. Sales Office; Model Home. Declarant, or its agents, may use any residence owned by Declarant as a model home or as a sales office for purposes of sales of lots or residences in the Property. Declarant may also may maintain a sales trailer on any lot owned by Declarant.

J. COLLECTION OF ASSESSMENTS; ENFORCEMENT.

1. Authority to Enforce and Collect. The Committee shall have the right to take prompt action against any person to enforce the provisions of this Declaration on behalf of the Association, including but not limited to an action to collect any unpaid assessment, enjoin any breach, obtain an affirmative injunction and other remedies to require the performance of the terms of these Covenants, Conditions and Restrictions. In doing so, the Committee may exercise one or more of the remedies, separately or concurrently, specified in this Declaration as well as any other remedies which may be available at law or at equity. In addition, any one or more Owners may also bring an action, except against Declarant or his successor declarants, to recover damages or to enjoin, abate, or remedy by affirmative injunctions or otherwise any noncompliance or breach by appropriate legal proceedings.
2. Special Assessment to Enforce or Collect. In the event the Committee decides, by majority vote, to initiate legal action against an Owner, the Committee shall be empowered to levy a special assessment against all Owners to finance the estimated cost of pursuing the legal action. Promptly following the determination of such a special assessment, the Committee shall send an assessment notice to all Owners, which notice shall inform the Owners of the estimated cost, the special assessment against each Owner (which shall be determined by dividing the estimated cost by the number of lots in the Property), and the name and address of the person to whom it is to be sent. All Owners shall pay the special assessment by the due date specified in the assessment notice. Notwithstanding the above, property acquired by Lane County through tax or lien foreclosure proceedings shall be exempt from the assessments or any obligation to pay assessments for as long as the property is owned by Lane County.
3. Abatement and Enjoining of Violations. In the event of a violation of provisions of this Declaration, the Committee shall have the right to: (a) enter the lot in which or as to which such violation exists and summarily to abate and remove, at the expense of the Owner, any thing or condition that may exist therein contrary to the intent and meaning of said provisions (except that judicial action must be instituted before items of construction can be demolished or altered), and the Committee shall not thereby be deemed in any manner to have trespassed or otherwise be subject to a suit for damages or otherwise; or (b) enjoin, abate, or remedy such thing or condition, including removal or alteration of construction, or by obtaining affirmative injunctions to require the performance of these Covenants, Conditions and Restrictions, all by appropriate legal proceedings.
4. Debt Obligation; Successors; Interest. Each assessment shall be the joint and several personal obligation of the Owner or Owners of the lot as of the time it is assessed by the Committee. In a voluntary conveyance of a lot, the grantee shall be jointly and severally liable for all unpaid assessments against the grantor to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser the Committee shall make and deliver a statement of the unpaid assessments against the prospective grantor or the lot, and the grantee in that case shall not be liable for, nor shall the lot when conveyed be subject to a lien filed thereafter for any unpaid assessments against the grantor in excess of the amount set forth in the Committee's statement. Any assessment or installment thereof not paid when due shall be delinquent and shall bear interest at nine percent (9%) per annum until paid. Notwithstanding the above, property acquired by Lane County through tax or lien foreclosure proceedings shall be exempt from the assessments or any obligation to pay assessments for as long as the property is owned by Lane County.

5. Association's Lien. In addition to the personal obligation for assessments, the Association shall have a lien on the Owner's lot for the unpaid assessments, interest, and attorney fees incurred in paragraph 8 of this Section. The lien shall be prior to all other liens on the lot except: (a) tax and assessment liens, and (b) a first mortgage or trust deed of record prior to the recordation of the lien.

6. Attachment, Notice, Recordation, Duration, and Foreclosure of Lien; Power to Bid at Foreclosure Sale. The Committee shall follow the provisions regarding the attachment, notice, and recordation and duration of liens established on real property under ORS 87.353 to 87.382 and provisions regarding the foreclosure of liens under ORS Chapter 88, except that notwithstanding ORS 87.376, a lien for an unpaid assessment shall continue in force and the suit to foreclose need not be commenced for a period of three years from the date the particular unpaid assessment became due. After a notice of lien has been recorded, all subsequent unpaid assessments, interest, and attorney fees shall automatically be covered by the lien as they become due and payable, without the necessity of further notice or recording. The Committee, acting on behalf of the Association, shall have the power to bid on the lot at the foreclosure sale, and to acquire, hold, lease, mortgage and convey the lot on behalf of the Association.

7. Action to Obtain and Recover a Money Judgment. The Committee may bring an action to obtain a money judgment against an Owner for damages or for the Owner's breach or noncompliance with the provisions of this Declaration. The Committee may bring an action to obtain a money judgment for unpaid assessments against the Owner or Owners personally obligated to pay the same; the action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same. Notwithstanding the above, property acquired by Lane County through tax or lien foreclosure proceedings shall be exempt from the assessments or any obligation to pay assessments for as long as the property is owned by Lane County.

8. Collection Costs; Attorney Fees. Owners who fail to pay assessments when due shall be obligated to pay reasonable fees and costs including, but not limited to, attorney's fees incurred in connection with the Committee's efforts to collect the delinquent or unpaid assessments, whether or not suit or action is commenced. Such fees and costs shall constitute an individual assessment against the delinquent Owner or Owners and shall be due and payable on demand of the Committee. In the event the Committee commences suit or action for the collection of any amounts due or to seek damages or enforcement of any provision of this Declaration, the defendant Owner or Owners, jointly and severally, will be liable for the costs of such suit or action, including reasonable attorney's fees to be fixed by the Court or Courts, both at trial and on appeal, in addition to all other sums or obligations. Such fees and costs shall constitute an individual assessment against the defendant Owner or Owners and shall be due and payable on demand of the Committee.

9. Disposition of Amounts Collected. Money collected by the Committee from delinquent or breaching Owners pursuant to this Section shall be used first to pay the unpaid cost of collecting, second to reimburse the Owners (except for the delinquent or breaching Owner) who bore the cost of collecting, and third to remedy the damage caused by the breach of the breaching Owner. Any money remaining may be held in the Committee's account as a reserve for future maintenance or improvement of the roadways or may be fairly divided among the Owners.

K. INSURANCE; WAIVER OF CLAIMS AND SUBROGATION.

1. Owner's Responsibility. Each Owner is responsible for insuring his or her own property, real, personal or otherwise, and liability that may arise from use or maintenance of the roadways and otherwise from this Declaration. The Association shall not be required to obtain or maintain insurance.

2. Waiver of Claims and Subrogation. Each Owner hereby waives all claims against another Owner and Declarant that are based on the other Owner's or Declarant's status of being a member of the Association or a member of the Committee governing the affairs of the Association and for the conduct taken as a member of the Association. Each Owner hereby waives subrogation for claims against another Owner or Declarant that are based on the other Owner's or Declarant's status of being a member of the Association or a member of the Committee governing the affairs of the Association and for the conduct taken as a member of the Association; each Owner is responsible for bringing the waiver of subrogation to the attention of his or her insurer.

L. AMENDMENTS.

Any amendment of this Declaration shall be by affirmative vote of a super majority of the Owners. Until the Turnover Date, no amendment shall be effective without Declarant's written consent. Amendments to the Declaration shall be executed by the required number of Owners (and Declarant, if applicable), and recorded in Lane County records. Section F may not be amended or terminated without Lane County's approval or until such time as the road is accepted into the County road system.

M. INVALIDATION.

Invalidation of any of the provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

N. LIMITATION ON LIABILITY.

Neither Declarant, the Committee, nor any member thereof shall be liable to any Owner on account of action or failure to act in performing the rights and duties of the Committee or Association, provided that Declarant or Committee or the member thereof has, in accordance with actual knowledge possessed by it, acted in good faith.

O. STATUTORY DISCLAIMER.

Green Bluff Estates shall not be governed by the Oregon Planned Community Act. To the extent the provisions of 105.170 to ORS 105.185 conflict with the provisions of this

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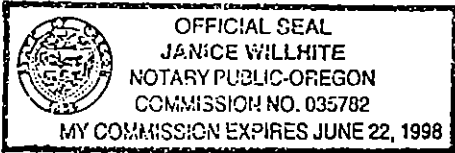
Declaration, this Declaration shall control.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set his hand this 31 day of August, 1995.

Robert J. Ericsson
Robert J. Ericsson

STATE OF OREGON
County of MULTNOMAH

Before me personally appeared Robert J. Ericsson and acknowledged said instrument to be his voluntary act and deed.



Janice Willhite
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 22, 1998

PURCHASER(S)' AGREEMENT AND ACKNOWLEDGEMENT

I (or We), _____,
the purchaser(s) of Lot(s) _____ of the GREEN BLUFF ESTATES subdivision, hereby
acknowledge that I (or we) have read, understand and agree to be bound by all terms of these
COVENANTS, CONDITIONS AND RESTRICTIONS OF GREEN BLUFF ESTATES.

STATE OF OREGON
County of _____

Before me personally appeared _____
and acknowledged said instrument to be his or their voluntary act and deed.

