

W. S. e. & F.

SUPPLEMENTAL AGENDA COVER MEMO
SUPPLEMENTAL MATERIAL

DATE: June 6, 2005

TO: BOARD OF COUNTY COMMISSIONERS

FROM: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR &
STEPHEN VORHES, ASSISTANT COUNTY COUNSEL

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-5161, Ronald and Patricia Tendick and PA05-5162, Kenny and Marta Gee)

- I. MOTION:** Move to Adopt Orders reflecting final Board action on both claims.
- II. ISSUE OR PROBLEM**

On May 11 and 18, 2005, the Board conducted public hearings on the Tendick and Gee Measure 37 claims. The Board concluded the claims were valid and that waiver of the restrictive land use regulations was necessary to avoid owner entitlement to just compensation under Measure 37. Revised Orders were presented to the Board on June 1, 2005 and discussions revealed additional concerns with the Orders. The main issues included mention of the requirement of state claim processing, what would actually occur in Lane County after Board action on each claim, whether a rezoning could be authorized under Measure 37 and whether the proposed Orders granted sufficient relief to each of the eligible property owners.

III. ANALYSIS

The Board tentatively determined that the restrictive dwelling and minimum area land division requirements of the current zoning prevent the Tendicks and Kenny Gee from dividing or building additional dwellings on their property and directed staff to draft revised orders to waive application of the restrictive land division and dwelling regulations to allow the Tendicks and Kenny Gee to use the property for a use permitted at the time they acquired the property. The revised orders presented to the Board attempted to do that based primarily on the information presented by the claimants. They also reflect the dual regulatory land use scheme of Oregon in alerting the claimants to the limit on county authority to waive state law. For an example, copies of the Multnomah County and state actions in the English claims under Measure 37 are attached. A copy of the joint letter sent by AOC, LOC and DLCDC concerning coordination of claims that raise both local and state "waiver" issues and examples of Jackson and Clackamas County orders are also attached.

In most responses sent by Lane County to date, claimants have been advised to examine the need for filing claims simultaneously with the state. The language in the last paragraph of each Order that refers to the requirements of state law and contacting the state could be removed but that may not change the need to seek state action to "waive" those restrictive state provisions applicable to any development of the claimant properties. Most counties recognize the need to address state law and the limitation on county authority to "waive" statutes or administrative rules under Measure 37. Even an action to amend the county comprehensive plan or zoning would still be subject to state law defining and addressing agricultural or forest lands. It is not clear rezoning is authorized by Measure 37, particularly for property not subject to any particular zone when acquired by the current owner.

Both Orders pending before the Board indicate that the current county regulations that restrict land divisions or dwelling approvals in the applicable zones (F-2 for Tendicks and EFU for Kenny Gee) shall not apply. Other provisions of the zone or the current land division requirements are not likely to preclude county approval of additional dwellings or divisions when the claimants seek formal approval of their proposals. Those regulations were not specifically identified by the claimants as a basis for compensation. If the Board wants to anticipate additional restrictions and address them in the Orders, that could be done with language that would replace the second sentence of the second Ordered paragraph indicating the Administrator or the Planning Director could determine if a particular provision reduces the value of the property. That sentence could read as follows:

"To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of divisions and any new dwellings to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that has the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal."

With that clarification, the Orders should be ready for adoption as the Board prefers.

IV. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final Orders, within 5 days the County will mail notice of the decision to all parties to the proceeding and record notice of the Board decision in the county deed records.

V. ATTACHMENTS:

Multnomah County and State Orders on Dorothy English Measure 37 claims
Joint AOC, LOC and DLCD letter of December 23, 2004
Examples of Jackson and Clackamas County Measure 37 Orders

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 05-041

**ORDER TO NOT APPLY LAND USE REGULATIONS TO 13100 N.W. McNAMEE ROAD
UNDER BALLOT MEASURE 37**

The Multnomah County Board of Commissioners Finds:

- a. **Parties:** Dorothy Pauline English, Christie Anne Verhoef and Douglas James Sellers are Ballot Measure 37 claimants who filed a demand for compensation under Ballot Measure 37 (2004) to Multnomah County on December 2, 2004, 12:11 a.m.
- b. **Subject Real Property:** This claim relates to real property commonly known as 13100 N.W. McNamee Road, Multnomah County, Portland, Oregon 97231, and more specifically described as:

Section 32A, T2N, R.1W, Willamette Meridian, consisting of 19.74 acres in Multnomah County, Oregon; Tax Account #R971320170 (Tax Lot 1200).

