

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF THE  
STATE OF OREGON

IN THE MATTER OF THE CLAIM            )  
FOR COMPENSATION UNDER            )  
BALLOT MEASURE 37 (CHAPTER 1,    )  
OREGON LAWS 2005) OF            )  
Richard E. Lile, CLAIMANT            )

FINAL ORDER  
CLAIM NO. M 118354

Claimant:     Richard E. Lile (the Claimant)

Property:     Tax Lot 2700, T.3S, R.1E, Section 11A, W.M., Clackamas County (the  
Property)

Claim:        The demand for compensation and any supporting information received  
from the Claimant by the State of Oregon (the Claim).

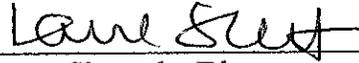
Claimant submitted the Claim to the State of Oregon under Ballot Measure 37 (2004)  
(Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et  
seq.*, the Department of Administrative Services (DAS) referred the Claim to the  
Department of Land Conservation and Development (DLCD) as the regulating entity.  
This order is based on the record herein, including the Findings and Conclusions set forth  
in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to  
and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and  
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Director of the DLCD as a final order of DLCD and the  
Land Conservation and Development Commission under Measure 37, OAR 660-002-  
0010(8), and OAR 125, division 145, and by the Administrator for the State Services  
Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145,  
and ORS 293.

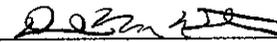
FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 18<sup>th</sup> day of October, 2005.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 18<sup>th</sup> day of October, 2005.

**NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

October 18, 2005

**STATE CLAIM NUMBER:** M118354

**NAME OF CLAIMANT:** Richard E. Lile<sup>1</sup>

**MAILING ADDRESS:** 10977 South Forest Ridge Lane  
Oregon City, Oregon 97045

**PROPERTY IDENTIFICATION:** Township 3S, Range 1E, Section 11A  
Tax Lot 2700  
Clackamas County

**OTHER CONTACT INFORMATION:** William C. Cox, Attorney at law  
0244 SW California Street  
Portland, Oregon 97219

**DATE RECEIVED BY DAS:** April 25, 2005

**180-DAY DEADLINE:** October 22, 2005

**I. SUMMARY OF CLAIM**

The claimant, Richard E. Lile, seeks compensation in the amount of \$450,000 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 approximately 1.46-acre property into three, approximately 20,000-square foot parcels, including one for the existing dwelling, and to develop a dwelling on each of the other two parcels. The property is located at 10977 South Forest Ridge Lane, east of the Willamette River and within the urban growth boundary (UGB) of Oregon City, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department have enforced laws that restrict the claimant's use of private real property. (See the complete recommendation in Section VI. of this report.)

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<sup>1</sup> Also known as Richard Edwin Lile.

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On May 26, 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, three written comments, evidence or information were received in response to the 10-day notice.

Some of the comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law.

One of the comments is relevant to whether a state law restricts the claimant's use of the property. This comment has been considered by the department in preparing this report. (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 criterion 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on April 25, 2005, for processing under OAR 125, division 145. The claim identifies as laws that restrict the use of the property as the basis for the claim: Statewide Planning Goals 2 (Land Use Planning) and 14 (Urbanization); OAR 660-014-0040, and OAR 660, divisions 21 and 26; Clackamas County Zoning Code

Designation of Future Urbanizable 10-Acre District (FU-10); and “all state wide planning goals and administrative rules, statutes, which have been adopted and enforced since claimant acquired the land.” 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 for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimant, Richard Lile, acquired the subject property on July 26, 1979, as reflected by a Warranty Deed included with the claim. An Ownership and Encumbrance Report submitted with the claim shows Richard Lile remains an owner of the property.

### **Conclusions**

The claimant, Richard Lile, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of July 26, 1979.

### **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.

### **Findings of Fact**

The claim states:

“OAR 660 Division 21 Urban Reserve [and] OAR 660 Division 26 Urban Growth Boundaries. Reduces uses and residential density allowed in subject property and applicant lost the right to create 2 lots in addition to the one where his home is now located.

