

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

**Final Staff Report and Recommendation
June 29, 2005**

STATE CLAIM NUMBER: M119168

NAME OF CLAIMANT: Steve Morrill

MAILING ADDRESS: PO Box 1629
Waldport, Oregon 97394

IDENTIFICATION OF PROPERTY: Township 12S, Range 11W, Section 18
Tax Lot 300
Lincoln County

OTHER INTEREST IN PROPERTY: Patsy Whitcomb-Morrill

DATE RECEIVED BY DAS: January 5, 2005

180-DAY DEADLINE: July 4, 2005

I. CLAIM

Steve Morrill, the claimant, seeks compensation in the amount of \$500,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 140 acre property into three approximately 45 acre parcels with homesites. The property is located at tax lot 300 in Lincoln County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. In lieu of compensation under Measure 37, department staff recommends that the State of Oregon not apply the following laws to the claimant's use of his property, to permit him to divide the property into three parcels of about 45 acres each, and to apply to Lincoln County for Conditional Use Permits to establish three residences based on the laws in effect when the claimant acquired the property: the amendments to Statewide Land Use Planning Goal 4 (Forest Lands) and OAR 660-006-0025, 660-006-0026 and 660-006-0027 enacted after July 16, 1990, and the provisions of ORS 215.780.

The action by the State of Oregon provides the state's authorization to the claimants to use their property subject to the standards in effect on July 16, 1990. On that date, the property was subject to Statewide Goal 4, OAR 660, Division 6, and applicable provisions of ORS 215 and ORS 92 (1989 editions).

III. COMMENTS ON THE CLAIM

Comments Received

On March 15, 2005, pursuant to OAR 125-145-0080 the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, there were five (5) written comments, evidence or information received by DAS in response to the 10-day notice. Comments received that are specific to the criteria required under Measure 37 for the department's review of this claim are discussed in the appropriate section of this report.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 5, requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of the measure (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of the measure (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

The claim was submitted to DAS Risk Management Division on January 5, 2005 for processing under OAR 125, Division 145. The claim identifies the Lincoln County's Timber Conservation zone as limiting the use of the property.

Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

According to the completed claim form, Steve Morrill, the claimant (also known as J.S. Morrill) and Patsy Whitcomb-Morrill acquired the property on July 16, 1990. Mr. Morrill provided a copy of a Warranty Deed and a recent title report for the property to substantiate his ownership. Based on information currently available to the department, it does not appear that Patsy Whitcomb-Morrill is a claimant.

Conclusions

Steve Morrill, the claimant, is and has been a current “owner” of the subject property, as defined under Measure 37, Section 11(C), since July 16, 1990.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the claimant’s use of the private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claim states that, “At the time of purchase, it was possible for the Morrills to split this property into three parcels of about 45 acres each and apply for Conditional Use Permits to establish three residences. The increase in minimum lot size from 40 acres to 80 acres in 1993 now limits the Morrills to one parcel with one home site.”

The regulation that is the basis for this claim is Lincoln County’s Timber Conservation Zone, which implements Statewide Planning Goal 4 (Forest Lands), ORS 215.780 and OAR 660-006-0026. The subject property of 140 acres cannot be further divided under the current requirements of Goal 4, ORS 215.780 and OAR 660-006-0026, which prescribe a minimum lot size of 80 acres.

The claimant purchased the property in 1990 when it was zoned by the County as Timber Conservation and had a 40-acre minimum parcel size requirement. That zone was acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. The Timber Conservation Zone, as amended in 1993 to reflect the 80-acre minimum parcel size requirement, still applies to the property. Amendments to Goal 4 (February 5, 1990) and OAR 660-006-0025, OAR 660-006-0026 and 660-006-0027, regarding the uses, land divisions and dwellings allowed in forest zones are also applicable.

