

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,  
OREGON

ORDER No.

06-11-29-9

**FILED**

DEC 27 2006

**COUNTY CLERK**

BY *M. Baldwin*

) 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 (PA06-6144/Wildish)

**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 landowner 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 the Wildish Land Co. (PA06-6144), the owner of real property described in Table 1 in the staff report and attached as Exhibit "A", consisting of approximately 1,368 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 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**, the Board has reviewed the evidence and 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**, on November 28 and November 29, 2006, the Board conducted public hearings on the Measure 37 claim (PA06-6144) of the Wildish Land Co. and has now determined that the minimum lot size and dwelling restrictions of the currently applicable zones were enforced and made applicable to prevent the Wildish Land Co. from developing the property as might have been allowed at the time it acquired an interest in the property on the various dates listed in Table 1 attached as Exhibit "A", and that the public benefit from application of the current minimum lot size and dwelling regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, the Wildish Land Co. requests either \$15,400,000 as compensation for the reduction in value of it's property, or waiver of all land use regulations that would restrict the division of it's land into lots containing less than the minimum lot size currently required in the zones applicable to the property and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time it acquired an interest in 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 F1, F2, E25, E30 and SG zones and the Greenway Development Permit regulations 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 the Wildish Land Co. to make application for development of the subject property in a manner similar to what it could have been able to do under the regulations in effect when it acquired an interest in 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 Wildish Land Co. 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 they acquired an interest in 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 request of the Wildish Land Co. shall be granted and the restrictive provisions of LC 16.210, LC 16.211, LC 16.212, LC 16.217 and LC 16.254 that limit the development of dwellings and the division of land in the applicable zones shall not apply to the Wildish Land Co., so it can make application for approval to develop the property identified in Table 1 attached as Exhibit "A", consisting of approximately 1,368 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when it acquired an interest in the property on various dates identified in Table 1 and attached as Exhibit "A".

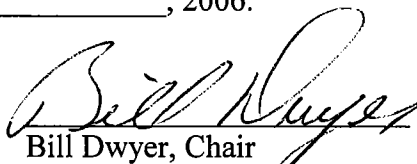
**IT IS HEREBY FURTHER ORDERED** that the Wildish Land Co. still needs to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by it as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zones described above and identified in Table 1 and attached as Exhibit "A", the claimant shall submit appropriate applications for review and approval of a land division or new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have 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 to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. 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 use of the property by the Wildish Land Co. does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml> ) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

**IT IS HEREBY FURTHER ORDERED** that the 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 applicant to divide or build dwellings can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

**DATED** this 6th day of December, 2006.



Bill Dwyer, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 11-29-2006 Lane County

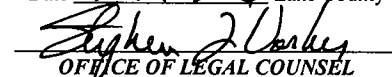
  
OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

Table 1

Map	Lot	acres	current zone	Acquired by Wildish Land Co.	conveyance or deed	original zone
180207	100	136.5	F1, F2	31-Dec-66	620-R/73-1468	AGT
180207	200	13.9	E30	31-Dec-66	620-R/73-1468	AGT
180207	1000	9.7	E30	24-Nov-71	560R/ 75306	AGT
180208	601	61.9	SG	31-Dec-66	620-R/73-1468	AGT
180208	700	296.2	F1	31-Dec-66	620-R/73-1468	AGT
180208	801	225.0	E25, SG	31-Dec-66	620-R/73-1468	AGT
180208	900	0.5	SG	31-Dec-66	620-R/73-1468	AGT
180209	400	39.8	SG	14-Nov-68	415R/ 45172	unzoned
180209	900	26.6	SG	14-Nov-68	415R/ 45172	unzoned
180209	1401	21.7	SG	29-Jul-67	359R/ 95624	unzoned
180209	1404	114.1	E25, SG	18-Jun-69	442R/ 70159	unzoned
180210	502	15.6	E25	14-Nov-68	415R/ 45172	unzoned
180210	503	0.6	E25	14-Nov-68	415R/ 45172	unzoned
180216	101	20.4	SG	18-Jun-69	442R/ 70159	unzoned
180301	3500	4.6	SG	31-Dec-66	stock subscription	unzoned
180311	500	66.1	SG	31-Dec-66	stock subscription	AGT
180312	300	158.9	SG	31-Dec-66	620-R/73-1468	AGT
180312	400	57.8	SG	31-Dec-66	stock subscription	AGT
180312	900	84.3	E25, SG	31-Dec-66	stock subscription	AGT
180312	1000	14.2	E25	31-Dec-66	stock subscription	AGT

**total acres 1368.5**