“OAR 660-014-0040 Date of Effect: October, 2000. This provision impacts the subject property by limiting land divisions near the UGB and outside city limits.

“Clackamas County Zoning Code designation of FU-10. At time of purchase the property was zoned GU by the County (Zoning Code Section 21.3). At time of purchase the GU zone designation allowed for 20,000 square foot lots. On 11/18/79 the County, upon adoption of the Metro UGB, rezoned the subject property to FU-10, which eliminated two of the three lots allowed Mr. Lile.

“All state wide planning goals and administrative rules, statutes, which have been adopted and enforced since claimant acquired the land, those include, but not by way of limitation, Goals 2 and 14. This is a catch-all notice provision since the land use laws are so intertwined one specific provision may impact other provisions which results in interdependent provisions making precision in identification difficult.”

The property is currently zoned Future Urbanizable 10-Acre District (FU-10) by Clackamas County. The FU-10 District is a rural residential zone, with a minimum lot size of ten acres. One detached single-family dwelling is permitted per lot or parcel.<sup>2</sup>

The subject property is within Oregon City’s UGB. Neither the Commission nor the department enforces laws that require specific zoning (*e.g.*, Future Urbanizable zoning) of the subject property or other individual properties within UGBs. Zoning allocations for properties within a UGB are assigned by the governing jurisdiction (in this case, Clackamas County in consultation with Oregon City) based on local conditions; including, but not limited to available infrastructure and services and forecasted population and economic growth.

Based on the information in the claim, the department has not identified any state laws that restrict the claimant’s use of the subject property.

### **Conclusions**

The claim does not establish any state laws that currently restrict the use of the claimant’s property. Because the subject property is located within the City of Oregon City’s UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department has enforced any laws that restrict the use of claimant’s real property.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation 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.”

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<sup>2</sup> Clackamas County Zoning Ordinance, Section 314.08 B.

### **Findings of Fact**

The claim includes an informal estimate of \$450,000 as the reduction in the property's fair market value due to current regulations. This estimate is based on "values used [that] are consistent with recent sales of similar properties in the vicinity." (See claim.) There is no appraisal or other documentation to substantiate the amount demanded for compensation. "The value figures will be more precisely supported by an appraisal if necessary. It is applicant's opinion however, that the appraisal is only relevant if the County and/or State decide to enforce the current use restrictions." (See claim.)

### **Conclusions**

As determined in Section V.(2) above, the claimant has not established that any state laws restrict the use of the subject property. Without such identification, it is not possible to determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the property.

### **4. Exemptions under Section 3 of Measure 37**

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

### **Findings of Fact**

The claim is based Clackamas County's General Use (GU) Zone applied when the claimant acquired the property, and the County's FU-10 applied in 1979.<sup>3</sup> Based on the record, there are no state laws enforced by the Commission or the department that restrict the use of the subject property.

### **Conclusions**

Because there are no state laws that restrict the claimant's use of the subject property, the exemption provisions of Section 3 of Measure 37 are not applicable to this claim.

## **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 the 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 in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has 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.

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<sup>3</sup> Dates are according to County staff. See copy of September 2, 2005, email in the department's claim file

### **Findings of Fact**

Based on the record for this claim, the claimant has not established that any state laws enforced by the Commission or the department restrict the use of the subject property that has the effect of reducing the fair market value of the subject property. Because the subject property is located within the City of Oregon City Urban Growth Boundary, neither the Commission nor the department enforces laws that require specific zoning of the subject property.

### **Conclusion**

Based on the record before the department, the claimant, Richard Lile, has not established that he is entitled to relief under Section 1 of Measure 37, as a result of land use regulations enforced by the Commission or the department. Therefore, this claim is denied.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on September 29, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's 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. Comments received have been taken into account by the department in the issuance of this final report.