- c. **Adequacy of Demand for Compensation:** On December 2, 2004, a demand for compensation was filed with the County on behalf of claimants, Dorothy English, Christie Verhoef, and Douglas Sellers. The demand letter sought \$1,150,000 in compensation or the right to divide their property at 13100 NW McNamee Road into 8 parcels and construct 8 homes. An appraisal was submitted, on February 9, 2005, to substantiate the amount of compensation being sought.

The demand for compensation was faxed to the County Attorney's Office at 12:11 am, and the original was hand delivered to the same office at 8:15 a.m., before the adoption of the County's Ballot Measure 37 implementing ordinance that same date. The County is not applying the ordinance, but is instead, applying Ballot Measure 37 directly.

The measure requires an owner submit a written demand for compensation, but does not specify what that entails. The demand must, at a minimum, describe the use being sought, identify regulations that prohibit the use, and substantiate that land use regulations have reduced the value of the property. The Board finds that the claimants' letter and appraisal contain this minimal information.

- d. **Relevant Dates of Property Ownership:** Ballot Measure 37 exempts land use regulations enacted prior to the date the current owner acquired the property. Deed records show that claimants Christie Verhoef and Douglas Sellers acquired an interest in the property in 1999 (Instrument #99-01244). Land use regulations in effect at that time were substantially the same as they are now, providing for one single family dwelling per lawful parcel (Section 11.WH.2046, Ord. #916). Current assessment records show that the property is improved, with a residence built in 1948. As there is already a dwelling on the property, no additional dwellings would have been permitted under land use regulations in effect on the date Christie Verhoef and Douglas Sellers acquired an ownership interest. Accordingly, neither has a basis for a Ballot Measure 37 claim.

Claimant Dorothy English has provided evidence that she first acquired the property with her husband in November, 1953 pursuant to a land sales contract (Book, 1630, page 591). The current parcel is the south half of the original parcel in which Claimant Dorothy English has held a continuous ownership interest. In May of 1953 the County adopted its first interim zoning ordinance, a code that was primarily directed at nuisance uses and would not have prohibited more than one dwelling from being established on a parcel or lot. The Board finds that Claimant Dorothy English became the owner of her property prior to the County enacting land use regulations restricting the number of dwellings to one per property.

- e. **County Codes as a Restriction on Use of the Property:** Claimant Dorothy English asserts that these regulations and others (together totaling 61 regulations) restrict the use of land by prohibiting the construction of 8 dwellings on 8 lots. Claimant Dorothy English requests that these regulations not be applied to the property pursuant to the provisions of Ballot Measure 37.

The property is zoned Commercial Forest Use (CFU-2) with Protected Aggregate and Mineral, Significant Environmental Concern (SEC) for views and streams, and Hillside Development overlays (HDP). The Board finds that these regulations, and all other County codes challenged in the claim letter, can be placed in four separate categories and treats each of them differently.

Category 1 regulations include those which must not be applied in order for Claimant Dorothy English to construct up to 8 houses on her property. The Board finds that it is appropriate to not apply the regulations in Category 1 to claimant Dorothy English in lieu of paying compensation.

Category 2 regulations are regulations which guide the manner in which development can occur. It is not possible to know at this time whether or to what degree they will restrict the development of the property. None of these regulations in and of themselves prevent construction of 8 homes on 8 parcels. Claimants may resubmit to the Board any land use regulation listed in Category 3 for reconsideration under Ballot Measure 37, if, during the development process, enforcement of the county's codes will result in a restriction in use that has the effect of reducing the fair market value of the property. The Board finds that it would be premature to order that the regulations in Category 2 not be applied.

Category 2 regulations include land division codes (partitions and subdivisions), which is the mechanism to create new parcels of land. The Board finds that land division codes can be regulations restricting the use of Claimant Dorothy English's property to the extent that it may prohibit her from partitioning or subdividing her parcel. We have made this finding because Mrs. English was a chief petitioner of Ballot Measure 37, and had expressed an interest in further dividing her property as part of that campaign. It is appropriate to not apply County codes that would prevent the subdivision of the property into a maximum of 8 lots, and construct up to 8 homes.

This is, notwithstanding that the measure is unclear that dividing land is a "use" of property that can be granted by not applying regulations, and that any rights to divide and develop the property gained by the claimant cannot be transferred to subsequent buyers.

Because of the uncertainties surrounding this issue for both claimants and buyers, the Board does not view this action as a precedent for deciding future claims and would hope that the matter is clarified by the legislature.

Until more information is known about how they intend to partition or subdivide the property, the Board cannot determine which land division provisions will need to not be applied to allow up to 8 houses on up to 8 lots. The board intends that partitions or a subdivision be allowed on the subject property, but the determination of which code provisions not be applied is premature.

Category 3 regulations are exempt from Ballot Measure 37 claims because they are necessary to protect public health and safety, are necessary to comply with federal law or they were enacted prior to acquisition date of the owner. The Board finds that the regulations in Category 3 should continue to apply to the claimants and the property.

Category 4 regulations have no bearing on the claim. The Board finds that the regulations in Category 4 are not relevant to the claim and should therefore continue to apply.

The Board's Order, below, lists each regulation that Claimant Dorothy English requests not be applied, in the appropriate category.

- f. **County Code Restrictions Reduce Fair Market Value:** The Board finds that land use restrictions prohibit Claimant Dorothy English from constructing one or more additional homes on her property and that the appraisal she submitted to the County is evidence to support a finding of diminution in value.
- g. **Enforcement of County Code Restrictions:** Land use regulations enacted after the date the owner acquires the property must be enforced for the measure to be operative. The CFU-2 and Protected Aggregate and Mineral zoning rules effectively prohibit additional permanent dwellings, reducing the value of the property. There is no application that Claimant Dorothy English can apply for that could lead to the approval of additional homes on her property and Board finds that the regulations, on their face, have been enforced.
- h. **Validity of Claim for Compensation:** The Board finds that:
 - (1) Claimants made a demand for compensation under the requirements set forth in Ballot Measure 37 by describing the use being sought, by identifying the regulations that prohibit the use, and by submitting evidence that land use regulations have reduced the value of the property;
 - (2) Claimant Dorothy English provided evidence to prove that she acquired the property in 1953, before the regulations challenged in the claim;
 - (3) There is evidence in the record to show that land use regulations now in place on the property restrict the use of real property, specifically the ability to place up to 8 dwellings on up to 8 lots on the subject parcel;



- (4) The appraisal submitted by Claimant Dorothy English is evidence that the land use restrictions now in place on the property have the effect of reducing the fair market value of the property;
- (5) The land use regulations that reduce the fair market value of the property have been enforced in that the plain language of the CFU-2 and Protected Aggregate and Mineral zoning prohibit additional permanent dwellings in the zone; and
- (6) The Board elects not to pay the compensation demanded by Claimant Dorothy English.

The Multnomah County Board of Commissioners Orders:

1. Claimant Dorothy English's request be granted and the land use regulations restricting the use of her property not be applied in order to allow up to 8 dwellings on up to 8 lots on the subject property. Category 1 regulations which will not be applied are listed below:

- §33.2215, Uses. Requires that any building, structure, or land be used in compliance with the Commercial Forest Use rules, which prohibit the creation of small lots and limit new dwellings because of the inherent conflict between residential and commercial timber uses.
- §33.2220, Allowed Uses. Lists the uses allowed without County review in the Commercial Forest Use zone, pursuant to the Forest Practices Act and Statewide Planning Goal 4. Developing more than one permanent dwelling on a parcel is not listed as allowed.
- §33.2225, Review Uses. Although not listed in the claim letter, this category of uses in the Commercial Forest Zone would also need to be set aside, as it lists those activities that are allowed subject to administrative review by the County and the subdivision or development proposed is not listed as allowed.
- §33.2230, Conditional Uses. Lists the uses allowed when approved through a hearings process and found to meet specific approval criteria. The development rights being sought are not listed in this section, and like other sections of the Commercial Forest Use code that list uses that are allowed, this one should not be applied to avoid any confusion as to whether or not Claimant Dorothy English can proceed to develop the property.
- §33.2235, Large Acreage Dwelling. This is a conditional use process for qualifying one dwelling on a large forested property. The argument for not applying this section is the same as that for §33.2230.
- §33.2240, Template and Heritage Tract Dwellings. This is a conditional use process for qualifying one dwelling where the undeveloped property is in an area where there are already several dwellings or the property has been held in the same ownership for a long period of time. It would be §33.2230. The argument for not applying this section is the same as that for §33.2230.