Conclusions

The land division standard that applied to the property when the claimant acquired it and that complied with the Goal 4 minimum lot size standard are the land division standards in the County's acknowledged Timber Conservation Zone, which provided for the creation of parcels of 40 acres. The rules for dwellings in forest zones prescribed under OAR 660-06-025 and 660-06-027, as amended in February 1990, also would apply to any future application by Mr. Morrill for home sites on the newly formed parcels.

Based on the Goal 4 standard for land divisions applicable to this property when Mr. Morrill acquired it in 1990, creation of some new parcels likely would have been possible. No new parcels are permitted under the current standards and the uses authorized under ORS 215.780 and OAR 660-006-0026 permit.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim states that the fair market value of the subject property has been reduced by \$500,000 as a result of land use laws enacted after he acquired the property in 1990. The claim asserts that state land use regulations, as implemented through the Lincoln County zoning ordinance for Timber Conservation, restrict his ability to subdivide a 140 acre parcel into 3 parcels of approximately 45 acres, which would have a value of \$250,000 each as potential homesites. Under the standards for subdividing forest resource land parcels that existed in 1990, it would have been possible to subdivide the subject 140-acre lot into three parcels. The claim does not document the basis for the estimated value of the lots. There is no certified appraisal to substantiate the claimed values either before or with state land use regulations.

Conclusions

As explained in section V. (1) of this report, Steve Morrill is the current owners of the subject property as of July 16, 1990. Thus, under Ballot Measure 37, Mr. Morrill is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in section V. (2) of this report, laws adopted since the claimants acquired the property restrict division of the subject property. The claim asserts the reduction in value due to the restrictions to be \$500,000. However, without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim is based on Lincoln County's Timber Conservation zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These are Statewide Land Use Planning Goal 4, Forest Lands, ORS 215.780 and OAR 660-006-0025, 660-006-0026, and 660-006-0027. Goal 4, and the Goal 4 implementing rules as they existed on the date the claimant acquired the property in 1990 are exempt under Section 3(E) of the Measure.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, Division 6, include standards for siting dwellings in forest zones. This provision includes fire protection standards for dwellings and for surrounding forestlands. Section 3 (B) of Measure 37 specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." Therefore, the siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, Division 6) are exempt under subsection (3) of Measure 37.

Conclusions

Without a specific proposed use or a specific listing of laws that are the basis for the claim, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of forest land apply to the owner's anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37. However, those laws that applied to the property prior to the claimant's acquisition in 1990 will continue to apply.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety will also continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the Measure to begin with.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the record before the department, laws enforced by the Commission or; the department restrict subdivision and development of housing. The laws enforced by the Commission or the department, reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$500,000. This amount is based on the speculative value of the divided lots with approval for residential structures.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Mr. Morrill to use the subject property for a use permitted at the time he acquired the properties on July 16, 1990.

Conclusion

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon not apply the following laws to the claimant's use of his property to permit him to divide the property into three parcels of about 45 acres each and to apply to Lincoln County to determine whether to issue Conditional Use Permits to establish three residences based on the laws in effect when the claimant acquired the property: the amendments to Statewide Land Use Planning Goal 4 (Forest Lands) and OAR 660-006-0025, 660-006-0026 and 660-006-0027 enacted after July 16, 1990, and the provisions of ORS 215.780. This waiver is only to allow Mr. Morrill the foregoing uses of the property, to the extent they were permitted at the time he acquired it. As a result, Mr. Morrill's use of the property will be subject to those specified laws in effect on July 16, 1990. (See the complete recommendation in Section VI. of this report.)

2. The action by the State of Oregon provides the State's authorization to the claimant to use his property subject to the standards in effect on July 16, 1990. On that date, the property was subject to Statewide Goal 4 as implemented through the acknowledged Lincoln County Timber Conservation zone. The siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, Division 6) are exempt under subsection (3) of Measure 37 and will continue to apply to the subject property.
3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for him to obtain a decision under Measure 37 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

This staff report is not a final decision by the department, and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses shall be delivered to the Oregon Department of Administrative Services (DAS), Risk Management - State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Comments shall not be submitted electronically or by facsimile.