NOTARY PUBLIC FOR OREGON
My Commission Expires:

EXHIBIT 1

"Parcel 1 Legal Description-subdivision known as Green Bluff Estates"

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 10, TOWNSHIP 19 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN, LANE COUNTY, OREGON, SAID POINT BEING SOUTH 00°02'17" WEST 1800.28 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 10; THENCE NORTH 89°39'52" EAST 60.00 FEET; THENCE SOUTH 00°02'17" WEST PARALLEL WITH SAID SECTION LINE 351.29 FEET TO THE NORTH BOUNDARY OF THAT CERTAIN TRACT OF LAND DESCRIBED ON REEL 814, INSTRUMENT NO. 51367 OF LANE COUNTY OREGON DEED RECORDS; THENCE NORTH ALONG SAID BOUNDARY NORTH 89°39'52" EAST 619.20 FEET, AND SOUTH 00°02'17" WEST PARALLEL WITH SAID SECTION LINE 5.00 FEET TO THE NORTH BOUNDARY OF THAT CERTAIN TRACT OF LAND DESCRIBED ON REEL 899, INSTRUMENT NO. 19648 LANE COUNTY OREGON DEED RECORDS; THENCE ALONG SAID NORTH BOUNDARY NORTH 89°39'52" EAST 518.02 FEET TO THE EAST LINE OF THE J. T. GILFREY DONATION LAND CLAIM No. 46, SAID TOWNSHIP AND RANGE; THENCE SOUTH 00°20'57" EAST 246.86 FEET TO THE SOUTHEAST CORNER OF SAID CLAIM; THENCE SOUTH 00°21'15" EAST 1206.70 FEET TO THE WEST SOUTHWEST CORNER OF THE E. CONGER DONATION LAND CLAIM No. 47 IN SAID TOWNSHIP AND RANGE; THENCE SOUTH 62°29'10" EAST 251.38 FEET TO THE MOST EASTERLY NORTHEAST CORNER OF THE J. M. HENDRICKS DONATION LAND CLAIM No. 61, SAID TOWNSHIP AND RANGE; THENCE SOUTH 00°05'30" WEST 906.56 FEET; THENCE NORTH 89°54'39" WEST 457.67 FEET; THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE RIGHT (THE CHORD OF WHICH BEARS SOUTH 22°04'51" WEST 83.45 FEET) A DISTANCE OF 106.83 FEET; THENCE NORTH 86°03'22" EAST 294.62 FEET; THENCE NORTH 30°04'08" WEST 93.70 FEET; THENCE SOUTH 87°29'34" WEST 191.80 FEET; THENCE SOUTH 9°43'21" EAST 153.15 FEET; THENCE NORTH 89°54'39" WEST 378.96 FEET TO THE WEST LINE OF SAID SECTION 10; THENCE NORTH 00°02'17" EAST 2959.41 FEET TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

EXCEPT THAT PROPERTY DESCRIBED ON INSTRUMENT 89-32197, LANE COUNTY OREGON DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 10, TOWNSHIP 19 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN, LANE COUNTY, OREGON, SAID POINT BEING SOUTH 00°02'17" WEST 2196.57 FEET FROM OF THE NORTHWEST CORNER OF SAID SECTION 10; THENCE NORTH 89°39'52" EAST 702.00 FEET; THENCE SOUTH 00°02'17" WEST PARALLEL WITH SAID SECTION LINE 340.14 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°39'52" EAST 300.00 FEET; THENCE SOUTH 00°02'17" WEST 725.00 FEET; THENCE SOUTH 89°39'52" WEST 300.00 FEET; THENCE NORTH 00°02'17" EAST 725.00 FEET TO THE TRUE POINT OF BEGINNING.

AGRICULTURE, GRAZING, TIMBER RAISING DISTRICT (AGT)-05. Purpose

The Agriculture, Grazing, Timber Raising District is intended to provide areas for rural density residential development and continuation of farm uses and timber production where compatible with each other. It is appropriate to be applied to areas which have, by nature of use and land division activity, already begun a transition from rural to urban use, primarily in the outer portions of the rural-urban fringe areas where public facilities and services will be necessary before intensive urbanization should occur, and in rural lands with marginal suitability for agricultural production.

-10. Permitted Buildings and Uses

In the AGT District, the following types of buildings and uses are permitted as hereinafter specifically provided for by this Section, subject to the general provisions and exceptions set forth in this Chapter:

- (1) The following farm uses:
 - (a) General farming, including but not limited to the growing and raising of trees, vines, shrubs, berries, vegetables, nursery stock, hay grains, seed, and similar food and fibre products.
 - (b) Pastures and grazing.
 - (c) Except as limited by LC 10.110-15(1) following, animal husbandry, including the breeding and raising of cattle, sheep, horses, goats and rabbits; provided that such raising activities are not a part of, nor conducted in conjunction with any livestock sales yard, slaughter house, or animal by-product business; provided further that such uses on lots of less than five (5) acres shall be subject to the area requirements of LC 10.110-42(6).
 - (d) Raising and selling of fur bearing animals.
 - (e) Keeping of honey bees and the production and sale of honey.
- (2) The management, growing, and harvesting of forest products, including Christmas tree raising.
- (3) One single-family dwelling or two-family dwelling per lot or one mobile home per lot in compliance with the general requirements of this Chapter for mobile home permits (LC 10.195).
- (4) Normal accessories for a mobile home, such as, awning, cabana, ramada, patio, carport, garage or storage building, pursuant to an original mobile home use permit or subsequent permit for only accessories.

- (5) Guest house.
- (6) Parks, playgrounds, and community centers owned and operated by a governmental agency.
- (7) Lodges and grange halls.
- (8) Public and semi-public buildings and structures essential to the physical and economic welfare of an area, such as, fire stations, sub-stations, and pump stations, provided that interior yards shall be a minimum of twenty-five (25) feet, and no stockpiling or storage of materials shall be allowed.
- (9) Sale of agricultural products grown or raised on the premises, provided the sales floor area does not exceed three hundred (300) square feet.
- (10) Home occupations. (See LC 10.340 for Home Occupation provisions)
- (11) Accessory buildings and uses customarily provided in conjunction with a use permitted in this District.
- (12) Kennel, provided the following conditions are satisfied:
 - (a) The maximum number of dogs over four (4) months of age shall be eight (8).
 - (b) For more than three (3) dogs over four (4) months of age, there shall be at least five thousand (5000) sq. ft. of lot area for each dog on the lot.
 - (c) All dogs shall be owned by the occupant of the premises, except those temporarily kept for purposes of breeding.

-15. Conditional Uses

The following conditional uses, subject to a conditional use permit granted pursuant to the general provisions of this Chapter providing for the granting of conditional use permits (LC 10.320):

- (1) The following animal husbandry uses, provided the lot area is a minimum of ten (10) acres:
 - (a) Breeding and raising of pigs.
 - (b) Poultry ranching.
 - (c) Dairying.
- (2) The following uses, when such uses are operated on the same property as, by the owner or operator of, and customarily provided in conjunction with a farm use, and are not a separate business or enterprise, provided the lot area is a minimum of ten (10) acres:
 - (a) Hop, nut and fruit driers.
 - (b) Feed mixing and storage facilities.
 - (c) Hullers.
 - (d) Mint distilleries.
 - (e) Seed processing, packing, shipping and storage.
 - (f) Plants for the storage or packing of agricultural products produced on the premises.

10.110-15

Lane Code

10.110-23

- (g) Feed lots.
- (h) Temporary and portable sawmills, barkers, and chippers.
- (i) Any other similar processing and allied farm commercial activities.
- (3) Sale of agricultural products raised on the premises where the sales floor area exceeds three hundred (300) square feet; the sale of livestock grown and raised on the premises.
- (4) Animal hospitals; kennels which do not satisfy the requirements for kennels allowed as a permitted use.
- (5) Churches.
- (6) Schools.
- (7) Day nurseries.
- (8) Group care homes.
- (9) Hospitals, nursing homes, and sanitariums.
- (10) Stables, riding academies, and commercial riding; provided such activities are contained on the property authorized for conditional use permit approval.
- (11) Radio and TV transmission towers.
- (12) Stadiums.
- (13) Electric transmission facilities transmitting electric current in excess of 75,000 volts on any single cable or line or group of cables or lines.
- (14) Flood control facilities and irrigation projects.
- (15) Accessory dwellings for persons employed on the premises.
- (16) Airports, heliports, or aircraft landing fields.
- (17) Cemeteries.
- (18) Correctional institutions.
- (19) Sanitary landfills.
- (20) Golf courses.
- (21) Jails.
- (22) Penal farms.
- (23) Radio and TV stations.
- (24) Rock, sand, gravel, and loam excavations and extraction of mineral resources, with incidental processing.
- (25) Sewage treatment plants.
- (26) Mobile home parks.
- (27) Tourist parks.
- (28) Camping vehicle parks.
- (29) Campgrounds.
- (30) Other uses not specifically authorized any place in this Chapter.

-23. Setback Requirements (Also see 10.300-15)

- (1) Front yard setback shall be twenty (20) feet.
- (2) Side yard setback shall be as follows:
 - (a) Ten (10) percent of the lot width for an interior yard, but in no case shall be more than fifteen (15) feet nor less than ten (10) feet.

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- (b) Twenty (20) feet for a street side yard for a reverse corner lot; ten (10) percent of the lot width for a street side yard for a regular corner lot, but in no case shall be more than twenty (20) feet nor less than ten (10) feet.
- (3) Rear yard setback shall be twenty (20) feet for a main building; five (5) feet for an accessory building or structure.

-28. Vision Clearance

Vision clearance for corner lots shall be a minimum of fifteen (15) feet.

-35. Off-Street Parking

There shall be at least one (1) permanently reserved parking space, or private garage, on the same lot, or attached to or made a part of the main building. Such parking space shall be not less than eight (8) feet wide and eighteen (18) feet long. The parking space or garage shall be provided at the time of the erection of the main building, and it shall have adequate provisions for ingress and egress by standard-sized automobiles. For parking space requirements for buildings other than dwellings, see the general Off-Street Parking Section (LC 10.300-05).