- §33.2245, Use Compatibility Standards. These rules require that development not force changes in, or significantly increase the costs of accepted forestry or farming practices on surrounding properties nor increase fire hazards or fire suppression costs on those properties. Developing up to 8 homes on 8 lots necessarily conflicts with adjoining farm and forest operations (that is why it is not allowed), thus this section of the code would have to be set aside.
- §33.2260, Dimensional Requirements. The 80 acre minimum lot size requirement prevents further division of the property and needs to be set aside. The 130' setback is a problem for smaller lots, therefore it should not be applied.
- §33.5700 et. seq., Protected Aggregate and Mineral Sites. These rules prohibit or severely limit new noise sensitive uses, such as dwellings, in close proximity to aggregate sites. The aggregate overlay covers all of Claimant Dorothy English's property because of its proximity to the Angel Brothers Quarry, which is approximately 630 ft to the north.

2. **Claimant Dorothy Mrs. English's request be denied relating to the land use regulations listed below. It would be premature to not apply those regulations given the available evidence. Claimants may resubmit to the Board any land use regulation for reconsideration under Ballot Measure 37, if enforcement of the county's codes during development will result in a restriction in use that has the effect of reducing the fair market value of the property. This section of the order applies to the following Category 2 regulations:**

- §33.2255, Single Family Dwelling Condition of Approval, Prohibition on Claims Alleging Injury From Farm or Forest Practices. This standard requires that deed restrictions be recorded putting owners on notice that they are prohibited from taking legal action against *adjacent* property owners who are farming or conducting timber harvest or other forest management activities on their properties.
- §33.2260, Dimensional Requirements. Building heights are limited to 35' in height and lots must be at least 50 feet wide. It is unclear whether or not these will be an issue since the claimant has not provided information regarding how they intend to divide the property or the type of homes that they want to build. Remaining standards in this section relate to non-conforming structures and agricultural structures, neither of which are the subject of this claim.
- §33.2285 and §33.4100 et. seq., Off-Street Parking and Loading. These standards require that sufficient area be provided on each lot for off-street parking (typically two spaces per dwelling).
- §33.2290, Access. Requires that the lots or parcels possess street frontage or other access that is safe and convenient. Might qualify as a health and safety requirement, exempt from the measure.

- §33.2305, Development Standards for Dwellings and Structures. Includes road grade, clearance and improvement standards to ensure that emergency equipment can access property and includes requirements for fire breaks and other similar measures to limit fire hazards in forested areas. Parts of these codes might qualify as health and safety requirements.
- §33.2310, Exception to Secondary Fire Safety Zones and Forest Practice Setbacks. Alternative to fire break requirement, relying instead on certain fire resistant building materials, sprinkler systems, alarms, etc. Might also qualify as a health and safety requirement, exempt from the measure.
- §33.4500 et. seq., Significant Environmental Concern. These standards require development be clustered and located close to roads to provide for wildlife movement throughout the greater forest park area. Alternative protection standards are available if these standards cannot be achieved. These rules also require development to ensure that views of the ridge as seen from certain vantage points on Sauvie Island, the Multnomah Channel, and Highway 30 are as natural as possible. This influences dwelling location, height, color, etc. None of these standards prohibit the development of homes or the creation of lots.
- §33.7000, Land Divisions. The code section listed appears to be in error. Land division rules are listed under §33.7700 et. seq. and contain standards that are not expressly required under ORS 92. None of them; however, would prevent a further land division. These standards influence the form that the subdivision takes, and since the claimant has not provided any information as to how they intend to divide the property it would be premature to not apply them.
- §4.000 et. seq., Access to County Roads. Regulates access onto County roads, primarily to ensure that it is safe. Will not, on its face, prevent the development of up to 8 homes on up to 8 lots on the subject property.
- §5.000 et. seq., Transportation Impact. Sets thresholds as to what constitutes a traffic impact that might warrant a traffic study. Does not, in itself, dictate whether or not up to 8 homes on up to 8 lots can be built on the subject property.
- §6.000, Improvement Requirements. Could require certain public improvements depending upon the nature of the development that is proposed (e.g. culverts, paved approach, etc.). Might qualify as health and safety requirement.
- §7.000, Transportation Impact Studies. Includes requirements for studies. The need for a study is dependant upon the nature of the development that is proposed.
- §8.000, Off-Site Improvements. Would be limited to improvements along McNamee Road. Unlikely that they would be sought unless necessary for health and safety purposes and impossible to identify without having some ideas as to how the property is to be developed.

