

HOUSE COMMITTEE ON LAND USE

February 09, 2005 Hearing Room 50

1:30 P.M. Tapes 16 - 17

MEMBERS PRESENT: **Rep. Bill Garrard, Chair**

Rep. Gordon Anderson, Vice-Chair

Rep. Mitch Greenlick, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

Rep. Patti Smith

Rep. Mac Sumner

STAFF PRESENT: **Sam Litke, Committee Administrator**

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:
Measure 37 Claims Process – Informational Meeting

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 16, A

002 Chair Garrard Calls the meeting to order at 1:31 p.m. and opens an informational session on Measure 37 claims process.

MEASURE 37 CLAIMS PROCESS – INFORMATIONAL MEETING

010 Lane Shetterly Director, Department of Land Conservation and Development (DLCD). Describes the role of the Department of Administrative Services (DAS) in receiving Measure 37 claims. Defers to David Hartwig.

032 David Hartwig Administrator of State Services Division, Department of Administrative Services. Outlines steps taken to develop a Measure 37 claims process. Describes their role in

- the filing and review of M37 claims
- establishing claims coordination
- the statewide claims registry
- partnering with regulating agencies
- notification of adjacent property owners
- appraisals if needed.

050 Hartwig Discusses the establishment of a rules working group and lists the agencies and groups involved. States their intent to give definition to terms and describe claims process in a logical manner.

095 Hartwig Restates activities involved in and adds the drafting letters to communicate status of claims to claimants.

110 Hartwig Reports that there are 127 claims to date of which 84 have been processed and forwarded to DLCD, one forwarded to the Marine Board and one claim forwarded to the Forestry Department with the remainder of claims pending. States that they have given no notice to adjacent property owners or initiated appraisals to date. Comments on their continuing review and anticipated timeframe for permanent rules. Submits the temporary rules, draft of revised temporary rules, and claim form (**EXHIBIT A**).

133 Hartwig Points to OAR 125-145-0030 and OAR 125-145-0040 (**EXHIBIT A, Page 2**) . Identifies the change in terminology from “requiring” to “suggesting” what information is to be submitted.

143 Shetterly Remarks on the improvements made to the process since they received claims rather than dealing with hypothetical situations. Reiterates their desire to make the process efficient, accessible and for

claims to be evaluated on merits not hindered by administrative technicalities.

- 170 Chair Garrard Asks if when claims are sent to DLCD from DAS, if DLCD is requesting an appraisal.
- 174 Shetterly Responds negatively. Adds that at this point the state doesn't require an appraisal but can conduct one if necessary.
- 179 Ron Eber Farm and Forestry Specialist, Department of Land Conservation and Development. Adds that some claims have been submitted with appraisals. Discusses the difficulty in trying to determine what reduction of fair market value is and instances which would require or not require appraisals.
- 200 Chair Garrard Clarifies that the determination of actual loss is not necessary once it has been proven there was a loss.
- 204 Eber Responds affirmatively.
- 212 Rep. Greenlick Refers to Deschutes County which has multiple requests for subdivisions of several hundred lots and wonders if the assessment model used considers the change in the market with all the requests or if they are assessed as if it were the only request being made.
- 227 Eber Notes it is a continuing question and comments on the complexity of the issue.
- 237 Shetterly Elaborates on the issue of "market saturation" noting that at this point they are not particularly concerned.
- 248 Rep. Greenlick Continues, asserting the possibility that land would be less valuable and stresses the issue's importance.
- 260 Eber Comments on the challenges faced in dealing with claims.
- 285 Rep. Nolan Refers to comment by Eber that there is no money to compensate and asks who made that decision.
- 292 Shetterly

