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Memo Date: December 21, 2006  
Order Date: January 3, 2007

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**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works Department/Land Management Division

**PRESENTED BY:** KENT HOWE, PLANNING DIRECTOR

**AGENDA ITEM TITLE:** REPORT BACK REGARDING THE PROCESSING OF MEASURE 37 CLAIMS.

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**I. MOTION**

Give direction to staff regarding the processing of M37 claims.

**II. AGENDA ITEM SUMMARY**

Report back regarding the processing challenges of Measure 37 claims.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

There are 395 Measure 37 claims that have been submitted to Lane County. Only 77 have received a final determination. There are 318 claims that must be processed by the end of May.

**B. Policy Issues**

There are certain actions required by the Lane Code in order to process a M37 claim. Completing these actions takes approximately 12½ hours for each claim. There were 250 claims submitted in November which must be processed within 180 days. In addition to that, there are 68 claims that have exceeded the 180 day deadline or will come due between December 2006 and April 2007. The current process will not allow staff to review the claims in a timely manner. This memo will provide the Board with several options that could reduce the processing time. Staff is seeking direction from the Board because changes to the process may require changes to Lane Code.

**C. Board Goals**

In accordance with the Lane County Strategic Plan, it is the mission of Lane County Government to provide high quality, local government services in a fair, open, and economical manner to best meet the needs and expectations of our citizens and our guests.

#### **D. Financial and/or Resource Considerations**

If a claim is not processed within 180 days, the land owner may have a cause of action for compensation under Measure 37 in circuit court. In addition, the land owner is entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation. If the court determines the claim is valid, the County may be required to pay compensation rather than waive the restrictive land use regulations.

#### **E. Analysis**

In 2006, there were 77 claims that received a final determination or are pending final review by the County Administrator. It required 970 hours of staff time to process those 77 claims. Under the current process, it takes an average of 12.5 hours for a claim to receive a final determination. That does not include the time spent by the LMD Office Assistant, County Counsel or Planning Director. Under the current process, it will require approximately 3,975 hours of staff time to process the remaining 318 claims.

Put another way, processing the remainder of claims using the current process will require approximately 4-5 FTE in the Planning Program alone over the next six months. Recent trends in filling positions do not suggest it will be an easy task using traditional methods. While we have ultimately been successful in filling vacant positions over the last couple of years, many postings have required extensions and few applicant pools have yielded multiple candidates worthy of hire (see Attachment A). Further complicating the issue is that these positions would be temporary in nature.

Conversations with LCOG and the cities of Eugene and Springfield may result in a few staff being made available on a limited basis. In addition, LCOG has advertised for temporary positions and will make those applicants available to us for consideration (there has been limited response thus far). There are also few if any private sector options. The use of local planning consultants is at best a limited option due to the potential for conflicts of interest. Utilizing firms from outside the area would likely carry a significant cost and knowledge of local codes and conditions would be limited. While there are some opportunities to redirect existing staff from ongoing work, substantial delays would result in the processing of other planning actions, building permits and long range planning projects. That option simply transfers the problem. We will continue to work toward a temporary staffing solution.

LC 2.700-2.770 outlines the steps for processing a M37 claim. It requires the following:

1. Completeness review and notification to the applicant within 10 days of submission.
2. The County Administrator makes a determination regarding the validity of the claim. These first two steps have been delegated to LMD Planning

staff to review all claims for completeness and prepare a recommendation to the Board regarding the validity of the claim. To determine the validity of each claim, staff conducts research to determine the following:

- the current and previous family member owners(s);
- the date(s) of acquisition and continuous family ownership;
- the zoning on the date(s) of acquisition;
- the current zoning; and
- an assessment of the evidence of a reduction in value.

Once the research is complete, staff writes a report for each claim that contains the results of the research, explains any issues unique to the claim and makes a recommendation regarding the validity of the claim. If the claim appears valid, a draft order that will approve the claim is attached to the report. In accordance with the language of the Measure, the Board must take action on all valid claim waivers.

