

W.S.G.

AGENDA COVER MEMO

DATE: June 1, 2005

TO: BOARD OF COUNTY COMMISSIONERS

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

AGENDA ITEM TITLE: 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 (PA05-5161, Ronald and Patricia Tendick)

I. MOTION: Move to Adopt Order

II. ISSUE OR PROBLEM

On May 11 and 18, 2005, the Board conducted public hearings on the Tendick's Measure 37 claim. The Board concluded the claim was valid and that waiver of the restrictive land use regulations is necessary to avoid owner entitlement to just compensation under Measure 37.

The Board determined that the restrictive dwelling and minimum area land division requirements of the Impacted Forest zone (F-2/RCP) prevent the Tendicks from dividing or building a second dwelling on their property and directed staff to draft a revised order to waive application of the restrictive division and dwelling land use regulations to allow the Tendicks to use the property for a use permitted at the time they acquired the property.

Attached is a revised order to waive application of specific division and dwelling land use regulations applicable to the Tendick's property.

III. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final order, within 5 days the County will mail notice of the decision to all parties to the proceeding and record notice of the Board decision in the county deed records.

VI. ATTACHMENTS:

Order No. 05-5-11-12

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

ORDER No. 05-5-11-12

) 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 (Ronald and Patricia Tendick/
) PA05-5161)

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 Ronald and Patricia Tendick (PA05-5161), owners of real property commonly known as 35918 East Enterprise Road, Creswell, Oregon 97426 and more specifically described in the records of the Lane County Assessor as map 19-02-09, tax lot 900 and consisting of approximately 53.88 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 May 11 and 18, 2005, the Board conducted public hearings on Ronald and Patricia Tendicks' Measure 37 claim (PA05-5161) and determined that the restrictive dwelling and minimum area land division requirements of Lane Code 16.211(5), (6), (7) and (10) that were enforced and made applicable to the property prevent Ronald and Patricia Tendick from dividing or building a second dwelling on their property and the public benefit from application

of the land use regulation to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Ronald and Patricia Tendick do not request compensation, but request that the current land use regulations not apply to the property so that they can divide a portion of the property and build a second dwelling on their property for their son and the Board finds that to be a use permitted at the time the Tendicks acquired the property based on an interpretation of Measure 37 that concludes land division regulations can restrict the use the Tendicks could have made of the property at that time; 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 F-2 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 authorize division of the property to create an additional parcel and construction of an additional dwelling by the Tendicks; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Ronald and Patricia Tendick 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 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 Tendicks' request shall be granted and the restrictive dwelling and minimum area provisions of Lane Code 16.211(5), (6), (7) and (10) that limit the division of land and restrict placement of additional dwellings shall not apply to Ronald and Patricia Tendick, so that they can further divide and build another dwelling on the property commonly known as 35918 East Enterprise Road, Creswell, Oregon 97426 and more specifically described as map 19-02-09, tax lot 900.

IT IS HEREBY FURTHER ORDERED that the Tendicks will need to receive approval of a partition to allow creation of a new parcel and construction of an additional dwelling under other land use regulations applicable to dividing land or placing another dwelling on the property that were not specifically identified or established as restricting the Tendicks use of the property for a home site and it would be premature to not apply those regulations given the available evidence. Applicants may resubmit to the Board any land use regulation for reconsideration under Ballot Measure 37 and LC 2.700 through 2.770 if enforcement of those regulations during development will result in a restriction in use that has the effect of reducing the fair market value of the property. 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 the Tendicks use of their property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate division or

construction of an additional dwelling. The requirements of state law, including ORS 215.705, 215.720 through 215.780 and OAR chapter 660, division 4, contain specific standards regulating land divisions and development on forest land and applicants 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 claim for this property before seeking county land use approval. The county land use regulations and other 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 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