

PASSED

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

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
05-6-29-13) 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.

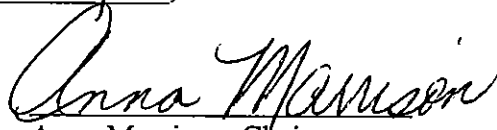
NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Robert Ericsson made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value 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 13th day of July, 2005.



Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 6-23-2005 Lane County



OFFICE OF LEGAL COUNSEL