3. If the claim is not valid then it is denied. LMD staff drafts a denial letter that is signed by the County Administrator.
4. If the claim is valid, it is scheduled for a hearing before the Board of County Commissioners.
5. At least 20 days prior to the hearing, notice is sent to the applicant and to neighbors within 1500 feet of property outside urban growth boundaries.
6. Staff prepares a hearing packet with a cover memo, draft order, copy of the claim and copies of any public comments. The memo and draft order are reviewed by County Counsel.
7. At the hearing, the Board determines the validity of the claim. If the claim is valid, the Board adopts an order to that effect.
8. After the hearing, the adopted order is recorded and a copy of the adopted order is sent to the applicant and neighbors within 1500 feet.
9. Anyone who submitted comments at the public hearing will be sent notice of any subsequent development that relies on the M37 claim.

The hearing, notice and recording of the adopted order are the steps that might be changed to shorten the processing time. The research must be conducted for each claim and documented in a report. The research and report tasks can not be shortened but additional staff will reduce the time it takes to complete these tasks for all the claims.

### **Hearing Options**

The Board needs to determine what amount of public participation is appropriate for the M37 process. Of the many reasons for public involvement, one is to provide an opportunity for the public to present issues that are relevant to a claim but were not discovered through staff's research. The topics that are relevant to a M37 claim, however, are very narrow. According to Measure 37, the relevant

topics are current ownership, the alleged reduction in value caused by restrictive land use regulations, the acquisition dates and continuous family ownership. As outlined in LC 2.700 through 2.770, to have a valid claim, the applicant must prove:

- Lane County has enacted or enforced a restrictive land use regulation since the owner or a family member acquired the property; and
- The restrictive land use regulation has the effect of reducing the fair market value of the property; and
- The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

Common issues raised at the public hearings are the availability of water and the impact of increased traffic in the neighborhood. While these may be valid concerns, they can not be addressed until the land use development stage. A valid M37 claim waiver is only a determination that the current owner is allowed to submit an application to develop the property in a manner that could have been allowed when that owner acquired an interest in the property. A land use application is still required prior to any development. The water issues and traffic impacts may be addressed if and when the applicant submits a land use application involving those issues.

The Measure does not specifically require a public hearing, public meeting or any public notice. The Lane Code requires a public hearing of some sort, but many counties, as well as the state, do not. There are at least two options for complying with the public hearing requirement of the Lane Code. The first option is to present each claim at an individual Board public hearing as has been the practice in Lane County. This is time consuming but may provide the greatest opportunity for public involvement. The second option is to schedule multiple claims for a single Board hearing and let people testify on any of the claims as they sign up. At the end of the hearing, the Board can take action on all the scheduled claims. This option may shorten the hearing process but does not limit public testimony

The Board also may be able to amend the code to limit or remove the requirement for a public hearing and allow claims to be placed directly on the meeting agenda (some counties have opted to use the consent calendar for some or all M37 claims). This option may provide the greatest time savings but will limit the amount of public participation. The Board could also retain the option to schedule any item for a hearing. This will allow greater public participation for claims that have a higher degree of public interest and/or controversy.

The Board also has the option of amending the code to only exclude certain claims from the hearing requirements. Some counties have attempted to do this by creating a threshold based on the number of desired lots. For example, any claim that requests ten lots or fewer does not go to a hearing. Some counties taking this approach have seen claimants structure their claims to meet that threshold so none of the claims go to a hearing. Instead of a threshold based on

lots, Lane County also could create a threshold based on the number of acres in a claim. For Lane County, approximately half the claims contain less than 50 acres. Information regarding the processes used by other counties will be available at the work session.