- §9.000, Compliance Method. Relates to how infrastructure improvements are guaranteed (e.g. developer constructs them, they pay the County to build, non-remonstrance, etc.). Dependant upon development that is proposed.
 - §16.000 et. seq., Variances from County Standards and Requirements. Contains rules for obtaining a variance to road rules. Impossible to know if any are needed without some idea as to how the property would be divided and developed.
- §29.506, Permits Required. Regulates work within the right-of-way. Whether or not improvements are needed within the road right-of-way depends upon the development that is proposed.
- §29.508, Acceptance of Deeds and Easements for Road Purposes. Regulates how these legal instruments must be structured. Impossible to know if dedications are needed without an idea as to how they intend to develop the property.
 - §29.560, Street Standards, Rules and Guidelines. Explains that street standards implement established rules and policies and that access requirements are based upon the functional classification of a road. Largely a policy statement that may not be directly applicable to a subdivision or development. If directly applicable, impossible to say how it would impact this claim because no information has been provided as to how they intend to develop the property.
 - §29.571, Right-of-Way and Improvement Standards. Requires road frontage within public rights-of-way to be improved where it is presently substandard and adjoining private development is adding a significant amount of traffic to the road segment. Might not be an issue with this section of McNamee Road.
 - §29.572, Rules for Streets, Roads and Rights-of Way. Contains requirements for construction of public streets and roads, and the dedication of right-of-way for road purposes. It is unclear whether or not this will be an issue, since we do not know how they intend to develop the property.
 - §29.573, Rules for Drainage Facilities. Includes standards for managing drainage across properties. It is unclear as to the extent to which these standards apply since we do not know how they intend to develop the property.
 - §29.574, Rules for Traffic Control and Traffic Control Devices. Includes standards for stop signs and signalization. If it is at all applicable, its provisions are likely health and safety related and therefore exempt.
 - §29.577, Utility Locations. Regulates how utilities are installed within the public right-of-way. Standards are typically applied to utility providers, not developers, so it is possible that they might not even apply.
 - §29.578, Rules for Right-of-Way Use. Regulates location and number of accesses onto public roads. Might be exempt as necessary for health and safety, considering the curvature and grade of McNamee Road. The extent to which these standards apply though is unknown.

- §29.582, Rules for Accessways. Contains standards for the size and configuration of certain private roads. Impossible to know how these standards relate to this claim, since no information has been provided as to how the property is to be developed and access provided.
 - §12.000 et. seq., Public Roads. Standards are generally tailored to ensure that roads are safe and passable for emergency vehicles. Impossible to know how these standards relate to this claim, since no information has been provided as to how the property is to be developed.
 - §18.000 et. seq., Right-of-way Permits. Includes rules regulating how and where approaches onto a County Road are constructed. Largely health and safety related. Since no information has been provided as to where new approaches would be constructed onto the property, it is impossible to know how these standards relate to this claim.
3. **Claimant Dorothy English's request be denied because the regulations are exempt from Ballot Measure 37. These regulations are necessary to protect public health and safety or to comply with federal law. This section of the order applies to the following Category 3 regulations:**
- §33.5500 et. seq., Hillside Development and Erosion Control. A zoning overlay that applies to steeply sloped terrain or areas that have been mapped as susceptible to landslides, debris flows, etc. Its purpose is to ensure that proposed development is safe, and that the earthwork will not destabilize the slopes.
 - §29.350 West of Sandy River Grading and Erosion Control Code. This code citation is an error as it is applicable to the West of Sandy area. The Grading code applicable to this area is §29.330. Grading and erosion control rules have no bearing on whether or not up to 8 homes can be built on the subject property. They are structured to ensure that soil erosion attributed to development is minimized and storm run-off attributed to development is properly managed. These standards are necessary for health and safety and implement federal law, such as the Clean Water Act.
4. **Claimant Dorothy English's request be denied because the regulations she seeks to have the County not apply have no bearing on the claim. This section of the order applies to the following Category 4 regulations:**
- §33.2265, Lot of Exception. These rules allow the creation of small lots in certain circumstances, such as if there are 2 dwellings on a lot as of a certain date, assuming all other rules apply. They would have no bearing on Claimant Dorothy English's ability to divide or develop the property through waiver of other provisions of the Commercial Forest Use code.
 - §33.2270, Lot Line Adjustment. The requirement is relevant to when a land owner wants to move a line common to two lots or parcels.