		Responds that those who determined the budget made the decision as there is no money appropriated to DLCD or any other resources to pay based on the administrative rule and statutes.
303	Rep. Nolan	Believes that it was the preference of the governor to pay compensation and questions if there has been a shift.
306	Shetterly	Responds that when the measure passed the biennial budget had not been completed and now it is up to budget deciding entities for the future.
316	Chair Garrard	Comments on the largely varied claims around the state and wonders if Shetterly can identify a general trend.
327	Shetterly	Defers to Eber.
332	Eber	Responds that there has been no detailed analysis but gives brief synopsis of requests and reports that they are in the process of determining trends.
352	Chair Garrard	Asks if they have a date for preliminary findings on types of claims and if the state and local claim trends will differ.
357	Eber	Responds he doesn't know how long and that many claims have not been filed at a local and state level.
366	Chair Garrard	Asks if a week would be a reasonable amount of time to report back to the committee.
370	Shetterly	Responds that they will at least be able to provide a rough estimate and lists what type of information will be provided.
378	Eber	Adds that there are uncertainties with certain claims which do not specify their desired use.
387	Chair Garrard	Clarifies that some claimants are filing to get their old land designation back with no stated plan of use.
390	Shetterly	Responds affirmatively .

392	Eber	Comments that most claims don't want compensation, they want to do a specified action.
399	Chair Garrard	Clarifies that it would be reasonable to have them come back to give statewide trends in one week.
403	Shetterly	Responds affirmatively
410	Keith Kutler	Department of Justice (DOJ).

TAPE 17, A

005	Chair Garrard	Comments on the diversity of interpretations from counties and cities in response to Measure 37. Expresses his concern that the Department of Justice has "a serious obligation to give counties and agencies legal determinations" in a timely manner rather than decisions through litigation.
019	Kutler	Responds that the DOJ does not represent counties. Adds that they haven't received requests from any counties and that counties have their own legal counsel.
023	Chair Garrard	Counters that DLCD told claimants to file at the state and county level to cover themselves and contends that is legal advice.
027	Kutler	Responds that it is a good idea for DLCD and the claimants but does not believe it is legal advice. Asserts that legal advice is when a client asks specific questions and receives answers.
038	Chair Garrard	Asks him to identify their clients.
040	Kutler	Names the state agencies they are working with.
042	Chair Garrard	Asks how many requests, if any, they have had for legal definitions of Measure 37.
044	Kutler	Responds that they many general questions and notes that they are trying to answer broader questions first.
050	Chair Garrard	Asks how many responses have been issued.

051	Kutler	Responds that he doesn't know.
054	Rep. Ackerman	States the need to determine standards that would apply statewide and what should be left to local control in terms of implementing Measure 37. Asks if they are capable of organizing those issues outside of legal advice.
062	Kutler	Believes they can fill any task that is required but reiterates that their decisions would only be binding to state agencies but not on counties.
068	Rep. Ackerman	Restates that they are not looking for advice, rather guidelines in organizing what should apply statewide and what should be left to local control.
077	Kutler	Responds that developing policy is not the role of the DOJ. Elaborates on DOJ's role in interpreting text rather than policy making.
089	Chair Garrard	Questions previous understanding of Shetterly's indication of hesitation on the part of DLCD making decisions without legal decisions from DOJ.
095	Kutler	Responds that he's been misinterpreted. Clarifies that they are engaged in answering specific questions on Measure 37. Comments on Shetterly's close contact with their department.
100	Chair Garrard	Asks Shetterly who he has been working with at DOJ.
105	Shetterly	Responds that their contact attorney is Richard Whitman. Adds that although there has been no written opinion, they have received legal advice in other forms. Gives explanation for why there has been no written legal opinion and comments on their continuing work to answer more substantive and evolving questions.
125	Chair Garrard	Asks if waiting for decisions from DOJ has slowed their process.
127	Shetterly	Responds negatively. Notes their confidence in adhering to the 180 day deadline and their larger concern with issues of authority between state and local entities.
138	Rep. Greenlick	Remarks on the ambiguities of the measure and wonders whether there will be any guidance from the Attorney General soon.