The various Hearing options are summarized below:

1. Public hearing with Hearing Official or Planning Director to forward a recommended Order to the Board for adoption at a work session or consent calendar. There may be no apparent time savings with this option. This may require an amendment to the Lane Code.
2. Public hearing with the Board:
  - a. One hearing per claim; or
  - b. Multiple claims at one hearing. Let anyone speak to any of the claims. This will expedite the hearing but depending on notice requirements may provide only limited time savings for the overall claim process. Under this scenario, claims could be heard by a geographic area (i.e. watershed) in an effort to identify issues of common concern or engage parties with interests in multiple claims.
3. Public meeting instead of a public hearing. Comments taken in writing or during the public comment period prior to public meeting, if time permits. Requires some type of notice prior to meeting. Only the high interest or controversial claims could be discussed at the meeting. This option provides a potential for good time savings as well as retaining public participation. This may require an amendment to the Lane Code.
4. Set orders for each claim on the regular or consent calendar. This option may have the greatest potential for time savings but limits public participation to appearances at Public Comment or submission of written material. This will require an amendment to the Lane Code.

### **Notice Options**

The Lane Code requires hearing notices to be sent to land owners within 1500 feet of the subject property. If an order is adopted after the hearing, a copy of the order is mailed to the people who gave testimony at the hearing as well as the applicant and the people within 1500 feet of the property. The Board could choose to amend the code to change the distance, publish notice in the newspaper or not send any public notice.

The various options for notice are listed below:

1. No change. Send hearing notice to individuals within 1500 feet of the subject property. Send decision notice to participants.
2. Send notice to individuals within 750 feet. This is the same distance that is required for most land use applications and will reduce the amount of staff time required. This will require an amendment to the Lane Code.
3. Publish notice only in the Register-Guard or other local newspapers. After

the hearing/meeting, send a copy of the decision notice to individuals participating in the proceeding. Used in conjunction with hearings on multiple claims this option would allow for display ads that could include mapping information and could result in a significant reduction in staff resources. This will require an amendment to the Lane Code.

4. Publish notice in the Register-Guard/newspapers but don't send the adopted order or provide decision notice to participants. The decision notice mailing required under option 3 would be eliminated, further reducing staff time required for notices. This will require an amendment to the Lane Code.
5. Delete the notice requirement. This option has the greatest time savings but would likely limit public participation particularly if implemented in conjunction with significant changes to the hearing process. This will require an amendment to the Lane Code.

### **Order**

The Lane Code requires an adopted order to be recorded. The Board can maintain this requirement or amend the code to eliminate this final step. The elimination of this step will require an amendment to the Lane Code.

### **F. Alternatives/Options**

The Board has the option to change the M37 process or leave the process unchanged.

### **V. TIMING/IMPLEMENTATION**

The chosen alternative will be implemented at the direction of the Board. If the Board chooses to amend the Lane Code, a draft amendment will be presented to the Board by the end of January.

### **VI. RECOMMENDATION**

Give direction to staff regarding the processing of M37 claims.

### **VII. FOLLOW-UP**

Staff will implement the direction of the Board.

### **VIII. ATTACHMENTS**

Attachment A - Land Management Division FY05-06 Recruiting  
ORS 197.352 (M37) and LC 2.700-2.770

**Lane County Public Works Department – Land Management Division  
FY05-06 Recruiting: Time-to-Fill**

**2005**

**Senior Building Inspector – Electrical (205-052)**

- Posting: May 2 – May 16
- Seven applicants; five referred for interviews. One applicant dropped out, and four were interviewed.

Appointee started July 1, 2005, at Step 9.

**Senior Building Inspector – Electrical (205-073)**

- Pre-Posting: Initially, position offered to an individual from the recent applicant pool for posting 205-052. The applicant declined offer.
- Posting: June 27 – July 11
- Three applicants; one referred for interview.

Appointee started August 1, 2005, at Step 9.

**Principal Planner (205-093)**

- Posting: August 15 – September 6; *atypical three week posting.*
- Extensions: One week extension to September 12.
- Seven applicants; five referred for interviews.

