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**BEFORE THE BOARD OF COMMISSIONERS  
FOR LINCOLN COUNTY, OREGON**

In the Matter of )  
)  
*The Ballot Measure 37 Claim of John and Becky Palmer,* )  
*Case File No. 8-LURCC-06* ) **ORDER NO. 11-06-381**

WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37. The Measure amends ORS Chapter 197 to require, under certain circumstances, actions to address claims of owners of real property if government land use regulations reduce fair market property value; and

WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property must make a "written claim for compensation" to the government entity enacting, enforcing or applying a land use regulation that allegedly restricts the use of the owner's property and has the effect of reducing its fair market value; and

WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures with certain limitations; and

WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim that reduces fair market value of real property or, in the alternative and in lieu of payment of just compensation, allows the County to modify, remove or not apply the land use regulation allegedly supporting a claim reducing a property's fair market value; and

WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for compensation and make decisions on those claims. A determination to modify, remove or not apply a land use regulation or compensate a property owner must be based on substantial factual information and analysis; and

WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and ambiguous provisions and that future litigation or legislative action will be necessary to clarify the measure's terms. The County, therefore, adopted procedures in Board of Commissioners Orders #12-04-318 and #4-05-120 to assess claims in a timely manner and to require factual and analytical information as part of the claim so the County will have a rational basis for its decision on each claim; and

WHEREAS on July 14, 2006, John and Becky Palmer filed a Measure 37 claim seeking compensation, or the modification, removal or non-application of land use regulations ("waiver") that restrict land use divisions and the placement of dwellings in the A-C (Agricultural Conservation) and Timber Conservation (T-C) zones. A "waiver" would allow the claimants to permit the division of the

1 subject property into 40-acre parcels and that the regulations regarding establishment of dwellings (LCC  
2 1.1373 and LCC 1.1375) in effect on August 6, 1992 be applied on each of the resulting parcels. The  
3 property is approximately 116.61 acres in size and is located at 12319 Logsdan Road. It is further  
4 identified as Tax Lot 406, Lincoln County Assessor's Map No. 10-10-08-06. County records and the filed  
5 claim are found in Lincoln County Planning Department File No. 8-LURCC-06 and by this reference are  
6 incorporated into this Order as if fully set forth; and

7  
8 WHEREAS, after notice to surrounding property owners in accordance with Order #4-05-120, a  
9 hearing was held on September 15, 2006 on the claim before the Planning Director as Hearings Officer, for  
10 the purpose of receiving facts and evidence related to determining the validity of the claim. The claimants  
11 provided testimony in support of the claim. There was no testimony in opposition to the claim; and

12  
13 WHEREAS the Planning Director has issued his Department's Staff Report and Recommendation  
14 that is attached to this Order as Exhibit "A" and by this reference incorporated herein. That report finds  
15 and concludes that the claim when submitted was valid, and recommends that the Board, lacking funds for  
16 compensation, in the alternative modify, remove or not apply the restrictions (commonly referred to as a  
17 "waiver") by not applying the current A-C zone regulations (LCC 1.1373) and T-C zone regulations (LCC  
18 1.1375) at issue in the subject claim that were enacted by Lincoln County in their present form by  
19 Ordinance No. 347 in 1994. The current A-C and T-C zone standards at issue restrict any further division  
20 and placement of additional dwellings on the subject property (LCC 1.1373 and 1.137). Applying the  
21 "waiver" would allow the claimants to divide the subject property into 40-acre parcels and allow the  
22 placement of additional dwellings under the standards in effect at the time of the claimants' acquisition of  
23 the subject property in 1992. This would, in accordance with the requirements of Subsection (8) of Ballot  
24 Measure 37, allow the owners to use the property for a use permitted at the time of the owners' acquisition;  
25 and

26  
27 WHEREAS the Board has considered the report and recommendations of the Planning Director  
28 and County Counsel, including the implications known at this time concerning ambiguous provisions in  
29 Measure 37 which are and will continue to be subject to judicial clarification for the foreseeable future.  
30 Given that status, the Board desires to proceed cautiously with processing this Measure 37 claim.  
31 Therefore, the Board will decide this Measure 37 claim after placing the claimants on notice of possible  
32 future court decisions and interpretations; and

33  
34 WHEREAS based on what is known at this time, the Board finds it is in the public interest, due to  
35 the lack of resources to pay compensation, to modify, remove or choose not to apply the challenged land  
36 use regulation to the subject property and issue the "waiver" to claimants;

37  
38 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

39 1. Claimants are placed on notice that Oregon courts continue to interpret provisions in Measure 37  
40 which may change the way claims are treated. Claimants proceed in this matter knowing that any action  
41 taken by the Lincoln County Board of County Commissioners could be null and void if a court of  
42 competent jurisdiction interprets Measure 37 in any fashion which alters the Board's approval. Lincoln  
43 County does not waive any rights or remedies under law by granting a "waiver" under the law.