-42. Area (Also see LC 10.300-20)

- (1) Any property zoned AGT after May 14, 1971, shall be designated AGT-5, and the minimum area for division of land for any property so designated shall be five (5) acres; except:
 - (a) The division of agricultural land by lease or rental for any farm use purpose is permitted, provided however, that no structure or building may be erected appurtenant to such division of land except those permitted under LC 10.110-10(11).
 - (b) Division of land for less than five (5) acres is permissible for uses permitted under LC 10.110-10(7) and (8) and permitted conditionally in the AGT District except under LC 10.110-15(15).
- (2) The minimum area for the division of land for any property zoned AGT prior to May 14, 1971, shall be one (1) acre and shall have a lot width of not less than one hundred fifty (150) feet.
- (3) For each accessory dwelling or mobile home unit approved conditionally under LC 10.110-15(15) except for farm labor camps the lot shall contain a minimum average of five (5) acres per such accessory unit.

- (4) A single-family dwelling or mobile home only may be established on any lot separately owned as of September 13, 1969, which does not conform to the area requirements provided in subsections (1) and (2) above.
- (5) The main building and accessory buildings located on any one building site or lot shall not cover in excess of thirty (30) percent of the lot area.
- (6) The following animal use area regulations shall apply on lots of less than five (5) acres:
 - (a) Cows, horses, sheep or goats cannot be kept on lots having an area of less than one (1) acre. The minimum area for such animals (other than their young under the age of six months) on less than five (5) acres shall be as follows:

Horses	One (1) per acre, plus one (1) additional for every 15,000 square feet.
Cow.....	One (1) per acre, plus one (1) additional for every 10,000 square feet.
Goat or sheep.....	Five (5) per acre, plus one (1) additional for every 2,000 square feet.

- The area of a property may be utilized one time only for the computation of the above allowable animal usage.
- (b) The number of chickens, fowl and/or rabbits (over the age of six (6) months) shall not exceed one for each five hundred (500) square feet of property. The number of young chickens, fowl and/or rabbits (under the age of six (6) months) allowed on the property at any time shall not exceed three (3) times the allowable number of chickens, fowl, and/or rabbits over the age of six (6) months.
- (c) The number of colonies of bees allowed on a lot shall be limited to one (1) colony for each two thousand (2,000) square feet of lot area.
- (d) Animal runs, stables, barns, corrals of less than one-half acre, chicken or fowl pens, and colonies of bees shall be located on the rear half of the property, but not closer than seventy (70) feet from the front property line and no closer than forty (40) feet from any residence or other property line.

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Lane Code

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Animals, chickens, and/or fowl shall be properly caged or housed, and proper sanitation shall be maintained at all times. All animal and poultry food shall be stored so as to be rodent-proof.

When an AGT District is reclassified to another district, all those animal uses in this paragraph (6) shall be required to comply with the requirements of said other district. for such uses within a period of six (6) months from the date of reclassification. [10.110-42(6) to here added by 15-72;9.8.72.]

-90. Site Development Requirements for Subdivision Lots Recorded Prior to September 13, 1969.

Any lot in a major or minor subdivision plat that was recorded as of September 13, 1969, and which is less than one (1) acre in size shall have the Use regulations and the Signs, Height, Area, and Building Setback requirements of Section 10.135, Suburban Residential District (RA).

13-72;7.21.72
15-72;9.8.72

ERICSSON RIDGEWAY

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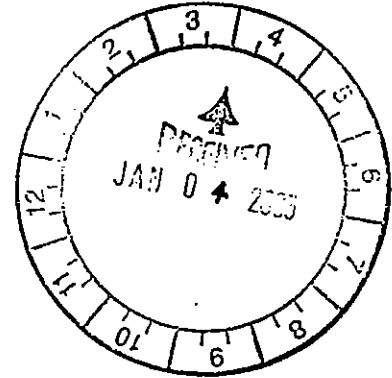
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FACSIMILE 503.228.4910
TELEPHONE 503.228.0217
R.JERICSSON@ERICSSONRIDGEWAY.COM

December 29, 2004

Lane County Land Management Division
125 East 8th Avenue
Eugene, Or., 97401

State of Oregon
Risk Management – State Services Division
1225 Ferry St. SE U160
Salem, Oregon 97301-4292



Re: Measure 37 Claims for Compensation

Dear Lane County and State of Oregon:

Enclosed is a claim for compensation. The claim involves two pieces of property located in Lane County, currently designated Lot 3 and Lot 6 Green Bluff Estates subdivision.

Because of the legislative interplay between the state statutes, administrative regulations and the ordinances of Lane County the claims are submitted to both governmental entities to avoid gaps in coverage of Measure 37. For clarity and to avoid duplication or gaps in coverage of Measure 37, the governmental claim against one governmental entity is incorporated, by this reference, into the claim against the other governmental entity.

Because neither Measure 37, nor even the State of Oregon in its claim processing form, require a fee to submit a claim, none is paid to Lane County at this time.

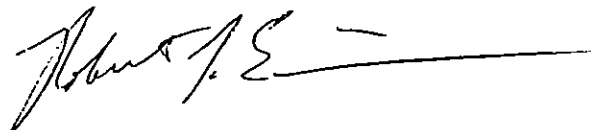
Further because Measure 37 does not require submittal of a fee appraisal, none is submitted at this time. The demand for compensation has been determined by experience as well as consultation with various real estate market professionals. If amount of compensation is not agreed, court action is available and appropriate probative evidence will then be submitted.

These claim will be reviewed and may be amended, clarified and supplemented, as appropriate, once better historical information about the land use regulations becomes available such as the information currently being prepared by Washington County.

Acknowledge receipt of this claim for compensation and provide me the tracking number and additional information you may desire. If you require additional information that is allowed by Measure 37, please advise.

The most direct contact particulars for me this winter are P. O. Box 58, Post, OR 97752; telephone 541.477.3198. Thank you for your prompt attention to these claims and requests. If there is any additional information needed as required by law to process the claims please advise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert J. Ericsson', followed by a long horizontal line extending to the right.

Robert J. Ericsson

Measure 37 Claim Number: M37- _____

Application for Claims Under LC 2.700 through 2.770 Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Applicant/ Agent

ROBERT J. ERICSSON

P. O. BOX 58

POST, OR 97752
47106

541.477.3198

2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

Property Owner Name (Please Print) Mailing Address Phone.

SAME AS APPLICANT

3. Legal Description

Please provide an accurate legal description, tax account number(s), map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot:

LOT 3: 19 02 10 33 AND TAX ACCOUNT NUMBER 1553872

LOT 6: 19 02 10 33 AND TAX ACCOUNT NUMBER 1553831

Street Address:

NOT APPLICABLE

Legal Description:

LOT 3, GREEN BLUFF ESTATES, A SUBDIVISION IN LANE COUNTY, OREGON

LOT 6, GREEN BLUFF ESTATES, A SUBDIVISION IN LANE COUNTY, OREGON.

4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

ALL STATE STATUTES, ADMINISTRATIVE RULES, COUNTY ORDINANCES, AND RULES, RESTRICTING THE USE OF LAND THAT WERE ENACTED OR ENFORCED AGAINST THE LAND SUBSEQUENT TO THE DATE OF PURCHASE OF THE LAND BY THE CURRENT OWNER OR A FAMILY MEMBER OF THE CURRENT OWNER. THESE RESTRICTIVE LAWS, RULES, ETC. INCLUDE BUT ARE NOT LIMITED TO ORS CHAPTERS 197 AND 215, OAR 660 INCLUDING OAR DIVISION 6, GOAL 4, FOREST LANDS, THE F-2 IMPACTED FOREST LAND DESIGNATION, ORS CHAPTER 215.316 – 215.327 MARGINAL LANDS CRITERIA, ALL COUNTY CODE PROVISIONS IMPLEMENTING THE STATE STATUTES AND ADMINISTRATIVE RULES AS WELL AS ANY COUNTY PROVISIONS MORE RESTRICTIVE THAN THE STATE LAWS AND RULES, AS WELL AS ANY OTHER RESTRICTIVE STATE STATUTES, RULES, AND COUNTY PROVISIONS RESTRICTING THE USE OF THE LAND THAT WERE ENACTED OR ENFORCED AGAINST THE LAND SUBSEQUENT TO THE DATE OF PURCHASE OF THE LAND.

SEE ALSO DESCRIPTION OF RESTRICTIVE LAWS AS SET FORTH IN THE COVER LETTER SUBMITTED WITH THIS APPLICATION AND THE FACT THAT RESEARCH IS STILL CONTINUING THAT MAY RESULT IN AMENDMENT, CLARIFICATION AND SUPPLEMENTATION OF THE PRESENT CLAIM SUBMITTAL.

5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds.

Title policy attached. Deeds on record. Date purchased on or about August 28, 1973.

6. Appraisal/Regulatory Effect

Please provide one original, signed appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon addressing the requirements of provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in fair market value by showing the difference in the fair market value of the property before and after the application of the challenged regulations as of the date the owner makes written demand

for compensation. Include all of the supporting methodology, assumptions and calculations affecting the appraisal.

A FEE APPRAISAL IS NOT REQUIRED BY MEASURE 37.

DEMAND: \$1,500,000 +. This figure has been determined by experience as well as consultation with various real estate market professionals. If amount of compensation is not agreed, court action is available and appropriate probative evidence will then be submitted.

7. Leases, Covenants, Conditions and Restrictions

Please provide copies of any leases or covenants, conditions and restrictions applicable to the subject property.

NONE, OTHER THAN THE PRESENT VERSION OF THE GREEN BLUFF ESTATES CC&Rs IMPOSED BECAUSE OF THE RESTRICTIVE LAWS REQUIRING THE CURRENT SUBDIVISION AND 20 ACRE PARCEL CONFIGURATION.

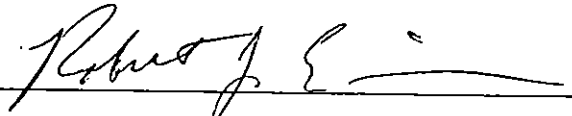
8. Identification of Relief Sought

Please specifically indicate what relief is being sought, either a monetary value of the claim describing the reduction in fair market value of the property or the specific use authorization sought in any waiver of the land use regulation.

- 1) \$1,500,000 OR 2) A WRITTEN WAIVER, RECORDED IN THE REAL PROPERTY RECORDS AND OTHER APPROPRIATE PLACES, OF ALL LAND USE STATUTES, REGULATIONS AND ORDINANCES, TO ALLOW DEVELOPMENT OF THE LAND CURRENTLY OWNED BY OWNER, SHOULD OWNER OR ASSIGNEE DESIRE TO DO SO, AS WOULD HAVE BEEN ALLOWED AS OF THE DATE OF PURCHASE OF THE LAND IN 1973.**

I have completed all of the attached application requirements ^{as required by Measure 37} and certify that all statements are true and accurate to the best of my knowledge and belief. I will continue research of the laws and supporting real property matters and amend or supplement, as appropriate.

Entry by County or its designee upon the subject property is authorized, subject to constitutional and other legal limitations, by the owner. Owner consents to application for claims under provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

 Robert J. E. December 29, 2004

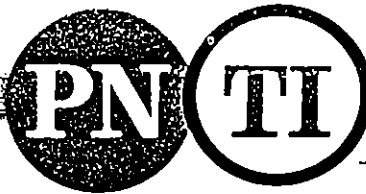
Owner and Applicant Signature and Date

The following contacts are provided to assist you in finding the necessary information for this application.

For zoning and land use information, please contact the Land Management Division at 682-3577.

This phone contact is a message line. Please leave a message and a Planner will return your call.

For deeds and records information, please contact Lane County Deeds and Records at 682-3654.



Premium \$ 340.00

POLICY OF TITLE INSURANCE

ISSUED BY

Pioneer National Title Insurance Company

a California corporation, hereinafter called the Company, for a valuable consideration paid for this policy of title insurance, the number, date, and amount of which are shown in Schedule A, does hereby insure the parties named as Insured in Schedule A, the heirs, devisees, personal representatives of such Insured, or if a corporation, its successors by dissolution, merger or consolidation, against direct loss or damage not exceeding the amount stated in Schedule A, together with costs, attorneys' fees and expenses which the Company may be obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of:

- Title to the land described in Schedule A being vested, at the date hereof, otherwise than as herein stated; or
- Unmarketability, at the date hereof, of the title to said land of any vestee named herein, unless such unmarketability exists because of defects, liens, encumbrances, or other matters shown or referred to in Schedule B; or
- Any defect in, or lien or encumbrance on, said title existing at the date hereof, not shown or referred to in Schedule B, or excluded from coverage in the Conditions and Stipulations; or
- Any defect in the execution of any mortgage or deed of trust shown in Schedule B securing an indebtedness, the owner of which is insured by this policy, but only insofar as such defect affects the lien or charge of such mortgage or deed of trust upon said land; or
- Priority, at the date hereof, over any such mortgage or deed of trust, of any lien or encumbrance upon said land, except as shown in Schedule B such mortgage or deed of trust being shown in the order of its priority,

all subject, however, to the Conditions and Stipulations hereto annexed, which Conditions and Stipulations, together with Schedules A and B are hereby made a part of this policy.

This policy shall not be valid or binding until countersigned below by a validating officer of the Company.

In Witness Whereof, Pioneer National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Pioneer National Title Insurance Company

by *George B. Garber* PRESIDENT

Attest: *John J. Egan* SECRETARY

Issued in Lane County by
CASCADE TITLE CO.
1075 OAK ST.
EUGENE, OREGON 97401

Countersigned TITLE AND TRUST DIVISION

By *[Signature]*
Validating Signatory

SCHEDULE A

Amount \$ 90,000.00

Date September 4, 1973

At 8:00 A.M.

INSURED

H. LLOYD ERICSSON and ROBERT J. ERICSSON

The estate or interest referred to herein is, at the date hereof, vested in

LESTER K. JACKSON and BETTY LOU JACKSON
as tenants by the entirety

The land referred to in this policy is described as

(A T T A C H E D)

Beginning at a point on the West line of Section 10, Township 19 South, Range 2 West of the Willamette Meridian, 1800.28 feet South of the Northwest corner thereof; run thence North 89° 37' 35" East 60.00 feet; thence South parallel with the said Section line, 356.29 feet; thence North 89° 37' 35" East 1137.44 feet to the East line of the J. T. Gilfrey Donation Land Claim No. 46, Township 19 South, Range 2 West, of the Willamette Meridian; thence South 0° 23' 30" East 247.61 feet to the Southeast corner of said Claim; thence South 0° 24' 10" East 1206.88 feet to the Southeast corner of Government Lot 2, said Section; thence South 62° 35' 25" East 251.60 feet to the most Easterly Northeast corner of the J. M. Hendricks Donation Land Claim No. 61, said Township and Range; thence South 0° 03' 00" West 956.63 feet to the most Easterly Southeast corner of said Hendricks Claim; thence South 0° 47' 31" East 606.37 feet to the Southeast corner of Government Lot 1, said Section; thence North 89° 38' 55" West along the South line of said Section 1438.78 feet to the Southwest corner of said Section, thence North 3472.89 feet along the West line of said Section to the Point of Beginning, all in Lane County, Oregon.

SCHEDULE A — Continued

The estate or interest in the land described in this schedule is: a fee

SCHEDULE B

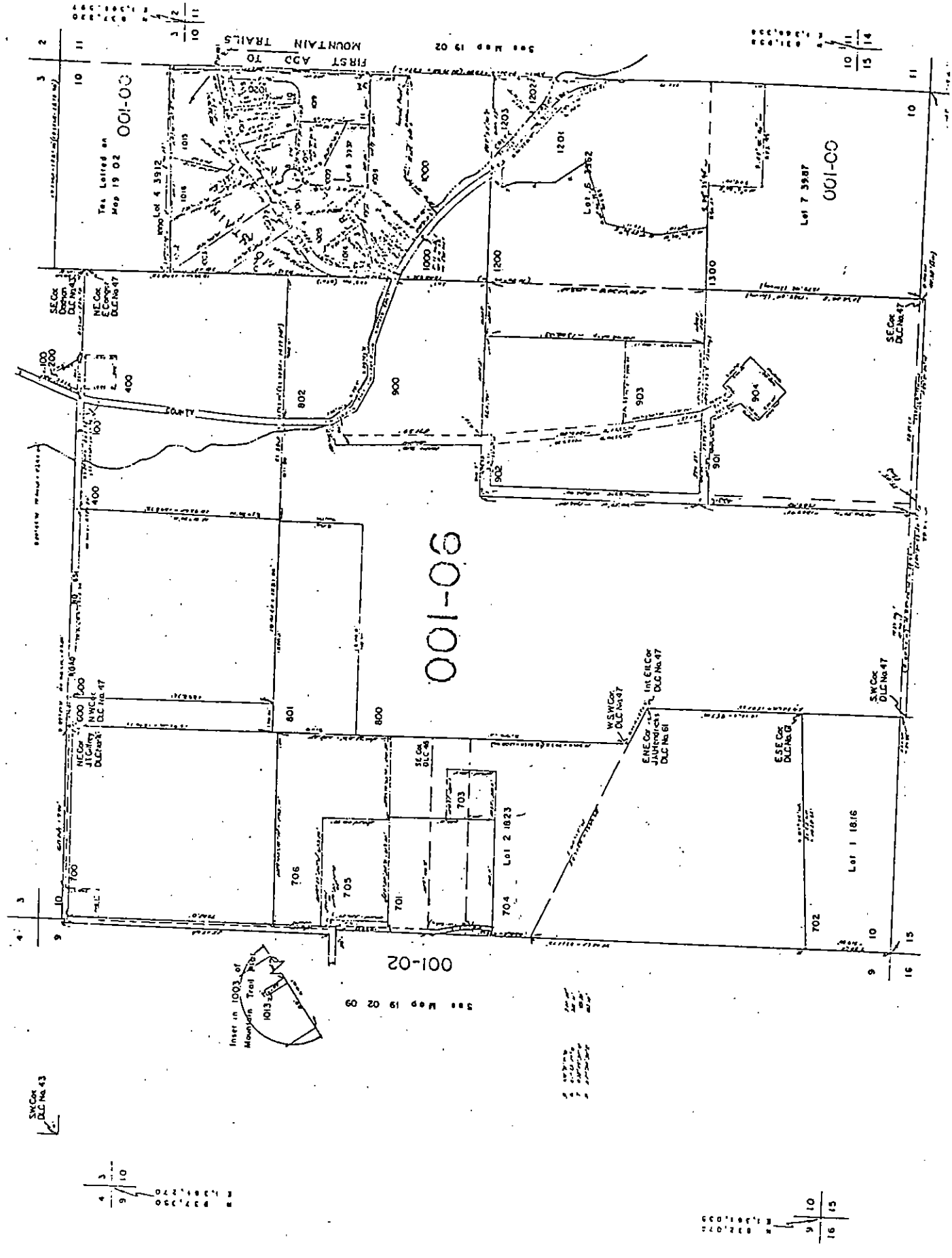
This policy does not insure against loss by reason of the matters shown or referred to in this Schedule except to the extent that the owner of any mortgage or deed of trust is expressly insured on page 1 of this policy.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; pending proceedings for vacating, opening or changing of streets or highways preceding entry of the ordinance or order therefor.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
5. Taxes for the fiscal year 1973-74, a lien due, but not yet payable.
6. Road reserved by Edyl C. Stone in instrument recorded October 24, 1960, Reception No. 13553, Lane County Oregon Deed Records.
7. Mortgage, including the terms and provisions thereof, executed by H. Lloyd Ericsson and Robert J. Ericsson, to Pacific First Federal Savings and Loan Association, dated August 27, 1973, recorded August 28, 1973, Reel No. 653, Reception No. 39662, Lane County Oregon Records, to secure payment of a note for \$35,000.00.