- §33.2275, Lot of Record. These provisions explain what a legal, developable property is within the Commercial Forest Zone.
- §33.2280, Lot Sizes for Conditional Uses. This claim is not seeking to establish a use that is conditionally allowed in the Commercial Forest zone, so this provision is irrelevant to the request.
- §33.4300 et. seq., Planned Development. These standards allow the creation of lots smaller than would otherwise be allowed if remaining land is, for example, preserved as a common area for the residents. Its applicability is largely limited to urban areas.
- §33.7000 et. seq., Design Review. Not applicable to single family development.
- §33.7200 et. seq., Nonconforming Uses. Applies to the alteration or replacement of an existing non-conforming use. To our knowledge this claim does not involve any existing non-conforming uses; therefore, these provisions are not applicable.
- §33.7400 et. seq., Signs. This claim is not seeking to place signs on the property so these provisions are not applicable.
- §33.7000, Land Divisions. The code section listed appears to be in error. Land division rules are listed under §33.7000 et. seq. and contain standards that must be followed to create new conveyable properties in accordance with ORS 92. This statute is not referenced in Ballot Measure 37, so rules implementing it are outside the scope of this claim.
- §10.000 et. seq., Road. Corridor Specific Cross-Section Overlay. Applies to unique roadways such as freight corridors, Boulevards, etc. Is not applicable to McNamee Road.
- §11.000 et. seq., Local Access Roads. Establishes minimum standards for roads that are not maintained by the public but are located within publicly dedicated rights-of-way. No such rights-of-ways presently exist on, or in close proximity to the site.
- §13.000 et. seq., Temporary Road Closures. Requirements for when and how temporary road closures are to occur. Not applicable to a request to subdivide and develop property.
- §15.000 et. seq., Truck and Transit Restrictions. Restricts movement of large trucks and transit vehicles on certain roadways. Since the development sought does not generate either, it is not applicable.
- §17.000 et. seq., Appeals. Process for challenging how the County applies road standards. County processes, in themselves, are not land use regulations that are subject to Measure 37 claims.
- §22.000 et. seq., Property Owner Maintenance Requirements. Applies to maintenance of sidewalks and curbs within the right-of-way.

- §29.500, Street Standards. It contains no language that would be directly applicable to land divisions or development.
- §29.530, Street Standards, Adoption of Rules. Contains language explaining how the street standards can be amended. The provisions are procedural and outside the scope of the measure.
- §29.562, Local Street Category. Defines what constitutes a local street and is, in itself, not a standard that would be directly applicable to the subdivision of the property or the construction of homes.
- §29.563, Land Use Category. Rules are crafted for urban areas where site specific zoning is at odds with the classification of the roadway. Is not applicable to rural areas.
- §29.565, Scenic Route Category. Applies to scenic routes such Skyline Boulevard. Not applicable to McNamee Road.
- §29.575, Rules for Pedestrian Paths and Bikeways. Rules for when new paths and bikeways are required. Not applicable to rural local roadways, such as McNamee Road.
- §29.576, Rules for Sanitary Sewer. Contains standards for constructing sewer infrastructure within public roadways. State law prohibits new sewer systems outside Urban Growth Boundaries; therefore, this section of the code is not applicable. Any new lots or parcels would need to be served by on-site septic systems.
- §29.579, Rules for Street Lighting. Street lighting is required with urban subdivisions where districts exist or are formed to pay for on-going maintenance and utility costs. These provisions are not applicable to rural areas.
- §29.580, Rules for Street Trees. Street trees are required in conjunction with urban subdivisions and are not applicable to this request.
- §29.581, Rules for Development Support and Financing. Rules relate to the formation of local improvement districts and cost sharing of improvements by the County. None of these standards appear to be directly applicable to this claim.
- §29.620, West of Sandy River Flood Hazard Regulations. This code citation is an error as it is applicable to the West of Sandy area. The Flood Hazard code applicable to this area is §29.600. The property is not within a mapped Flood Hazard Area so these standards are not applicable.
- §33.7000, Land Divisions. The code section listed appears to be an error. Land division rules are listed under §33.7700 et. seq. and contain standards that must be followed to create new conveyable properties in accordance ORS 92. They are only

relevant to the partitioning or subdivision of property and are; therefore, outside the scope of the measure.

5. Conditions of Approval:

- (a) This Board Order allows certain County code provisions not to be applied by the County to Claimant Dorothy English's property as set out in Category 1 above. This does not constitute a waiver or modification of corresponding state law, or administrative rules.
- (b) This action by the Board, to not apply certain regulations to Claimant Dorothy English's property, does not authorize immediate construction of the dwellings. Rules that still apply to the property require that land use and building permits be approved by the County before development can proceed.
- (c) Any plat must include a note that this plat must record pursuant to Ballot Measure 37.