44  
45 2. The Measure 37 claim of John and Becky Palmer, Lincoln County Case File No. 8-LURCC-06,  
46 was a valid claim when filed on July 14, 2006. The Board of Commissioners declines to pay just  
47 compensation for the claim. In lieu of compensation, Lincoln County Code (LCC) Sections 1.1373 and

1 LCC 1.1375 are modified, removed or not applied for current minimum parcel size requirements and  
2 restrictions of dwellings against the subject property to the following effect:

- 3
- 4 ○ The non-application of regulations would be limited to the current minimum  
5 parcel size requirements and restrictions on dwellings provided for in LCC  
6 1.1373 and LCC 1.1375. Provisions of LCC 1.1373 and 1.1375 in effect on  
7 August 6, 1992, the date of the claimants' acquisition, would instead apply. All  
8 other current provisions of the Lincoln County Code would continue to apply.
- 9
- 10 ○ Establishment of additional land parcels and dwellings on the subject property  
11 would be subject to all applicable public health and safety regulations including,  
12 but not limited to: land division procedures, building codes, on-site sewage  
13 disposal rules and requirements, flood hazard area regulations, and county road  
14 approach permit requirements.

15  
16 3. A State of Oregon "waiver" under Measure 37 may be required for the development or use of  
17 the subject property. Lincoln County lacks authority to waive state regulations or laws. This order does  
18 not affect any land use regulations of the State of Oregon. The claimants are responsible for seeking  
19 compensation or "waiver" from the state of any applicable state laws. The Planning Director shall send  
20 notice of the Board's decision to the Director of the Department of Land Conservation and Development.  
21 If a State Measure 37 claim is required, no use, development, permits or other development applications  
22 will be processed or approved by Lincoln County unless the state has issued, if appropriate, its own  
23 "waiver."

24  
25 4. This "waiver" provision is void if the property owners or property owners' successors are  
26 compensated by another governmental agency, including the state, for a reduction in value resulting from  
27 the same or similar land use regulations on the subject property.

28  
29 5. Excepting new land use regulations imposed after the date of this decision, and subject to  
30 applicable review rights as permitted under Measure 37, this final decision bars a subsequent Measure 37  
31 claim against Lincoln County as to the subject property.

32  
33 6. Transferability of the "waiver" granted by the County under this decision is unknown under the  
34 current status of Measure 37. Transferability of the "waiver" is allowed to the extent permitted by law.  
35 Granting of this "waiver" does not commit the County to issuance of development or building permits, if  
36 those actions are not allowed under law.

37  
38 7. This order be recorded in the Lincoln County Deed Records maintained by the Lincoln County  
39 Clerk without payment of recording fees.

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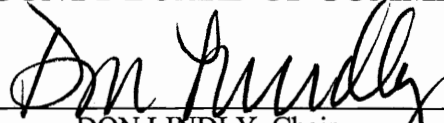


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8. Copies of this order be provided to the Planning Director, County Counsel, and claimants.

DATED this 8th day of November, 2006.

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
DON LINDLY, Chair

  
\_\_\_\_\_  
BILL HALL, Commissioner

  
\_\_\_\_\_  
TERRY N. THOMPSON, Commissioner

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DEPARTMENT OF PLANNING AND DEVELOPMENT

210 S. W. 2nd ST  
Newport, OR 97365  
(541) 265-4192  
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## LAND USE REGULATION COMPENSATION CLAIM

### PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

**CASE FILE:** 8-LURCC-06  
**DATE FILED:** 07/14/06  
**CLAIMANT:** John and Becky Palmer

**REQUEST:** The claimants seek compensation for, or the modification or removal of, land use regulations which restrict land divisions and the placement of dwellings in the AC (Agricultural Conservation) and Timber Conservation (T-C) zones.

#### **A. REPORT OF FACTS:**

1. **Lot Size:** Approximately 116.61 acres.
2. **Property Location:** The property is located at 12319 Logsdan Road at the intersection of Logsdan Road and Big Rock Road. It is identified on Lincoln County Assessor's Map #10-10-08-06 as tax lot 406.
3. **Zoning Designation:** A-C (Agricultural Conservation) and T-C (Timber Conservation).
4. **Plan Designation:** Agricultural Land and Forest Land
5. **Surrounding Land Use:** Adjacent uses along Logsdan Road are comprised of primarily agricultural and forest uses, with some widely scattered rural residences.
6. **Topography & Vegetation:** The property is divided by Big Rock Creek; to the west of the creek is open pasture, to the east are forested slopes.