THIS MAP IS TO ASSIST LOCATING PROPERTY. THE COMPANY ASSUMES NO LIABILITY FOR INACCURACIES.

LANE COUNTY
C-400'

See Map 19 02 03



12 02 10

9 10
16 15

4 3
9 10

0 2 4 6 8 10 12 14 16 18 20

10 11
15 14

001-00

001-02

See Map 19 02 03

Lot 7 3987
001-00

Lot 1 1816

SW Cor
DLC No 43

SE Cor
DLC No 47

NE Cor
DLC No 47

SW Cor
DLC No 47

SE Cor
DLC No 47

NE Cor
DLC No 47

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SW Cor
DLC No 47



M37 Claim Form

Department of Administrative Services
Risk Management - State Services Division
1225 Ferry St. SE U160, Salem, Oregon 97301-4292
Web Site: <http://www.oregon.gov/DAS/Risk/M37.shtml> Phone: 503-373-7475

INSTRUCTIONS FOR SUBMITTING A CLAIM

This form requests specific information that is required of a claimant by OAR 125.145.0010-0120. A Claimant must fully complete each box of the claim form and provide all information and evidence to support the claim. In lieu of completing each box or section on this form, a Claimant may attach supplemental documents to provide the requested information. Attached documents shall not be used to complete section 1 and 2, or any section which requires a signature.

- Claims may only be submitted by an Owner or an Authorized Agent of the Owner.
- Claims may only be submitted; in person; by private carrier; by U.S. Postal Service Certified or by Registered Mail to:
Risk Management-State Services Division, 1225 Ferry St. SE, U160, Salem OR 97301-4292
- Only Original Signed Claims will be accepted, claims submitted electronically or by facsimile, will not be accepted.
- Attach *separate sheet of paper* as needed, with reference to the appropriate *Section number on this form*.
- Claim criteria/requirements may be found in Oregon Administrative Rules 125.145.0010 – 0120

Section 1 NAME AND CONTACT INFORMATION OF CLAIMANT/PROPERTY OWNER

Enter the name and contact information of the PRIMARY property owner who is submitting the claim.

Name of Claimant: ROBERT J. GRILSSON	Day Time Phone #: 541-477-3198	
Address: P.O. Box 58		
City: POST	State: OR	Zip: 97752

Section 2 NAME AND CONTACT INFORMATION OF PERSON SUBMITTING CLAIM (AGENT)

Enter the name and contact information of the person who is sending the claim for the property owner if different than the name in Section 1 above.

Name of Agent: SAME AS ABOVE	Day Time Phone #:	
Address:		
City:	State:	Zip:

Must attach a written notarized statement signed by the owner(s) or a Power of Attorney properly authorizing submittal of this claim.

Attachment: Yes No

NONE

Section 3

NAMES AND CONTACT INFORMATION OF OTHERS WITH INTEREST IN THIS PROPERTY

Enter the name and contact information of every person or entity who has an interest in the property. This includes but is not limited to:

- (a) Every lessee and lessor of the Property;
 - (b) Every person or entity holding a lien against, or a security interest in, the Property;
 - (c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.
- This could be other owners, banks, mortgage companies, state or federal agencies or entities, programs specific to the use of the property and any and all others with any interest in the property. Some examples could be; a USDA program providing funds for an owner not to grow a particular crop on the land, banks with second third or other mortgage interest. If using an attachment, the attachment must be submitted in such a format as to easily distinguish the various owners and interest in the property.

Name:	Day Time Phone #:	
Address:		
City:	State:	Zip:
Describe Interest in Property:		

Name:	Day Time Phone #:	
Address:		
City:	State:	Zip:
Describe Interest in Property:		

Name:	Day Time Phone #:	
Address:		
City:	State:	Zip:
Describe Interest in Property:		

Name:	Day Time Phone #:	
Address:		
City:	State:	Zip:
Describe Interest in Property:		

Name:	Day Time Phone #:	
Address:		
City:	State:	Zip:
Describe Interest in Property:		

Section 4 PROPERTY FROM WHICH THE CLAIM DERIVES

Enter the location of the property, all contiguous property, upon which the claim is based. This description is by street address, legal description, and other descriptors which allow a concise description of the property allowing its location, size, and other physical attributes to be ascertained. Attachment if Applicable

Street Address: if applicable		NOT APPLICABLE		City: PLEASANT HILL	
County:	WHEELER LANE	State:	OR	Zip:	
Tax Lot #:	LOT 3 GREEN BLUFF LOT 6 ESTATES SUBDIVISION	County Tax Assessor's Map Reference # & Date:			
Township:	19	19 02 10 33		Map # 1553872	
Range:	02	19 02 10 33		Map # 1553831	
Other Legal Description Information:		Section: 10			
<p>LOT 3, of the Green BLUFF ESTATES subdivision LOT 6, of the Green BLUFF ESTATES subdivision</p>					

Section 5 EVIDENCE OF OWNERSHIP

Include evidence or information describing the length and extent of ownership of the property, any encroachments, easements, Covenants Conditions and Restrictions, and federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations. Examples may include; an owner who lives and works on the property, but does not own the mineral rights or a property owner who has easements for neighbors to use roads and the local power company to traverse the property with power or other cables.

The following is attached as proof of ownership: (list all attachments)	Title report
Date of Acquisition of Property:	ON OR ABOUT AUGUST 28, 1973
Nature & Scope of Ownership of Property: Attachment if Applicable <input type="checkbox"/>	FREE SIMPLE ABSOLUTE WARRANTY DEED
All Encroachments, Easements, etc. (see OAR 125-145-0040 (8) for further information) Attachment if Applicable <input type="checkbox"/>	C C & R, FOR GREEN BLUFF ESTATES SUBDIVISION ON FILE WITH THE LANE COUNTY REAL PROPERTY RECORDS

Section 6 NATURE AND MANNER OF RESTRICTION

List each Land Use Regulation on which the Claim is based and include evidence or information that demonstrates the manner in which each cited Land Use Regulation restricts the use of the Property compared with how the owner was permitted to use the Property under Land Use Regulations in effect at the time the owner acquired the Property.

Law or Rule: Attachment if Applicable <input type="checkbox"/>	See Supplement	Describe how this Land Use Law or Rule restricts the use of this property: attached & incorporated herein
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Describe how this Land Use Law or Rule restricts the use of this property: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Describe how this Land Use Law or Rule restricts the use of this property: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Describe how this Land Use Law or Rule restricts the use of this property: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Describe how this Land Use Law or Rule restricts the use of this property: \

Section 7 DATE ON WHICH EACH CITED LAND USE REGULATION BEGAN TO APPLY TO SUBJECT PROPERTY

List each Land Use Regulation on which the Claim is based and include evidence or information that demonstrates the date on which each cited Land Use Regulation began to apply to the Property.

Law or Rule: Attachment if Applicable <input type="checkbox"/>	see attached Supplement	Date of Effect: attached & incorporated herein
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Date of Effect: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Date of Effect: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Date of Effect: \
Law or Rule: Attachment if Applicable <input type="checkbox"/>	\	Date of Effect: \

Section 8 AMOUNT OF PROPERTY VALUE REDUCTION

Enter the amount of Fair Market Value reduction to the Property caused by each cited Land Use Regulation. (Refer to Sections 6 & 7 above). Attach evidence or provide information to support the basis and rationale for the reduction in Fair Market Value.

Fair Market Value Reduction Amount \$: 1,500,000	Law or Rule: SEG ATTACHED	Basis of Evaluation: SUPPLEMENT TO MEASUR
Fair Market Value Reduction Amount \$:	Law or Rule:	Basis of Evaluation: THE CLAIM SUBMITTED TO
Fair Market Value Reduction Amount \$:	Law or Rule: }	Basis of Evaluation: LANE COMMUNITY
Fair Market Value Reduction Amount \$:	Law or Rule: }	Basis of Evaluation: }
Fair Market Value Reduction Amount \$:	Law or Rule: }	Basis of Evaluation: }

8-37

Section 9 AUTHORITY TO ENTER PROPERTY

This section of the form authorizes the Department, the Regulating Entity and their officers, employees, agents, and contractors to enter the Property as necessary to verify information, appraise the property, or conduct other business related to this claim. Each person that can restrict access to the property must sign in the appropriate box in this section.

Constitutional and lawful

I/We Affix Our Signature(s) to this Form Granting Access to the Subject Property in ANY Manner or Form Deemed Appropriate by State Agency or Agencies for the Review of the Property in Furtherance of the Processing or Handling of this Claim:
SIGNATURES OF ALL OWNERS WITH AUTHORITY TO RESTRICT ACCESS

Printed Name: ROBERT J. GRISSON	Signature: <i>Robert J. Grison</i>
Interest in Property: OWNER	
Printed Name:	Signature:
Interest in Property:	
Printed Name:	Signature:
Interest in Property:	
Printed Name:	Signature:
Interest in Property:	
Printed Name:	Signature:
Interest in Property:	
Printed Name:	Signature:
Interest in Property:	

Section 10 ATTACHMENTS

Check the appropriate box for all documents, evidence and supporting information that is attached and included as a part of this claim.

*without standing
in section wording
This Be Permitted
if necessary.*

*TO BE PROVIDED
IF NECESSARY*

*TO BE PROVIDED
IF NECESSARY*

*Did RECORD
IN LAND COUNTY
RECORDS AS
PART OF
GREEN BLUE
SUBDIVISION
PAPERS*

Title Report: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Deed: Yes <input type="checkbox"/> No <input type="checkbox"/>	Appraisal(s) Yes <input type="checkbox"/> No <input type="checkbox"/>	Covenants, Conditions & Restrictions: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Affidavits: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Tax Map(s) Yes <input type="checkbox"/> No <input type="checkbox"/>	Tax Deferrals: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Tax Reductions: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Participating Federal Programs: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Other Information:(Explain)	
Other Information:(Explain)		Other Information:(Explain)	

Section 11 OTHER CLAIMS FILED

List all other governmental entities you or someone on your behalf has submitted claims to regarding the Property involved in this claim. List all claims submitted to the state or other entities relating to this property or any portion thereof on anyone's behalf. You must list all entities even if you only submitted a claim to them for a portion of the Property that is the subject of this claim.

Have you submitted a claim to another governmental entity regarding the property listed in this claim?
No

Yes Date: *SAME AS DATE* To Whom: *LAND COUNTY - see attached*

Yes Date: To Whom: *claim incorporated herein*

Yes Date: To Whom:

Yes Date: To Whom:

ADDITIONAL INFORMATION THAT MAY BE SUBMITTED IN SUPPORT OF THIS CLAIM

1. A report by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from the enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;
2. A statement of the effect of the cited Land Use Regulation(s) on any Owner's tax status, including without limitation any tax deferrals or tax reductions related to the cited Land Use Regulation(s);
3. Citation to each Land Use Regulation(s) in effect at the time the owner acquired the property explaining how the use that is now not permitted by the Land Use Regulation(s) set forth in Oregon Administrative Rules (OAR) 125-145-0040(9) was permitted at the time the owner acquired the property;
4. Names and addresses of Owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside and urban growth boundary and not within a farm or forest zone and 750 feet of the Property if the Property is located in a farm or forest zone.

I ATTEST THAT I HAVE FILLED OUT THIS FORM COMPLETELY AND THIS CLAIM IS TRUE AND CORRECT. (Signatures of all parties preparing this form.)

Signature Robert J. E. Date December 30, 2004

Signature [Handwritten Signature] Date Dec. 30, 2004

Signature _____ Date / /

Signature _____ Date / /

Signature _____ Date / /

Signature _____ Date / /

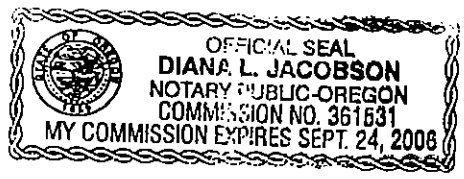
State of Oregon
County of Crook

Signed and sworn to before me on 12 30, 2004 by Diana L. Jacobson
(month - day - year)

Diana L. Jacobson
(Notary Public - State of Oregon)

Notary Seal

My commission expires: Sept 24, 2006



SUPPLEMENT ATTACHED AND INCORPORATED INTO THE OFFICIAL

M37 CLAIM FORM
DEPARTMENT OF ADMINISTRATIVE SERVICES
RISK MANAGEMENT – STATE SERVICES DIVISION
1225 FERRY ST. SE U160, SALEM, OREGON 97301

Pursuant to the instructions for submittal of a Measure 37 claim to the State of Oregon, this supplemental attachment provides the information requested by the indicated Sections of the official form that are not otherwise completed on the official form.

Property subject to claim:

20 ACRES +/- in Lane County, Oregon, consisting of two separate lots, one known as Lot 3 and the other known as Lot 6 of the Green Bluff Estates subdivision.

Date property first acquired by owner or family member:

On or about August 28, 1973

Section 8 Amount of Property Value Reduction

Fair Market Value Reduction:

Not less than \$1,500,000 . This figure is subject to amendment once the historical land use information is available.

Law or Rule taking property rights, restricting use of land and causing reduction of value:

All state statutes, administrative rules, county ordinances, and rules, restricting the use of land that were enacted or enforced against the land subsequent to the date of purchase of the land by the current owner or a family member of the current owner. These restrictive laws, rules, etc. Include but are not limited to ORS Chapters 197 and 215, OAR 660 including oar division 6, goal 4, forest lands, the F-2 impacted forest land designation, ORS chapter 215.316 – 215.327 marginal lands criteria, all county code provisions implementing the state statutes and administrative rules as well as any county provisions more restrictive than the state laws and rules, as well as any other restrictive state statutes, rules, and county provisions restricting the use of the land that were enacted or enforced against the land subsequent to the date of purchase of the land.

This claim and the applicable laws will be reviewed once the historical land use information becomes available and amendment, supplementation or clarification of this claim will correspondingly, as appropriate, be made.

Desired Property development of the property:

See the foregoing description. Essentially, should he so desire to do so, owner desires to be allowed to develop the property to the full extent he would have been able to develop the property when it was purchased in 1973.

Basis of Evaluation

The demand for compensation has been determined by experience as well as consultation with various real estate market professionals. If amount of compensation is not agreed, court action is available and appropriate probative evidence will then be submitted. In addition, this demand amount may increase once historical land use information becomes available.

REC'D MAR 08 2005

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March 4, 2005

Kent Howe
Planning Director
Public Service Building
125 East 8th Avenue
Eugene, OR 97401

Re: Measure 37 Claim for Compensation – Green Bluff Estates Lots 3 & 6

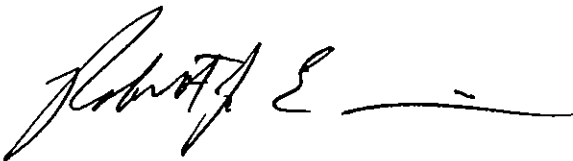
Dear Mr. Howe:

Despite my better judgment, enclosed is our check for \$850.00 (\$750 fee and \$100 notice money) relative to my Measure 37 claim that my wife, and law partner, said to send. I understand that my claim is third in line, with the first to be considered by the Board in about 2 weeks.

This check is tendered under protest in that I still take the position that Measure 37 does not require any fee to recover simply that which was taken by the restrictive regulations in the first place. Nevertheless, if a lawsuit is required to resolve my claim, the fee is tendered to delete that one issue from contention. I understand that your regulations, specifically 2.720(9), mean that if I am entitled to compensation by way of either payment of money to me or waiver of the restrictive land use regulations, the fee will be refunded.

Because we (you and I) did not learn until our telephone call of yesterday that my February 8, 2005 had been misfiled in another applicant's claim file, I would appreciate it if you would notify me that you have received this letter and check. Thank you.

Sincerely,



Robert J. Ericsson

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

February 24, 2005

Mr. Lane Shetterly, Director
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, Oregon 97301-2540

Re: Oregon Ballot Measure 37

Dear Mr. Shetterly:

You have asked that we address two questions concerning 2004 Oregon Ballot Measure 37. Your first question concerns sections 8 and 10 of the measure, which provide that certain entities may elect to waive ("modify, remove, or not apply") a law as an alternative to paying compensation to a property owner. Generally, you want to know if a waiver under Measure 37 is personal to the current owner of the property or runs with the land. That is, does the waiver remain if the current owner conveys the property to a new owner?

The short answer to your first question is that when a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by "not applying" the law, that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost. We also consider the result where the public entity elects to "modify or remove" the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.

Your second question is whether a public entity's decision to "modify, remove, or not apply" a law under section 8 of Ballot Measure 37 may be made on a "blanket" basis, that is whether a public entity may decide in advance that all claims that involve a particular law, or that involve owners who acquired their property after a particular date, or some other subset of the potential universe of claimants, will be granted relief. The short answer to this question is that Measure 37 authorizes public entities to "modify, remove, or not apply" the law only after the

affected owner has established his entitlement to relief. In other words, before deciding to grant relief to a Measure 37 claimant, a public entity must determine at least that:

- the claimant acquired the affected property before the law in question was adopted;
- the law restricts the use of the property in question;
- the law reduces the fair market value of the property in question;
- the law is not one that regulates activities that are commonly and historically recognized as a public nuisance;
- the law is not one that protects public health and safety; and
- the law is not required to comply with federal law.

To determine if Measure 37 applies, the public entity will have to consider facts specific to the particular property at issue and its present owner. As a result, the short answer is that we do not believe public entities may adopt rules or ordinances or other laws that provide "blanket waivers" of laws under Ballot Measure 37.

Analysis

When interpreting a statutory provision adopted through the initiative process, the Oregon Supreme Court applies the same methodology that it applies to the construction of a statute. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61, 11 P3d 228 (2000); *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 612 n-4; 859 P2d 1143 (1993). The objective is to determine the intent of the voters who pass the measure. "The best evidence of the voters' intent is the text of the provision itself." *Roseburg School Dist. V. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993). In interpreting the text, we consider statutory and judicially developed rules of construction "that bear directly on how to read the text," such as "not to insert what has been omitted, or to omit what has been inserted," and to give words of common usage their plain, natural and ordinary meaning. *PGE*, 317 Or at 611; *ORS 174.010*. However, the meaning of the terms in a measure cannot be assessed in isolation from the context in which the measure's drafters used those words. See *PGE*, 317 Or at 610-11. The Oregon Supreme Court, however, is unlikely to conclude analysis of an initiated measure at the first level of review. *Stranahan*, 331 Or at 64.

The second level of review is an examination of the history of the provision. The history of an initiated provision includes information available to the voters at the time the measure was adopted that discloses the public's understanding of the measure. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560 n 8, 871 P2d 106 (1994). Sources of such information include the ballot title, explanatory statement and arguments for and against the measure included in the Voters' Pamphlet as well as contemporaneous news reports and editorials on the measure. *Id.* The extent to which these sources of information will be considered depends on their objectivity, as well as their disclosure of public understanding of the measure. *Stranahan*, 331 Or at 65 (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).

If, after considering the text, context and history of the measure, the intent of the voters remains unclear, we may resort to judicial rules of construction to resolve any remaining uncertainty. *PGE, 317 Or at 612 n.1.*

1. Transferability of Measure 37 Relief

Your first question concerns whether a public entity's decision to modify, remove or not apply a law is personal to the owner making the claim or whether the grant of non-monetary relief runs with the land. In other words, when a public entity provides non-monetary relief to the present owner of property by waiving a law to allow a use of the property, what happens if the law is applied to the property to a new owner? We conclude that the relief is personal to the owner making the claim. In reaching that conclusion, we consider three potential answers. (1) Measure 37 only authorizes waiver for the present owner making the claim; (2) Measure 37 only authorizes waiver that runs with the land; or (3) Measure 37 gives the public entity making the decision on waiver the discretion to determine its duration. Nothing in Measure 37 expressly authorizes any of these answers, so we must discern the voter's intent by pairing our analysis with the

subsections (8) and (10) of the measure authorize certain public entities to grant a waiver from a law that would otherwise require the payment of compensation.¹ Subsection (8) provides that:

Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [sic] the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property." (emphasis added).

Section (10) provides that:

"* * * Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property." (emphasis added.)

Subsection (11)(C) defines "[o]wner" as "the present owner of the property, or any interest therein." (emphasis added.)

¹ For every law, there is of course a public body that already has authority independent of Measure 37 to amend or repeal it (e.g., the Legislative Assembly for statutes).

The highlighted language is the only text concerned with the nature of the non-monetary relief authorized by the measure. Standing alone, it only provides authority for a public entity to waive a law to the extent necessary to allow an otherwise prohibited use by the "present" owner, i.e., the owner at the time the exemption is granted. In other words, this language only authorizes a public entity to make exemptions personal to the owner making the claim.

We also consider the immediate context of this text. Sections (8) and (10) of the measure provide three means for a public entity to waive a law. An authorized public entity may (1) "modify," (2) "remove," or (3) "not apply" the law. The plain, natural and ordinary meaning of "modify" best suited to the circumstances is "lessen the severity of : MODERATE . . . <traffic rules were *modified* to let him pass - Van Wyck Brooks>." WEBSTER'S THIRD NEW INT'L DICTIONARY 982 (unabridged ed 1993)1452. None of the definitions of "remove" is ideally suited to the circumstances, but "eliminate" comes the closest. *Id.* at 1921. To "apply" a rule of law is "to put [it] in effect : IMPOSE." *Id.* at 105.

The first two means of providing non-monetary relief - modifying or removing the law - appear to entail making a change in the law itself. That is, the ordinary meaning of how a public entity would "modify" a law would be for the public entity to amend the law. Similarly, the ordinary meaning of how a public entity would "remove" a law would be for the public entity to repeal it. How the law was amended or repealed would seemingly determine whether that action was personal to the current owner or permanent. For example, one way to grant John Doe non-monetary relief for his property on Maple Drive would be to modify the law to provide that "this law shall not affect the real property at 111 Maple Drive, Anytown, Oregon." On its face, a modification taking that form would have the effect of making the law not apply to the property irrespective of its ownership.² Moreover, to make the law begin applying again once it was acquired by a new owner, the public entity would need to repeal or amend the decision to remove or modify the law, which would seemingly entitle the new owner to relief in his own right. And if that owner were then granted the same type of modification, the owner that followed him would likewise be entitled to relief, and so on.

By contrast, if a law were modified to provide that "this law shall not affect any real property at 111 Maple Drive, Anytown, Oregon *that is owned by John Doe*," the exemption would be limited to the owner making the request for compensation and the property would again be subject to the original law upon its acquisition by a new owner, absent independent grounds for an exemption. In sum, the first two means of modifying or removing the law so that it does not apply to a property could be accomplished either by actions that are personal to the current owner or by actions that run with the land. The fact that either is technically possible means that this context does not shed any light one way or the other on whether the voters intended non-monetary relief to be personal to the present owner or to run with the land.

The third means of non-monetary relief - to "not apply" the law - presumably has a different meaning than the first two. ORS 174.010. As noted above, the ordinary meaning of

² Similarly, the law could be repealed in whole or in part (as to particular property or as to a particular person). As discussed below, we do not believe Measure 37 authorizes a public entity to repeal a law that it is required by other law to have in place (except, perhaps, with regard to a specific, valid, Measure 37 claim).

"apply" is to put something into effect or to impose or enforce it. Thus, it appears that the intended meaning of "not applying" a law in this context is to stop enforcing it in a way that does not involve repealing or amending the law. Instead, the relevant public entity is authorized simply to not give effect to an existing law, *i.e.*, to discontinue enforcing it. This construction also is consistent with the text of section (4), which entitles the present owner to compensation if a law "continues to be enforced against the property" 180 days after he submitted a claim. Therefore, if the third means were used, as long as the present owner continues to own the property, the public entity would stop enforcing or applying the law to the property. However, the law would otherwise continue unaltered, and if the present owner conveys the property to a new owner the public entity would have no lawful basis for not enforcing it if the conditions that created the right to relief under Measure 37 ceased to exist, *e.g.*, if the property were acquired by someone who was not entitled to an exemption in his own right. For that reason, to "not apply" a law would necessarily be personal to the owner submitting the claim.³

Although the text and context of the measure strongly suggest that the voters intended that non-monetary relief be personal to the present owner of the property, we also review the history of the measure to determine if it sheds any light on your question. We turn first to the Voters' Pamphlet, which is the primary source for Measure 37's history. The ballot title states that "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value." The explanatory statement declares that "government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change or not apply restrictions in lieu of payment; if compensation not timely paid, *owner* not subject to restrictions." (emphasis added.)

The arguments in favor include 40 submissions, although the last two are apparently ironic and intended to discourage "yes" votes. Slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract. Except as discussed below, none sheds any light on the question at hand. Slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendents, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. *See, e.g.*, ORS 215.130.⁴ None of the

³ Measure 37's context includes related statutes that were already on the books at the time of its approval by the voters. *See Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 62 n15, 11 P3d 228 (2000). The breadth of Measure 37 results in a very large number of existing statutes that are related to Measure 37. We have not found anything in those statutes bearing directly on whether a Measure 37 exemption was intended by the voters to be personal or to run with the land.

⁴ ORS 215.130 provides in relevant part:

arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on a property's resale value, although one argument states that they restrict the use of home equity to fund owners' retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new "date of acquisition" for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property -- that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right to relief.⁵ The arguments in opposition include nothing that bears on this issue.

Measure 37 received considerable attention in the state's newspapers, but none of the articles or editorials we have seen discuss whether a decision to grant non-monetary relief would be personal or run with the land. Like the Voters' Pamphlet, the newspaper commentary we have reviewed does not address whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. The same appears to be true of the television advertising on this measure.

"(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted." (emphasis added.)

This statute allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent.

⁵ The argument in the Voters Pamphlet states:

"If the current owner sells an interest in her property, so long as the current owner still has a current possessory interest, or a reversionary interest in the property, the provisions of Ballot Measure 37 apply using the date the current owner acquired the property. Only if a current owner sells all of her interest in a piece of property does the date of acquisition change for purposes of determining what regulations are subject to Ballot Measure 37 protections."

Voters' Pamphlet, Volume I - State Measures. Oregon Vote by Mail General Election, November 2, 2004, at page 113. Argument in Favor furnished by Dorothy English, Barbara Prete and Eugene Prete.

In conclusion, the phrases "to allow the owner to use the property for a use permitted at the time the owner acquired the property" and "the owner shall be allowed to use the property as permitted at the time the owner acquired the property," together with the definition of "owner" as "the present owner of the property, or any interest therein" are the only text that directly addresses whether a decision to grant non-monetary relief by "not applying" or modifying or removing a law applies to the present owner or to the property. Those phrases specify the minimum that a public body *must* do to avoid paying compensation, i.e. modify, remove or not apply the law to allow *present owner* to use the property as permitted at the time the *present owner* acquired it. Absent independent authority to amend, repeal or otherwise disregard the law at issue, *see* note 1 *supra*, we believe that those phrases also specify the maximum that a public body *may* do to avoid paying compensation. This interpretation is reinforced by other text, namely, the three means by which government may stop the law from applying, as the third means could never be used if all decisions to grant non-monetary relief were intended to run with the land. The measure's history is generally consistent with this interpretation as well and provides no justification for an interpretation at odds with the plain meaning of the measure's text.

Where a local government has discretion concerning whether or not to adopt the ordinance, local government may have authority to modify or repeal that ordinance with regard to both present and future property owners. However, where local government has adopted an ordinance to implement a requirement of state or federal law, Measure 37 authorizes that local government to waive the ordinance only as to the present owner of the property.⁶ We therefore conclude that Measure 37 only authorizes government bodies to "modify, remove or not to [*sic*] apply" a law (as an alternative to compensation) that the government is otherwise required to apply where that decision is personal to the current owner of the property.

2. "Blanket Waivers"

Some local governments have expressed an intention to repeal laws in response to Ballot Measure 37, either on a wholesale basis (as applied to all persons and property) or on a more limited basis (for example, as applied to all owners of real property acquired before the effective date of the law in question). If a locally adopted law is required by state law, then subsections (8) and (10) permit a local body to *modify, remove or not apply* the law only with respect to a valid Measure 37 claim. That is, Measure 37 authorizes a public entity to modify, remove or not apply a local law that is required by state law only as to owners who have established valid claims under the measure. Cities or counties that repeal or amend local ordinances that are required by state law on a broader basis are, we believe, acting in violation of state law.

An owner establishes a valid Measure 37 claim only if the authorized public entity determines that a series of conditions are met, including:

⁶ ORS 197.646 generally requires a local government to amend its comprehensive plan and land use regulations to implement new land use statutes and land use goal and rules of the Land Conservation and Development Commission (LCDC).

- The public entity has enforced the law;
- The law restricts the use of private real property or any interest therein
- The law has the effect of reducing the fair market value of the claimant's property or any interest therein
- The owner of the property has made a written demand to the public entity
- The law was enacted after the date the claimant acquired the property
- The law does not restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- The law does not restrict or prohibit activities to protect public health and safety
- The law is not required to comply with federal law.