ADOPTED this 17th day of March, 2005.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Sandra Duffy
Sandra Duffy, Assistant County Attorney

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

IN THE MATTER OF THE CLAIM)
FOR COMPENSATION UNDER)
BALLOT MEASURE 37 (CHAPTER)
1, OREGON LAWS 2005) OF)
English, Verhoef and Sellers, CLAIMANTS)

FINAL ORDER
CLAIM NO. M 118917

Claimant(s): Dorothy English, Christie Verhoef, and Douglas Sellers (the Claimant(s))

Property: T2N R1W, Section 32A, Tax Lot 1200, Multnomah County

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

Claimants 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) and the Oregon Department of Forestry (the ODF Report) both attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

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 Ms. English's partition of the property into eight legal parcels, and the construction of a single family home on each parcel: ORS 92.012, 92.016, 92.025 and 92.042, the minimum lot sizes and dwelling standards established by Statewide Planning Goals 4 and 14, and ORS 215.705 to 215.755 and 215.780, except ORS 215.730 and those provisions of Goal 4 relating to siting standards for dwellings for the protection of public health and safety, and except for those provisions of the listed statutes in ORS chapter 92 that were in effect when Ms. English acquired the property in 1953.

2. In lieu of paying just compensation under Measure 37, the State of Oregon will not apply those provisions of the following laws to Ms. Verhoef's and Mr. Seller's partition of the property into eight legal parcels, and the construction of a single family home on each parcel: ORS 92.012, 92.016, 92.025 and 92.042, the minimum lot sizes and dwelling standards established by Statewide Planning Goals 4 and 14, and ORS 215.705 to 215.755 and 215.780, except ORS 215.730 and those provisions of Goal 4 relating to siting standards for dwellings for the protection of public health and safety, and except for those provisions of the listed Statewide Planning Goals and statutes that were in effect when Ms. Verhoef and Mr. Sellers acquired their interest in the property in 1999.

3. Ms. English may use the Property based on the order only for a use permitted at the time she acquired her interest in the Property. The use of Property permitted in 1953 was governed by laws that include, but are not limited to, the provisions of ORS chapter 92 that existed at that time. Ms. Verhoef and Mr. Sellers may use the Property based on the order only for a use permitted at the time they acquired their interest in the Property.

4. 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 Claimants first obtain 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.

5. Any use of the Property by the Claimants under the terms of this order remains subject to the following laws: (a) those laws not specified in (1) and (2), 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.

6. Without limiting the generality of the foregoing terms and conditions, in order for the Claimants to use the Property, it may be necessary for the Claimants 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 Claimants 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 Claimants.

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 chapter 125, division 145, by the Acting Director as a final order of DAS under Measure 37, OAR chapter 125, division 145 and ORS chapter 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under Measure 37 and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:

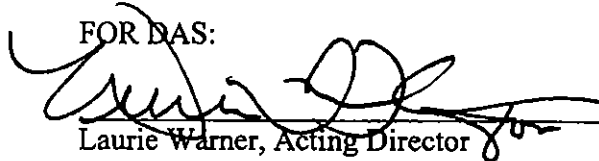


Lane Shetterly, Director

DLCD

Dated this 27th day of May, 2005.

FOR DAS:



Laurie Warner, Acting Director

DAS

Dated this 27th day of May, 2005.

FOR THE OREGON BOARD OF
FORESTRY AND THE OREGON
DEPARTMENT OF FORESTRY:



Clark Seely, Associate State Forester

ODF

Dated this 27th day of May, 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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."



December 23, 2004

Re: Ballot Measure 37 – State and Local Coordination

To All Interested Parties:

Shortly following the passage of Ballot Measure 37, leadership from the League of Oregon Cities, the Association of Oregon Counties and the state began meeting to discuss the measure and how to coordinate its implementation between the state and local governments. That effort is continuing, with an emphasis on process and protocol as we gain experience with the first claims filed under the measure.

The claims that have been filed so far underscore the need for all levels of government to work together and to keep open the lines of communication and information sharing. Given the state and local coordination in our land use planning program, it is apparent that many claims will raise issues relating to both state and local land use regulations. It will be important that the state and affected local governments be aware of those claims, to help ensure consistency and to better serve our constituents.

Coordinated communication will help the state and local governments identify issues of common interest or concern regarding the interpretation and application of the measure so that implementation does not vary widely from one jurisdiction to another. This should minimize conflicts that otherwise might arise between government entities involved in the same or similar claims.

With these principles in mind, we have agreed upon these basic processes to facilitate cooperation and communication between the state and local governments in implementing Ballot Measure 37:

Local governments should provide copies of claim information to the League of Oregon Cities or the Association of Oregon Counties on all Measure 37 claims. This does not need to include the full claim, but should be sufficient to provide essential information to identify it. The League and AOC will share that information with the state as to any claims that may involve a state land use regulation. Likewise, the state will provide local governments with copies of claim information on all claims filed on property within the local government jurisdiction.