Appointee started December 12, 2005, at step 8.

**Senior Plans Examiner (205-099)**

- Posting: August 16 – September 12; *atypical three week posting.*
- Extensions: One extension to October 10.
- Three applicants; two referred for interviews.
- The first candidate who was offered the position declined (posting open for seven weeks total).

Appointee started January 3, 2006, at Step 1.

Additional advertising included:

- The International Construction Code (ICC) website
- The Oregon Building Officials Association (OBOA) website
- Announcement to the OBOA listserv

**Senior Building Inspector – Electrical (205-145)**

- Posting: November 28 – December 12

- Three applicants; two interviewed.

Appointee started January 3, 2006, at step 10.

## 2006

### **Building Program Manager (206-009)**

- Posting: January 17 – February 3; *three days longer than normal two week posting.*
- Ten of eleven applicants met minimum requirements; four referred for interviews.

Appointee started May 15, 2006, at step 10.

### **Planner (206-022)**

- Posting: February 13 – February 27.
- Extensions: 2 week extension to March 13.
- Ten of eighteen applicants met minimum requirements; five referred and four showed up to interview.
- The first candidate who was offered the position declined based on salary.

Appointee started June 1, 2006, at step 4.

Additional advertising included:

- Oregon Chapter of the American Planning Association (Oregon APA)
- Oregon Planner Network – listserv

### **Land Management Technician – Compliance (206-037)**

- Posting: March 13 – March 27
- Extensions: Two extensions to April 21.
- Twelve of twenty-four applicants met minimum requirements; five referred and four available to interview. Following the first round of interviews, the Division requested an additional pool. Taking into account the two applicants who cancelled, the Division ultimately interviewed seven of the twelve applicants who met minimum requirements. None were hired.

### **Land Management Technician – Planning (206-047)**

- Posting: March 27 – April 7
- Extensions: 2 week extension to April 21.
- Fifteen of twenty-one applicants met minimums; 5 referred and interviewed.

Appointee started June 27, 2006, at step 1.

Additional advertising for **both** Land Management Tech positions included:

- LOC web site
- AOC website
- Oregon APA
- Oregon Planner Network
- Portland State University



- Oregon State University
- University of Oregon
- Personal phone calls to all Planner applicants to encourage their applications to this position as well.

**Senior Building Inspector or Building Inspector 1 or 2 (206-045)**

- Posting: March 27 – April 14; *four days longer than normal two week posting.*
- Extensions: two week extension to April 28.
- Sixteen of twenty-two met minimum requirements; five referred for interview; one dropped out; one of four remaining qualified at Senior level.

*Appointee started June 19, 2006, at step 9.*

Additional advertising included:

- OBOA website
- ICC website
- WABO website
- LOC website
- Chemeketa Community College – building inspector program
- Portland Community College – building inspector program

**Land Management Technician – Building (206-076)**

- Posting: June 5 – June 19
- Twelve of sixteen applicants met minimum requirements; five referred for interviews.

*Appointee started September 5, 2006, at Step 8.*

Additional advertising included:

- The Washington Building Officials (WABO) website
- The ICC website
- The League of Oregon Cities (LOC) website
- The AOC website.
- Announcements sent to Chemeketa and Portland Community Colleges.

**Land Management Technician – Compliance (206-103)**

- Posting: August 7 – September 1; *atypical four week posting.*
- Twelve of nineteen applicants met minimums; five referred and interviewed; one hired.

*Appointee started October 17, 2006, at step 1.*

**Notes:**

- 1) The normal posting period is two weeks in length.
- 2) The positions are compensated on a ten step pay scale.
- 3) All positions are posted for Lateral Transfer opportunities.
- 4) All positions advertised in Register-Guard and Oregonian.
- 5) The AOC website has a direct link to Lane County's job site.