158	Shetterly	Responds affirmatively.
160	Chair Garrard and Rep. Greenlick	Comment on legislative action.
165	Shetterly	Comments on the consideration of the DOJ.
167	Rep. Anderson	Asks if there has been an effort to have the local entities and all the agencies involved meet to give recommendations as a group.
176	Shetterly	Responds that there a team devoted to state and local government coordination which has representatives from cities and counties and meets frequently. Notes it may be the county's legal counsel who makes a final determination.
190	Rep. Ackerman	Recalls Shetterly's previous testimony that DLCD does not have legal authority to require an appraisal. Believes it is bad policy. Asks if it is expected that DLCD will request the authority to require an appraisal.
198	Shetterly	Defers to Kutler as a better source for the question of legal authority. Adds that at this point there is no legislative proposal to request the authority to require appraisals.
203	Rep. Ackerman	Clarifies that it is the state's position that appraisals are not necessary in the Measure 37 process.
205	Shetterly	Defers to Kutler.
208	Eber	Clarifies that it is not the state's position that appraisals are not necessary to the process. Elaborates that the state can not order claimants to submit appraisals along with their claims but they are not prohibited from asking for an appraisal or performing one on their own.
221	Rep. Ackerman	Asks if he believes that is good public policy or bad public policy.
226	Eber	Responds he would require an appraisal.

230	Rep. Ackerman	Requests that Eber make that recommendation to the agency and the committee.
235	Shetterly	Responds that he will provide the claims information requested.
252	Tom Hughes	Mayor of Hillsboro. Gives overview of concerns.
260	Hughes	Reports that they have passed a resolution and are trying to adopt an ordinance.
270	Hughes	Discusses a specific claim relating to EFU zoning which illustrates some ambiguities.
330	Hughes	Asserts the cities are seeing much more specific cases than the counties. Proposes two questions suggested by claim: <ul style="list-style-type: none"> • How far back in time the land should be evaluated. • How does one calculate the aggregate increase in value.
355	Hughes	Cites concern for application of the measure in regards to land outside of the Urban Growth Boundary (UGB). Hopes to work with DLCDC and the state to facilitate insurance of value to landowners without promoting bad planning.
391	Rep. Greenlick	Clarifies that in the aforementioned claim, the claimant is filing because the city could've increased the value more by applying an alternate land use action.
395	Hughes	Responds affirmatively.
397	Rep. Greenlick	Clarifies that the claim states the city didn't apply a land use that would've increased their land further.
398	Hughes	Concurs. Believes it may not be a valid claim.

TAPE 16, B

005	Hughes	Expresses interest in a process that would place a claim under the government that has jurisdiction over the regulation in question.
016	Chair Garrard	Asks if the city of Hillsboro has a compensation fund.

017	Hughes	Responds that it being creating but has no money yet.
024	Chair Garrard	Asks who he thinks should be making land use decisions in Hillsboro.
026	Hughes	Clarifies that he is referring to claims.
027	Chair Garrard	Confirms.
030	Hughes	Believes the city of Hillsboro should be allowed to determine if a claim should be paid or waived if they have the responsibility of paying the claim.
043	Hal Brauner	City Councilor, Corvallis. Remarks on his history in working on SB 100 (1973) and a director of DLCDC.
050	Brauner	Agrees with concerns raised by Hughes. Reports that they are developing an ordinance and describes their claim.
081	Brauner	Describes elements of their draft ordinance including: <ul style="list-style-type: none"> • All claims heard before city council • Developing system to cover cost of claim • Initial filing fee of \$500, more if total exceeds \$500 • Requiring an appraisal • Waiver will be non transferable outside of family allowed for under Measure 37 Comments that they are waiting to hear on state determination and court decisions.
121	Chair Garrard	Ask how much emphasis they are putting on the state's evaluation.
127	Brauner	Says the answer depends on the nature of the determination.
131	Hughes	Agrees with Brauner.
185	Steve Bryant	City Manager, Albany. Submits an informational sheet on Measure 37 and a copy of Albany's ordinance and claim form (EXHIBIT B). Introduces Albany's "alternative claim resolution process" which gives incentive to meet with claimants before a formal claim is filed. Elaborates on the process.