If any of those conditions is not satisfied, relief is not authorized by Ballot Measure 37. If the law or laws in question are ones that a city or county was required to adopt by state law, the city or county may not repeal or amend those laws except to the extent authorized by the measure. As a result, any ordinance that purports to waive otherwise applicable laws that are required by state law, without providing for the determinations set forth above to be made, is beyond the authority provided by Ballot Measure 37 and likely violates the state law that would otherwise require the local government to have the local law in question in place.

In the arena of land use, ORS 197.646 generally requires local governments to amend their comprehensive plans and land use regulations to implement new or amended statewide planning goals and rules, and land use statutes (such as ORS ch. 215). As a result, if a county were to "modify, remove or not apply" its own ordinance adopted to implement state law in response to a valid written demand made under Ballot Measure 37, it could do so only if it first determined that all of the conditions required for a claim to be valid and entitled to relief have been met.⁷

If you have any questions about this advice, please do not hesitate to contact me. The nature of this advice is necessarily general, and there may be aspects of existing state or local laws that require additional analysis as we work through questions arising from the implementation of this measure.

Very truly yours,



Stephanie Striffler
Special Counsel to the Attorney General

DNI:HRM:W:SLS:6YK:AGS15162

⁷ We expressly do not address whether such an action by a city or county would entitle a property owner to carry out a use. That question is beyond the scope of this advice.

Measure 37

Proposed by Initiative petition to be voted on at the General Election, November 2, 2004.

Ballot Title

37

GOVERNMENTS MUST PAY OWNERS OF FORGONE ENFORCEMENT WHEN REPEAL LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF YES VOTE: "Yes" vote requires that governments to pay owners of forgone enforcement by repealing, amending, and applying restrictions, when certain land use regulations reduce owners' property value.

RESULT OF NO VOTE: "No" vote requires repealing that governments to pay owners of forgone enforcement by repealing, amending, and applying restrictions, when certain land use regulations reduce property value.

SUMMARY: Currently, Oregon Constitution requires governments to pay owners of forgone enforcement when repealing, amending, and applying restrictions, when certain land use regulations reduce owners' property value. Measure 37 is a state statute requiring that, upon state, city, county, metropolitan service district, or other public entity's repeal, amendment, or application of a land use regulation that has the effect of reducing the fair market value of the property or any interest therein, the government must pay the owner of the property or interest the amount of the property interest or other benefit. Governments may repeal, amend, or not apply restrictions, in lieu of payment, if a written demand for compensation is not filed within 180 days of the date the owner makes written demand for compensation. Applies to restrictions enacted after January 1, 1997. Measure 37 does not apply to restrictions that are part of a public entity's plan to acquire or develop property, or to restrictions that are part of a public entity's plan to acquire or develop property, or to restrictions that are part of a public entity's plan to acquire or develop property.

ESTIMATE OF FINANCIAL IMPACT: The measure would require governments to pay owners of forgone enforcement when certain land use regulations reduce owners' property value. The measure would require governments to pay owners of forgone enforcement when certain land use regulations reduce owners' property value. The measure would require governments to pay owners of forgone enforcement when certain land use regulations reduce owners' property value.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation is not determined.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$16 million and \$300 million per year.

The measure may require compensation to landowners. The amount of local government expenditures needed to pay claims for compensation is not determined.

The effect of the measure on local government revenues cannot be determined.

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made 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 criteria, whichever is later.

(6) 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 this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this

37

Measure 37

act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions – for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Explanatory Statement

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner's property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner's property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including "family member" which is defined as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Committee Members:

David Hunnicutt
Dale Riddle
Bernie Bottomly
Patricia McCaig
Jack Roberts

Appointed by:

Chief Petitioners
Chief Petitioners
Secretary of State
Secretary of State
Members of the Committee

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

REAL PROPERTY COMPENSATION/REGULATION APPLICATION PROCESS

2.700 Findings and Purpose.

(1) Findings. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation reduces property value. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of private real property and the government has 180 days from such application to deny or pay the claim or take action to modify, remove, or not apply the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications for compensation, it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner.

(2) Purpose. The provisions of LC 2.700 through 2.770 implement the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The provisions of LC 2.700 through 2.770 establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of appellate review. The provisions of LC 2.700 through 2.770 shall become operative only when the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) become effective. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.710 Definitions.

For the purpose of LC 2.700 through 2.770 the following terms, phrases, words and their derivations shall have the meaning given in LC 2.710. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in LC 2.700 through 2.770 shall be given the meaning intended in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), or as those words may be subsequently defined by statute. Words used in LC 2.700 through 2.770 that are the same as words used in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) shall have the same meaning as the words used in those provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

Claim. A claim filed under Ballot Measure 37.

County Administrator. The County Administrator or the Administrator's designee.

Exempt Land Use Regulation. A land use regulation that:

- (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
- (2) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- (3) Is required to comply with federal law;

- (4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- (5) Was enacted prior to the date of acquisition of the property by the owner or a family member

Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land Use Regulation. Includes:

- (a) Any statute regulating the use of land or any interest therein;
- (b) Administrative rules and goals of the Land Conservation and Development Commission; and
- (c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.

Owner. The present owner of the property, or any interest therein.

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Lane County that restricts the use of the private real property in a manner that reduces the fair market value of the real property.
(Revised by Ordinance No. 9-00, Effective 12.6.00)

2.720 Application for Claim.

An applicant seeking to file a claim under LC 2.700 through 2.770 shall be the present owner of the property that is the subject of the claim at the time the claim is submitted. An applicant shall submit an application to the County Administrator consisting of all of the items set out in LC 2.720(1) through (9). The County Administrator may waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. Within 10 working days of when the application is first submitted, the County Administrator may require additional information beyond that listed in LC 2.720(1) through (9) where useful to address approval criteria. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the County Administrator has been submitted. Unless specifically waived by the County Administrator, the following must be submitted:

- (1) A completed application form;
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;

(5) A statement specifically identifying the section of Lane Code or other land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;

(6) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;

(7) A written statement addressing the criteria listed in LC 2.740(1)(a) through (d);

(8) A statement by the applicant specifying the amount of the claim, and the fair market value of the property before and after application of the challenged land use regulation(s); and

(9) Copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property. Unless waived by the County Administrator, an application also shall include an application fee, in the amount established by Order of the Board, to at least partially cover the County costs of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application for a claim under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The County shall refund the application fee if it is determined by the County or by a court that the applicant is entitled to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.730 Completeness Review.

The County Administrator shall review a claim application and, within 10 working days of its receipt, notify the applicant as to whether the application is complete. If the County Administrator determines that the application is complete, the County Administrator shall begin the application review process. If the County Administrator determines that the application is incomplete, the county shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the county a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intention to submit missing information shall constitute a waiver of the 180-day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The County shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information referred to above, if the applicant has not responded. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.740 Application Review and Recommendation.

(1) The County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;
- (c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

(2) If an application fails to meet one or more of the criteria listed above, the County Administrator shall issue a written final decision denying the claim and explaining the reason(s) for determining that the application does not qualify for compensation consideration and will not be referred to the Board. If the application meets all of the criteria in LC 2.740(1)(a) through (d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion at LC 2.760(3), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property.

(3) After consideration of the information included in the application and any other evidence obtained or received, the County Administrator shall determine whether modifying, removing, or discontinuing application of a land use regulation is necessary to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the owner would be entitled without modifying, removing, or discontinuing application of a land use regulation. The County Administrator shall compare the public benefits from application of the land use regulation to the private real property with the public burden of paying the required compensation to the owner if a modification or waiver of the land use regulation is not granted, taking into consideration the financial resources of the County for the payment of such claims. Based on this comparison, the County Administrator shall prepare a written report to the Board stating these determinations and the evidence on which they are based.

(4) If waiver or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a waiver or modification of the land use regulation that will avoid owner entitlement to compensation, grant a waiver or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a waiver or modification of the land use regulation and pay the compensation to which the owner is entitled.

(5) Notice of the denial or recommendation to Board shall be mailed to the applicant.

(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the 45th day after the application was accepted. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.750 Application Notice.

(1) Within 5 days of the referral to the Board, but no less than 20 days before the Board holds a public hearing, written notice of the application referral shall be mailed to all of the following:

- (a) The applicant;
- (b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;
- (c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property located entirely within an urban growth boundary or Rural Community and within 1500 feet of the perimeter of all other subject properties;
- (d) Neighborhood groups or community organizations officially recognized by the Board and whose boundaries include the subject property; and
- (e) Other agencies or interested parties as determined by the County Administrator.

(2) The failure of any person to receive notice shall not affect or invalidate any proceedings under LC 2.700 through 2.770.

(3) The notice shall include all of the following:

- (a) The street address or other easily understood geographical reference to the subject property;
 - (b) The criterion for the decision;
 - (c) The place, date, and location of the hearing;
 - (d) The nature of the application and the proposed use or uses which could be authorized if the identified land use regulation is waived or modified with respect to the subject property;
 - (e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
 - (f) The name and telephone number of a county contact person;
- and
- (g) A brief summary of the local decision making process for the decision being made. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.760 Board Consideration and Decision.

(1) Upon conclusion of any hearing on a claim application, and prior to the expiration of 180 days from the date a claim was filed, the Board shall either declare:

- (a) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or
- (b) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) in a manner which reduces the value of the subject property and allows the owner to use the property for a use permitted at the time the owner acquired the property.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above.

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the

facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.760(3).

(4) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision.

(5) The County shall record notice of the Board decision in the county deed records. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.770 Board Decision Effect.

(1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to modify, remove, or discontinue application of a challenged land use regulation by Order pursuant to LC 2.700 through 2.770 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.

(2) Any modification, removal, or discontinued application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property, and the new property owner shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.

(3) If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.700 through 2.770 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*