**197.352 Compensation for loss of value due to land use regulation.** 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 December 2, 2004, 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 section.

(3) Subsection (1) of this section 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 section;

(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 section 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 December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, 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 December 2, 2004, 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 section, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this section 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 section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section, 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 section.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this section, 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 section 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 section. 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 section. 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 section 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 section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [2005 c.1]

(3) The general procedure for conducting advisory question elections shall be consistent with ORS Chapter 255. The County Clerk responsible for election matters shall have the authority to take appropriate action to guarantee the submission of the advisory question to the appropriate voter group.

(a) After receipt of the Board referral, the County Clerk shall provide notice of the advisory question in the same manner specified in ORS 255.095.

(b) Advisory questions may be conducted Countywide or within only a portion of the County, however, the areas designated by the Board shall follow precinct boundaries established pursuant to ORS 246.410.

(c) No election contests or recounts, as specified in ORS Chapter 258 shall be permitted.

(d) No challenge to the ballot title, consisting of the caption, the question and explanatory statement, shall be permitted after Board referral to the people under this ordinance.

(e) Advisory questions referred pursuant to this ordinance shall be preceded on the ballot by the following statement:

"Referred to the people by the Board of County Commissioners.  
The questions are advisory only and shall have no binding legal effect whatsoever."  
(Revised by Ordinance No. 15-78, Effective 8.29.78; 19-81, 1.8.82)

## SERVICE DISTRICTS

### 2.660 Establishment of Local Service District.

Pursuant to Section 7 of the Charter, the method for establishing a local service district and for enlarging such a district already established, shall be as prescribed by the general laws of the State. (Revised by Ordinance No. 17-72, Effective 9.8.72)

### 2.665 Referendum in Local Service District.

Pursuant to Section 7 of the Charter, method for exercising the power of referendum in a local service district shall be as prescribed by the general laws of the State. (Revised by Ordinance No. 17-72, Effective 9.8.72)

## 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; 18-04, 12.1.04)*

### **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; 18-04, 12.1.04)*

**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; 18-04, 12.1.04)*

### **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; 18-04, 12.1.04)*

### **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; 18-04, 12.1.04)*

#### **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; 18-04, 12.1.04)*

#### **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; 18-04, 12.1.04)*

#### **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; 18-04, 12.1.04)*

## COUNTY LANDS AND BUILDINGS

### 2.800 Parking.

(1) The Board may designate by separate order certain locations on County-owned or controlled lands for parking purposes and may further order such regulation of parking considered reasonable and appropriate, including establishing user's fees and administrative charges in connection with such parking.

(2) For purposes of administration of any parking regulations ordered in accordance with LC 2.800(1) above, it shall be presumed:

(a) That a motor vehicle or other transportation vehicle was used with the owner's consent.

(b) That the owner of record was operating the vehicle whenever the actual operator is unknown.

(c) That a vehicle was parked for one-half the chargeable period whenever the actual time period is unknown. *(Revised by Ordinance No. 17-72, Effective 9.8.72; 18-77, 11.23.77)*

## FEES AND ASSESSMENTS

### 2.900 Fees to be Charged by the County Clerk for Recording and Other Services.

(1) The County Clerk shall charge no fees to Lane County or any of its Departments for recording.

(2) The fee for approval of a plat or a vacation order or ordinance by the county court is \$5.

(3) For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge \$20 plus \$10 per lot.

(4) The fee charged for the services of the County Surveyor for marking the record of a vacation order or ordinance upon the original plat shall be \$6.

(5) The fee for recording a copy of the location notice for a mining claim is \$5/document.

(6) The fee for recording an affidavit of annual labor upon a mining claim is \$5/page.

(7) The certificate described in ORS 517.280 shall not be issued until the co-owners entitled to it pay to the County Clerk a fee of \$12.50. The fee for recording the certificate shall be the same as for other mining conveyances, \$5 per page.