212	Rep. Smith	Asks if they will require an appraisal.
215	Bryant	Responds it will likely result in an appraisal.
227	Rep. Smith	Asks if neighbors have the authority to sue now.
233	Bryant	Defers to next panel of witnesses. Believes it would be beneficial to clarify this issue in statute.
250	Chair Garrard	Remarks that the ordinance allows for neighbors to file injunctions and suggests it would discourage Measure 37 claims.
255	Bryant	Responds that that is his hope. Gives a hypothetical example. Refers to applicant form (EXHIBIT B, Page 8) to illustrate other instances of caution to claimants.
277	Bryant	Explains the details of example of claim requesting annexation.
349	Bryant	Continues that lacking funds for compensation, the city would waive but suggests that it is not reasonable to suggest that a city waive a state regulation. Relays a question they posed to the department about how the state will deal with local governments if they waive state regulations.
377	Chair Garrard	Asks what answer he received.
380	Bryant	Responds that they would work with local governments to work things out as best they can.
383	Bryant	Commends Shetterly, and urges the legislature to provide clarity.
398	Chair Garrard	Notes commonality between county and cities requests that clarity provide local governments with flexibility and asks if the panel agrees.
405	Hughes, Brauner, Bryant	All agree.

004	Chair Garrard	Asks Brauner, as DLCD's second director, for his opinion on "what went wrong" and to note factors he believes contributed to the existence of Measure 37.
009	Brauner	Believes the results of SB 100 (1973) have been positive for Oregon. Cites resistance from the beginning from some groups. Believes that Measure 37 is not a compensation bill but a way for people to "get out from under regulations" they don't agree with. Believes working through this issue is a "natural evolution" and not the end of land use planning.
045	James Lewis	Community Development Director, Bend. Reports on the number of claims Bend has and speculates on future claims in areas of special interest.
073	Lewis	Notes that Measure 37 will not apply to many in the area because land has been purchased in the last 25 years and had regulations when they bought it. Expresses concern in adopting their new zoning regulations and land use procedures as they will "open themselves up to Measure 37 claims".
105	Lewis	Reiterates their focus on possible future claims prohibiting their ability to move forward after 3 years of work on zoning.
115	Lewis	Discusses Bend's ordinance and claim form. Reports that one problem is non-compliance with their ordinance and their question of processing claims without the required information or modifying their ordinance.
133	Lewis	Discusses the possibility of a pre-claim determination negotiation.
150	Lewis	Outlines some of the ambiguities he'd like to see clarified: <ul style="list-style-type: none"> • Definition of ownership • Transferability • Better definition of requirements • Determination of value.
176	Glenn Klein	Attorney, Hurrang Long. Reiterates the uniqueness of city claims.
198	Klein	Asserts that the level of government that has the authority to waive should have the responsibility to pay.

208	Klein	Expresses concern over sharing sensitive information in order to coordinate the process.
237	Klein	Comments that while the decisions of the DOJ are not binding, he anticipates the benefit of their wisdom.
256	Klein	Discusses the process of periodic review. States it would be useful to have a moratorium on state mandates for local governments.
291	Chair Garrard	Asks what period of time.
293	Klein	Responds for the duration that Measure 37 is in existence. Elaborates that the state should not require local government to adopt new mandates would that open up possible Measure 37 claims.
315	Rep. Smith	Asks if he was suggesting they repeal Measure 37.
319	Klein	Clarifies that he thinks the moratorium should last as long as Measure 37 lasts.
330	Chair Garrard	Adjourns the meeting at 3:16 PM.

EXHIBIT SUMMARY

- A. Measure 37 Claims Process, temporary rules and claims form, David Hartwig, 23 pp.**
- B. Measure 37 Claims Process, ordinance and claim form, Steve Bryant, 13 pp.**