

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

June 28, 2005

**STATE CLAIM NUMBER:** M119142

**NAME OF CLAIMANT:** Steve Morrill, on behalf of  
Old Bayview Enterprises Co., Inc.

**MAILING ADDRESS:** PO Box 1629  
Waldport, Oregon 9739

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

**IDENTIFICATION OF PROPERTY:** Township 13S, Range 11W, Section 7  
Tax Lot 804  
Lincoln County

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

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

**I. CLAIM**

Steve Morrill, on behalf of Old Bayview Enterprises Co., Inc., the claimant, seeks compensation in the amount of \$91,250 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 obtain approval for the legal division of the subject parcel. (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 not valid. The claim requests the waiver of an enforcement order brought by the Land Conservation and Development Commission (the Commission) in 1997 against Lincoln County, requiring the County's code for creating land partitions be made consistent with ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). The order was rescinded by the Commission in 2000 and is no longer applicable to the subject property. Furthermore, the state laws cited in the enforcement order that limit the division of the subject property were all enacted prior to the acquisition of the subject property by Old Bayview Enterprises Co., Inc. in 1994, and are thus exempt under

Section 3(E) of Ballot Measure 37. (See the complete recommendation in section IV. of this report.)

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

#### **Comments Received**

On March 14, 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 three written comments received in response to the 10-day notice. Surrounding property owners expressed concerns about the date of ownership in relation to the enactment date of applicable land use laws. Given that there are no funds available to pay compensation, comments regarding the possible impact of the proposed or intended development of the claimant's property are not relevant to the evaluation and determination of the claimant's Ballot Measure 37 claim, and cannot be considered by the department.

### **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 3, 2005 for processing under OAR 125, Division 145. The claim identifies the Commission's 1997 enforcement order against Lincoln County as restricting the use of the property. The enforcement order required the County to amend its land use code to be consistent with ORS 92.010(7)(d), 92.012, 92.014 and 215.010(1). 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).

## **Conclusion**

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**

Steve Morrill (also known as J.S. Morrill) acquired the property on July 16, 1990. According to the claim, Mr. Morrill transferred the property to the claimant, Old Bayview Enterprises Co. Inc., in 1994. Mr. Morrill provided a copy of a title report (First American Title Insurance, February 9, 2005) to substantiate the property ownership. The title report documents the transfer of the property from J.S. Morrill to Old Bayview Enterprises Co. Inc., a corporation owned entirely by Mr. Morrill, on March 30, 1994. Mr. Morrill sold a portion of the original parcel, Tax Lot 800, to another entity in 1994. The claim is relevant only to that portion of the original parcel that is still the property of Old Bayview Enterprises Co., Inc.

### **Conclusion**

Old Bayview Enterprises Co., Inc., is the current “owner” under Measure 37, Section 11(C), and has had an ownership interest in the subject property since March 30, 1994. Steve Morrill is a “family member” as that term is defined under Measure 37, Section 11(A), and acquired the property in 1990.<sup>1</sup>

### **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**

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<sup>1</sup> The claimant has stated, in his letter dated June 20, 2005 responding to the draft Staff Report and Recommendations, that the subject property is currently pending sale. Transfer or sale of the property to a new owner prior to the issuance of a final order by the department would be a change of ownership. Should that transfer occur, the claimant would no longer qualify as owner under the definition in Measure 37.

The claim does not specify the state law that has reduced the value of the property. However, the claimant asks the state to waive an enforcement order that the Commission had placed on Lincoln County, on April 27, 1997 (#97-EO-00754). The claim also asks that the department issue a letter to Mr. Morrill stating that the subject parcel is “lawful.”

