

Compensation paid and waivers issued under Oregon's Measure 37 and Measure 49

Prepared by OPLA

At the request of the committee, staff made inquiries of other states with regulatory takings laws about any compensation that may have been paid out pursuant to their takings laws. The only state that provided this information was Oregon. Below is the e-mail communications received from staff at the Oregon Dept. of Land Conservation.

Michael Morrissey, Policy Analyst, Director's Office of Oregon Department of Land Conservation and Development and **Sarah Marvin**, Ph.D. of the Landowner Compensation Specialist Planning Services Division Oregon Dept. of Land Conservation and Development provided the following information (this information was also sent to committee members via e-mail).

Measure 37

Measure 37 claimants were supposed to file claims with both the county in which their property was located, and with the state. This was because both state and county land use regulation applies to property under our land use system. Most people did this, but some (600 claims) only applied to their county. When the state issued decisions (final orders) on claims filed with the state, we didn't know of the county-only claims. And when M49 was enacted, it could only be applied to M37 claims filed with both a county and the state, and so most of those 600 county-only claims were denied under M49. Senate bill remedied that by allowing those 600 or so claims to be evaluated.

So, roughly 6,850 M37 claims were filed with both a county and the state, and another 600 were county only.

Although the voters assumed that the state would compensate landowners rather than waive land use regulations, no government agency had funds to do this. Instead, the state waived land use regulations for 100% of valid claims. To illustrate the impact of the state's inability to pay compensation, in lieu of paying a \$203 million claim, a waiver was granted to the landowner for a pumice mine, geothermal plant and large-scale resort located on an inholding in a National Monument.

The following numbers include a small amount of error:

Claims submitted to the state under Measure 37 (number does not include claims submitted to county and not state):

Total claims submitted: **6857** between December 2004 and December 2007. We continue to receive calls from people who want to file a claim past the deadline.

Total claims processed before November 7, 2007 (date Measure 49 passed, all processing of M37 claims ceased): **4504**

Compensation requested: over **\$17 billion** when we stopped counting.

Measure 49

Measure 37 claims resubmitted under Measure 49: **4960**

Actual claims: **4560** (after combining of contiguous property under same ownership into single claims and elimination of multiple claims for the same property)

Claims authorized for home sites: **3586** (includes approvals gained through litigation)

Claims denied or withdrawn: **974** (some still in litigation)

Measure 49 claims based on new land use regulations: 0

New land use regulations enacted since passage of M49: 0

Measure 37 claims vested before Measure 49 enacted: unknown; at least **160**

Under Measure 37, counties and cities were required to deal with claims as well. To my knowledge, only two Measure 37 claims were awarded compensation:

Dorothy English: judgment against Multnomah County: **\$1.15 million in addition to waiver** of land use regulations (cake and eat it too)

Palin: City of Prineville opted to pay claimants rather than waive regulations to allow them to develop on the edge of the scenic "Rimrock" cliff: **\$180,000**

I believe that land use regulation compensation ballot initiatives or legislation were defeated in Arizona and Washington because of the disastrous outcome of Measure 37 in Oregon. Shortly after the claims for massive subdivisions and commercial developments began pouring in, the voters overturned Measure 37 and replaced it with Measure 49, which scaled back the size of waived developments, but constrains future land use regulations, such as riparian setbacks.

All of the information we have is for claims against past development regulations (any regulation enacted before Dec. 6, 2007). When the voters passed Measure 49, it terminated any further claims based on past land use regulations. The state has had no new land use regulations since the measures passed, so there have been no "new claims."

We published a report comparing Measures 37 and 49 that has a lot of local detail (e.g. results by county) and doesn't answer all of your questions. But you can flip through it while I find what you need. It has some maps. Sadly, we did not have the funds to conduct a comprehensive statewide analysis. Here is the link: