



Oregon

Theodore R. Kulongoski, Governor

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Re: Ballot Measure 37

Dear Local Government Partner:

In the process of reviewing Measure 37 claims filed with the state, we have identified a recurring issue relating to the coordination of state and local land use regulations. As we prepare to begin releasing draft reports and recommendations on claims that we have received, I wanted to write to bring the issue to your attention and let you know how we will be approaching it.

The issue involves claims based on property acquisition dates that fall between the adoption of the statewide land use planning goals and the acknowledgment by the Land Conservation and Development Commission of the local comprehensive plan. During that transition period, local zoning ordinances may have allowed uses that were not permitted under statewide land use planning goals and/or their implementing rules. For instance, a local zoning ordinance might have allowed the division of land into one-acre parcels. If that land was agricultural land under Statewide Land Use Planning Goal 3, state law may have prohibited the division of the land into one-acre parcels.

In those cases, the department's position is, generally (and on advice of counsel), that until the local land use regulations were acknowledged by the Commission, the use of the subject property was subject to both the local ordinances *and* the applicable statewide land use planning goals and their implementing rules (as well as any applicable state statutes). That being the case, we want to ensure that local governments do not unintentionally purport to authorize a particular use of property that (even under Measure 37) is still subject to state laws that were in effect at the time an owner acquired the property. DLCDC staff are available to assist counties with historical records concerning when acknowledgment action occurred over time.

This issue obviously involves potentially complex legal and factual issues that we will review carefully on a case-by-case basis. Certainly, different claims will be decided different ways, based on the particular circumstances of each claim. But

this is an important enough issue that I wanted to bring it to your attention as you review any claims you may have before your local government, and to inform you as to our general analysis.

As always, we will be pleased to answer any questions you might have about this or any other matters relating to Measure 37.

Thank you for your continuing courtesies and cooperation in the implementation of Ballot Measure 37.

Yours very truly,

LANE SHETTERLY
Director