

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

June 28, 2005

**STATE CLAIM NUMBER:** M119169

**NAME OF CLAIMANTS:** Steve Morrill

**MAILING ADDRESS:** PO Box 1629  
Waldport, OR 97394

**IDENTIFICATION OF PROPERTY:** Township 13S, Range 11W, Section 18  
Tax Lot 900  
Lincoln County

**OTHER INTEREST IN PROPERTY:** Patsy Whitcomb-Morrill

**DATE RECEIVED BY DAS:** January 3, 2005

**180-DAY DEADLINE:** July 2, 2005

**I. CLAIM**

Steve Morrill, the claimant, seeks compensation in the amount of \$250,000 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 and develop the subject property. (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, the State of Oregon will not apply the following laws to the claimant's use of his property: the amendments to Statewide Land Use Planning Goal 14 adopted in 2000, and OAR 660-004-0040, which apply to the division of the subject property. The waiver applies only to that portion of the newly configured tax lot that was part of the original Tax Lot 900, an area of approximately 3.09 acres, and not to any additional property owned by the claimant that has been added through lot line adjustments or other actions. This waiver is only to the extent necessary to allow Mr. Morrill to divide the property in the manner he was permitted to at the time he acquired it. As a result, Mr. Morrill's use of the property will be subject to laws in effect on July 16, 1990, which may include Statewide Land Use Planning Goal 14. (See the complete recommendation in Section VI. of this report.)

### **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 in response to the 10-day notice. The comments received are not specific to the criteria required under Measure 37 for the department's review of this claim. Unless and until funds are available to pay compensation, comments regarding the possible impact of the proposed or intended development of the claimants' property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim, and cannot be considered by the department. (See comment letters in the department's claim file.)

### **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 on January 5, 2005, for processing under OAR 125, Division 145. 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 original claim form, Steve Morrill (also known as J.S. Morrill), the claimant and Patsy Whitcomb-Morrill acquired the property on July 16, 1990. The original claim is for a single parcel of 5.15 acres (Tax Lot 900) that was purchased on that date. The property has subsequently been through several lot line adjustments and been further divided. Mr. Morrill sold a portion of this parcel, consisting of an approximately 2.2 acres, on March 24, 2005. Mr. Morrill provided a copy of the Warranty Deed and a recent title report for the property to substantiate the change in ownership and the current configuration of the remaining portion of Tax Lot 900. This claim now applies only to the remaining portion of the original lot, an area of approximately 3.09 acres, and does not include the 2.2 acres the claimant sold on March 24, 2005 or areas that have been added to the original through subsequent lot line adjustments involving adjacent tax lots under Mr. Morrill’s ownership.<sup>1</sup>

### **Conclusions**

Steve Morrill, the claimant is a current “owner” under Measure 37, Section 11(C), and has had an ownership interest in the 3.9 acre subject property, as described in the findings of fact above, since July 16, 1990. There is no information in the current record to indicate the Patsy Whitcomb-Morrill is a claimant.

### **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 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.

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<sup>1</sup> In the event that the subject property is transferred to a subsequent owner(s), Mr. Morrill may no longer be an owner for Measure 37 review purposes. In addition, in the event of further lot line adjustments, the recommendation of this staff report may be modified.

## **Findings of Fact**

The claim states that the subject property “was zoned RR 1 / 2 at the time of purchase. It is presently zoned RR -2.” Lincoln County’s rural residential (RR) 1 / 2 zoning would have allowed the original parcel to be divided into one-acre lots.

As a result of a 1986 Supreme Court decision, in 2000 the Commission amended Goal 14 (Urbanization) and adopted OAR 660-004-0040 (Application of Goal 14 in Rural Residential Areas.)<sup>2</sup> After October 4, 2000, a county minimum lot size requirement in a rural residential zone may not be amended to allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). The amended rule does not allow the subject property to be divided without an exception to Statewide Planning Goal 14.

## **Conclusions**

Based on the standard for land divisions applicable to this property when Mr. Morrill acquired it on July 16, 1990, it is possible that the subject property could be divided into one acre lots, which is more than the current standards and the uses authorized under OAR 660-004-0040(5)(b) and OAR 660-004-0040(7)(a) will permit. The amendments became effective after property was acquired by claimant in 1990.

### **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**

According to the claimant, the zone change required by the Goal 14 amendment resulted in a claim in the amount of \$250,000. This amount is based on “the loss of 3 additional parcels with a gross value of \$362, 250”. One of those lots has been sold for \$112,250. The claim calculation is based on an average lot price derived from sale price of that lot (\$112,500) and the estimated value of the remaining 2.9 acre lot (\$129,000). The average lot sale price of \$120,750 was then multiplied by 3 to obtain a gross value of \$362,250 for the property. The claimant’s calculation assumes that the one-acre lots that would result from the application of the RR 1/2 zone, are worth the same amount per lot as the two existing lots of more than twice the size.

## **Conclusions**

As explained in section V.(1) of this report, Steve Morrill is a current owner of the property who acquired the property in 1990. Thus under Ballot Measure 37, Mr. Morrill is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its

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<sup>2</sup> *1000 Friends of Oregon v. LCDC* (Curry County, 301 OR App 447 (1986).

fair market value. Mr. Morrill estimates the lost in value at \$250,000. Without an appraisal based on the value of additional parcels for residential development, it is not possible to substantiate the specific dollar amount the claimant demands 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.

As explained in section V. (1) of this report, the Morrill's are the current owners of the subject property as of July 16, 1990. Thus, under Ballot Measure 37, the Morrill's are 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 restriction to be \$250,000. 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 regulation subject to this claim is Lincoln County's RR 1 /2 zone. The RR-2 zone implements Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040 (Application of Goal 14 in Rural Residential Areas). Section 3(E) of Measure 37 exempts, among other things, laws that were in effect at the time the owner acquired the property. Statewide Planning Goal 14 (1990 version) was in effect when the claimant acquired the property, and may continue to apply to the use of the property.

#### **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 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 amendments to Statewide Planning Goal 14 and OAR 660-004-0040 that are the basis for this claim were adopted after the claimants acquired the property and are not exempt under

Section 3, of Ballot Measure 37. The provisions of Goal 14 that were in effect in 1990 are exempt, however, and may apply to the use of the property. 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 \$250,000. Without an appraisal based on the value of additional parcels for residential development, it is not possible to substantiate the specific dollar amount the claimant demands 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.

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:

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of paying just compensation under Measure 37, the State of Oregon will not apply the following laws to Mr. Morrill's property; the amendments to Statewide Land Use Planning Goal 14 adopted in 2000, and OAR 660-004-0040, which apply to the division of the subject property. The waiver applies only to that portion of the newly configured tax lot that was part of the

original Tax Lot 900, an area of approximately 3.09 acres, and not to any additional property owned by the claimant that has been added through lot line adjustments or other actions. This order applies to the regulations listed above, except for the provisions of each of these laws that were in effect when Mr. Morrill acquired his interest in the Property on July 16, 1990.

2. The relief granted by this order does not authorize Mr. Morrill to use the Property for a use that was not permitted when he acquired his interest in the Property. The use of Property permitted in 1990 was governed by state laws that include, but are not limited to: the provisions of ORS 92, Statewide Land Use Planning Goal 4, OAR 660, Division 6, and ORS 215 that existed at that time.

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, this order does 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 this order remains 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of Measure 37.

5. Without limiting the generality of the foregoing terms, in order for the Claimant to use the Property, it may be necessary for the Claimant 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.