7. **Existing Structures:** Existing structures on the subject property include a residence, constructed in 1997, along with out-buildings.
8. **Utilities:** The following utilities currently serve the subject property:
  - a. Sewer: On-site sewage disposal
  - b. Water: On-site well
  - c. Electricity: Consumers Power.
9. **Development Constraints:** Big Rock Creek flows through the subject property; a small portion of the property is identified as being within the 100-year floodplain. No other constraints were identified.

## **B. EVALUATION OF THE REQUEST:**

### **1. Background:**

Gary Hamilton, agent for John and Becky Palmer filed a Land Use Regulation Compensation Claim on July 14, 2006. This claim was filed with the Department of Planning and Development in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The Palmer property is located near the east county line at 12319 Logsdan Road. The current zoning of the property is A-C, Agricultural Conservation (west of Big Rock Creek) and T-C, Timber Conservation (east of the creek). The claimants assert a diminution in the value of their property resulting from the restrictions of the A-C and T-C zones applied after their date of acquisition, more specifically, those restrictions that preclude the division of and the development of additional residences on the subject property. The claimants state that their desired remedy to the claim is the removal or modification of the A-C and T-C zone restrictions in a manner that will permit the division of the subject property into 40-acre parcels and permit the establishment of one single-family dwelling on the resulting parcels.

Planning staff met with claimants prior to the filing of their claim and discussed in detail the basic elements of the claim. Deed records submitted with the claim document the claimants' acquisition of the subject property in 1992. At that time, acknowledged county code provisions of both the A-C and T-C zone permitted the creation of 40-acre parcels; the A-C zone permitted one single-family dwelling on a farm parcel when used in conjunction with farm use. Dwellings in the T-C zone required discretionary review.

On September 15, 2006, a public hearing was held on the subject claim for the purpose of receiving facts and evidence related to determining the validity of the claim. Notice of the hearing was provided in accordance with Board of Commissioners Order #4-05-120. The claimants provided testimony in support of the claim. There was no testimony in opposition to the claim.

2. **Measure 37 Claim Requirements:** Measure 37 provides the following criteria for establishing eligibility for the supplemental right of compensation created by the measure:

- a. **Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” of property, which is defined in Measure 37 as the “present owner of the property, or any interest therein.”**

The claimants, John and Becky Palmer, acquired their original interest in the subject property by land sales contract on August 6, 1992 (recorded at Book 248 Page 1215, Lincoln County Deed Records). Records of the Lincoln County Assessor’s office confirm that John and Becky Palmer remain the owners of the subject property.

- b. **A public entity enacts or enforces a land use regulation that restricts the use of private real property:**

The current A-C zone and T-C zone regulations (LCC 1.1373 and LCC 1.1375, respectively) at issue in the subject claim were enacted by Lincoln County in their present form by Ordinance #347 in 1994. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the A-C zone (LCC 1.1373) and the T-C zone (LCC1.1375). These regulations restrict the use of this private real property to only those uses expressly authorized in the A-C and T-C zones. Specifically, in the case of the subject property, these regulations prohibit the further division and the placement of any additional dwellings on the property.

- c. **The land use regulation has the effect of reducing the fair market value of the property:**

As noted, the currently effective requirements of the A-C and T-C zones prohibit any division of the subject property; these restrictions also prohibit the placement of any additional dwellings on the property.

Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, the claimants have provided a letter of opinion from a licensed real estate broker, which estimates the difference in value of the property as currently regulated versus as regulated in 1992 as \$310,000. Although it appears that some of the assumptions made in arriving at this opinion do not accurately reflect applicable land use restrictions, the information on its face, i.e., the market value difference between one home site versus the potential for two additional home sites permitted at the time of acquisition, leads the department to conclude that it is more likely than not that there has been some reduction in fair market value of the subject property as a result of the enactment of the cited land use regulations.

- d. The land use regulation complained of is not a regulation; (a) restricting or prohibiting activities commonly and historically recognized as nuisances under common law; (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) 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; or (e) enacted prior to the date of acquisition of the property by the owner or a family member of the owner.

The regulations addressed by the subject claim are the restrictions on land divisions and dwellings imposed by the A-C and T-C zones. The A-C and T-C zones were enacted to comply with Statewide Planning Goals 3 and 4, respectively, which mandate the placement of defined agricultural forest lands into exclusive farm use zones and forest zones meeting the requirements of ORS Chapter 215 and applicable provisions of OAR Chapter 660. The purpose of the A-C and T-C zones is to preserve agricultural and forest lands for agricultural and forest uses. These regulations do not directly address common nuisances, health and safety, adult businesses or activities, nor do they have any federal nexus.

The claimants have provided documentation that the claimants' original interest in the property was acquired on August 6, 1992. The A-C and T-C zones, in their present form, were enacted in 1994, so the regulations giving rise to the claim were enacted after date of acquisition of the present owner.

- e. For claims arising from land use regulations enacted prior to December 2, 2004 (the effective date of Ballot Measure 37), written demand for compensation shall be made within two years of the effective date of the act.

The land use regulations for which compensation is sought, the A-C and T-C zone restrictions on land divisions and dwellings, were enacted in their present form in 1994, prior to the effective date of Ballot Measure 37. The subject claim was filed on July 14, 2006, within two years of the December 2, 2004 effective date of Ballot Measure 37.

**C. Recommended Findings and Conclusions:**

The director recommends for the Board's consideration the following findings and conclusions:

Findings:

1. Gary Hamilton, agent for John and Becky Palmer (husband and wife), filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on July 14, 2006.
2. The claim is based on an assertion of a reduction in fair market value of real property due to the enforcement of land use regulations by Lincoln County.
3. The subject property is identified as tax lot 406 on Lincoln County Assessor's map 10-10-08-06, which is taxed as real property by Lincoln County.
4. The A-C and T-C zone provisions (LCC 1.1373; 1.1375) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The A-C and T-C zoning restrict uses; specifically, the A-C and T-C zone standards prohibit the division of the subject property and the establishment of additional single-family dwellings.
6. The claimants have submitted evidence of a diminution in value caused by the A-C and T-C zone restrictions in the form of an estimated market value prepared by a licensed real estate broker. The analysis indicates that the land use regulations that prohibit the division of and the establishment of additional dwellings on the subject property have the effect of reducing the fair market value of the subject property by an estimated \$310,000.
7. According to the Lincoln County Deed Records, the claimants, John and Becky Palmer, first acquired an interest in the subject property in 1992, and have maintained an ownership interest continuously since that time.
8. The currently effective A-C and T-C zone regulations governing the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimants' date of acquisition.
9. The A-C and T-C zone restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in Subsection (3) of Ballot Measure 37.
10. The subject claim was filed on July 14, 2006, which is less than two years from the December 2, 2004 effective date of Ballot Measure 37.

Conclusions: Based on the above findings of fact, the Board reaches the following conclusions:

1. The subject claim for compensation for reduction in value of private real property from the enforcement of land use regulations was timely filed on behalf of the owners John and Becky Palmer, pursuant to Subsection (5) of Ballot Measure 37.
2. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions and dwellings imposed by LCC 1.1373 (A-C zone) and LCC 1.1375 (T-C zone), are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37; they restrict the use of the subject private real property; and they have the effect of reducing the fair market value of the property.
3. The owners of the property, John and Becky Palmer (husband and wife), are therefore entitled to the payment of just compensation equal to the reduction in the fair market value of the subject property caused by the enforcement of the A-C and T-C zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of the A-C and T-C zone restrictions, may modify, remove or not apply these restrictions in order to permit the owner to use the property for a use permitted at the time of her acquisition.

#### **D. Recommended Decision**

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires the payment of just compensation, or the modification, removal or non-application of the offending land use regulations. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of the subject land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that the Board direct that the claimants be allowed to divide the subject property into 40-acre parcels, and that the regulations applicable to the establishment of dwellings would be those provisions of LCC 1.1373 and LCC 1.1375 in effect on August 6, 1992. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owners to use the property for a use permitted at the time of the owners' acquisition. This recommendation is based on the following considerations:

1. No funds are currently budgeted in the county general fund for the payment of monetary compensation.
2. Not applying the dwelling restrictions of the A-C zone and T-C zone would permit the claimant owners to create additional parcels of 40 acres in size. The creation of these parcels would not be generally inconsistent with the prevailing land use

pattern in the area.

3. Not applying the current land division restrictions of the A-C zone and T-C zone in order to permit the creation of additional rural parcels is the claimants' desired resolution.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the current minimum parcel size requirements and restrictions on dwellings provided for in LCC 1.1373 and LCC 1.1375. Provisions of LCC 1.1373 and 1.1375 in effect on August 6, 1992, the date of the claimants' acquisition, would instead apply. All other current provisions of the Lincoln County Code would continue to apply.
- Establishment of additional land parcels and dwellings on the subject property would be subject to all applicable public health and safety regulations, including but not limited to: land division procedures, building codes, on-site sewage disposal rules and requirements, flood hazard area regulations, and county road approach permit requirements.

If the Board concurs with the above recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation. This order will incorporate the above-recited findings of fact and conclusions, and the appropriate directives to not apply the minimum parcel size requirements and dwelling restrictions of the A-C zone on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted

Matt Spangler  
Director

Case file # 8-24RCC-06



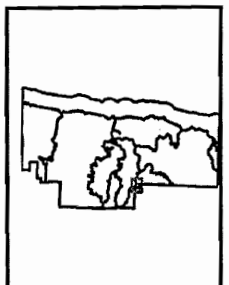
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1 in. = 2057 ft.

# Lincoln County Geographic Info System

County  
Shore2  
Taxlot-white

EXHIBIT     A      
    8     of     8    



10/31/2006

