



THEODORE R. KULONGOSKI  
Governor

May 10, 2007

The Honorable Peter Courtney  
Senate President  
900 Court St. NE, S-203  
Salem, OR 97301

The Honorable Jeff Merkley  
Speaker of the House  
900 Court St. NE, H-269  
Salem, OR 97301

The Honorable Floyd Prozanski  
Oregon State Senate  
900 Court St. NE, S-319  
Salem, OR 97301

The Honorable Greg Macpherson  
Oregon House of Representatives  
900 Court St. NE, H-385  
Salem, OR 97301

Dear President Courtney, Speaker Merkley, Sen. Prozanski and Rep. Macpherson:

Today I have signed Enrolled House Bill 3546, which grants to the state and local governments 540 days to make final decisions on claims filed under Ballot Measure 37 (ORS 197.352) on and after November 1, 2006. This amounts to an extension of time equal to 360 days beyond the 180 days provided in the measure for action on claims. House Bill 3546 also includes a hold-harmless provision for claimants during the extension period. Since Measure 37 extinguishes the rights of claimants who die before their claims are filed or completed, House Bill 3546 guarantees that the heirs of any claimant who dies during its extension period shall have the right to continue to pursue the decedent's claim.

The extension of time provided under House Bill 3546 was made necessary because the backlog of late claims has become insurmountable under Measure 37's timelines. More than 6,600 Measure 37 claims have been filed with the state, seeking compensation estimated to exceed \$17 billion. The total exceeds 7,000 claims including claims filed exclusively with local governments. Of these claims, more than 3,500 were received by the state alone between November 10 and December 4, 2006.

While the state has issued at least 2,593 Final Orders on claims, more than 3,600 claims remain to be processed. Without this legislation, on May 14, the state would have begun missing the 180-day deadline on claims, exposing the state to liability for billions of dollars in damages under the measure, plus attorney fees and costs, not to mention millions of dollars just in litigation costs for the state. This situation was not tenable, and I applaud the legislature for showing the leadership to both accommodate the reasonable expectations of claimants that their claims will be processed fairly, and to protect the state from potentially ruinous costs and liability.

President Courtney, Speaker Merkley, Sen. Prozanski and Rep. Macpherson

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Processing claims requires due diligence and time-consuming research. Notice must be given to neighboring property owners to give them time to assess and comment on claims near their property. The Department of Land Conservation and Development (DLCD), working with the Department of Justice (DOJ), must examine property and ownership records, analyze state and local land use regulations, assess the impact of those regulations on individual properties, review comments from neighbors, and determine findings of fact and issue final orders to the claimants.

The state has doubled its processing rate from an average of 150 claims per month to more than 300 per month since the surge of new claims began late last year. In order for the state to complete the processing of claims under the extension of time provided for under House Bill 3546, it will be necessary for the state agencies to continue to issue final orders at that same pace.

I have received assurances from DLCD and DOJ that the state can meet the extended timeline under House Bill 3546, while still meeting the high standards of due care and diligence in evaluating claims that both claimants and those who stand to be affected by claims deserve.

Based on those assurances, I am directing the state agencies to move forward immediately with the expeditious review and disposition of the Measure 37 claims in the state's possession. I am specifically directing that the state *not* withhold action on claims pending any future legislation or possible changes in the law.

I am further directing DLCD and DOJ to submit to me a written report on the total of claims closed by final order on a monthly basis, beginning with the first report – for the month of June – on July 10, 2007, and continuing monthly thereafter until all of the pending claims have been resolved.

I am committed to the fair implementation of Ballot Measure 37, recognizing the significant rights and interests on the part of claimants, neighboring property owners, nearby communities and the state at large. These directives, with the extension of time provided under House Bill 3546, will help to ensure that those rights and interests are met and honored to the fullest extent possible.

Sincerely,



THEODORE R. KULONGOSKI  
Governor

c: Members, Joint Land Use Fairness Committee  
Attorney General Hardy Myers  
Lindsay Ball, Director, DAS  
Lane Shetterly, Director, DLCD  
Oregon Counties