The claim states that Mr. Morrill had partitioned the subject property in 1994, according to the existing Lincoln County code, and the portion of the parcel identified as Tax Lot 800 was subsequently sold. Mr. Morrill attempted to sell the remaining portion of that parcel, identified by the County as Tax Lot 804, in 2000. At that time, Lincoln County determined that Tax Lot 804 is an unlawfully created parcel. The basis of that determination was the enforcement order (97-EO-00754) brought by the Commission against the County, to discontinue the County’s practice of allowing the division of parcels based on the existence of public roads. Pursuant to the enforcement order, the County had amended the sections of its code defining “Lot” (LCC 1.1371(2)), “parcel” (LCC 1.1371(3)), and “lawfully created parcel” (LCC 1.1371(4)), so they are consistent with the definitions found in ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). The enforcement order was dissolved by the department upon adoption of the amended code by the Lincoln County Commission on June 6, 2000. Because the enforcement order was dissolved in 2000, it cannot be waived or otherwise not applied to the subject property even if it was a land use regulation under the terms of Measure 37, which it is not. The applicable state regulations that form the statutory basis for the enforcement order are the aforementioned sections of ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). These statutes are the applicable state land use regulations relevant to this claim.<sup>2</sup> These laws govern the division of property into lots or parcels, and therefore may restrict the use of property.

### **Conclusions**

Steve Morrill, as sole owner of Old Bayview Enterprises Company, Inc., acquired the property on March 30, 1994. The relevant state land use regulations applicable to this claim are ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). These laws may restrict the use of the claimant’s 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 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 does not provide any specific information to establish the current value of the property, under the existing restrictions. Mr. Morrill, on behalf of Old Bayview Enterprises Co., Inc, estimates the value of the subject property without restrictions as \$91, 250, based on “the

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<sup>2</sup> Under ORS 215.010(1)(a)(A), a parcel is defined as a unit of land created by partitioning land as defined by ORS 92.010. ORS 92.010(7)(D) defines partition land as a division in to two or three parcels, not to include a division created by the sale or grant of land for a public road or other right of way.

average of the two sales that were lost due to the change in enforcement by Lincoln County.” The lot was marketed as a potential home site. Mr. Morrill states that he has not been successful in selling the lot as vacant acreage with no ability to obtain building permits.

### **Conclusions**

Based on the information in the claim, laws enforced by the department or the Commission may restrict the use of the 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. However, the Commission’s enforcement order does not restrict the use of the property, or reduce its value, because it is no longer in effect.

### **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 Measure 37.

### **Findings of Fact**

The claimant requests the state waive an enforcement order (97-EO-00754) brought by the Commission against Lincoln County, that required the County to discontinue their practice of allowing the division of parcels based on the existence of public roads and amend their code to reflect state statutory law. The enforcement order was dissolved upon adoption of the amended code by the Lincoln County Commission in 2000. The applicable state regulations that form the statutory basis for the enforcement order are the aforementioned sections of ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). These statutes were all adopted prior to the claimant’s acquisition of the property and are therefore exempt under Section 3(E) of Measure 37.

### **Conclusions**

Mr. Morrill, as sole owner of Old Bayview Enterprises Company Inc., became the current owner of the property on March 30, 1994. The relevant state land use regulations applicable to this claim, ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1), were enacted and enforced prior to March 30, 1994. These statutes are exempt under Section 3(E) of Measure 37. As a result, there is no basis for the department to approve 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 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 findings and conclusions set forth in this report, the department has determined that the claim is not valid. The claim requests the waiver of an enforcement order brought by the Commission in 1997 against Lincoln County, requiring the County's code for creating land partitions be made consistent with ORS 92.010 (7)(d), 92.012 and 92.014, and ORS 215.010(1). The order was rescinded by the Commission in 2000 and is no longer applicable to the subject property. Furthermore, the state laws cited in the enforcement order that limit the division of the subject property were all enacted prior to the acquisition of the subject property by Old Bayview Enterprises Co., Inc. in 1994, and are thus exempt under Section 3(E) of Ballot Measure 37.

## **Conclusion**

The claim does not establish that Old Bayview Enterprises Co., Inc. is entitled to relief under the provisions of Ballot Measure 37. Therefore, department staff recommends denying the claim.

## **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.