December 23, 2004

Page 2

Local governments should instruct claimants who file claims at the local level that they should also file a claim with the state if the claim appears to involve a state land use regulation. State claim information and the state claim form are available on the Department of Administrative

Services (DAS) website. Local governments may refer claimants to the website or download the forms and make them available to claimants. The DAS website address is:

www.oregon.gov/DAS/Risk/M37.shtml.

DAS is in the process of establishing an on-line claims registry. The registry will include all claims filed with the state, and DAS intends to make it available to local governments to input their claims information as well. Further information will be available about this on-line registry shortly after the New Year. We encourage all local governments to take advantage of this central claims registry. This registry will help provide the most complete information available about the number and types of claims on a statewide basis, and will serve as a valuable resource for local governments, in particular. You will receive further information about this when the registry is ready for implementation.

We are pleased to be able to communicate with you jointly about this important matter. The League, AOC and the state will continue to meet on a regular basis to coordinate on the implementation of Ballot Measure 37. You may expect to hear further from us as we move forward with those efforts. If you have questions that you would like to address to our joint group, please contact your organization.

Thank you for your cooperation and support of our joint effort.

Yours very truly,



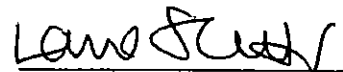
Mike McArthur
Executive Director
Association of Oregon Counties

PO Box 12729
Salem, OR 97309
Fax: (503) 373-7876
Ph: (503) 585-8351



Ken Strobeck
Executive Director
League of Oregon Cities

P.O. Box 928
Salem, OR 97308
Fax: (503) 399-4863
Ph: (503) 588-6550



Lane Shetterly
Measure 37 Coordinator
State of Oregon

635 Capitol St. NE, #150
Salem, OR 97301
Fax: (503) 378-5518
Ph: (503) 373-0050 x280

Volume _____ Page _____

After Recording Return To:

Jackson County Board of Commissioners
10 S. Oakdale, Room 200
Medford, Oregon 97501



01097281200500148250080082

I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Kathleen S. Beckett - County Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON

(8)

IN THE MATTER OF DECIDING THE)
CLAIM FILED UNDER BALLOT)
MEASURE 37 BY BERNARD AND)
CAROLYN ALEXANDER AND)
CHARLES AND LORETTA NELSON)

ORDER No. 101-05

WHEREAS, Ballot Measure 37 amended Chapter 197 of the Oregon Revised Statutes by initiative vote of the People of Oregon at the November 2, 2004 general election; and

WHEREAS, Bernard and Carolyn Alexander (collectively, the "Alexanders") and Charles F. and Loretta Nelson (collectively, the "Nelsons") filed a claim under Measure 37 (the "Claim") with Jackson County on December 30, 2004; and

WHEREAS, the Claim concerns certain real property (the "Property") totaling 60.78 acres in size and located at 3460 and 3470 Dry Creek Road, Medford, Oregon. Township 37 South, Range 1 West, Section 3, Tax Lots 2300 and 2301 and Township 37 South, Range 1 West, Section 4, Tax Lots 1602 and 1604, and further described in those certain bargain and sale deeds recorded as document numbers OR 01-31356 (Tax Lot 2300), OR 72-10317 (Tax Lot 2301), OR 94-41820 (Tax Lot 1602) and OR 78-22774 (Tax Lot 1604) in the real property records of Jackson County (the "Property"); and

WHEREAS, the Alexanders own all four tax lots comprising the Property, and the Nelsons retained a life estate in Tax Lot 1602 after conveying it to the Alexanders in 1994; and

WHEREAS, Tax Lots 2300 and 2301 are separate, lawfully created parcels, and Tax Lots 1602 and 1604 were and continue to be unlawfully created; and

WHEREAS, the Property is located outside of all urban growth boundaries; and

WHEREAS, the Claim does not seek compensation from Jackson County, but estimates that approximately \$8,300,000 to \$16,300,000 of damage has resulted from the adoption of restrictive land use regulations; and

WHEREAS, the Claim seeks approval for creation of one-half (1/2) acre and one (1) acre lots

101-05

on the Property, and that these lots be zoned RR-00; and

WHEREAS, the County Administrator has investigated the claim, and has forwarded to the Board of Commissioners a recommendation, a copy of which is attached hereto as Exhibit A, that the Board of Commissioners: (1) declare the Claim to be valid with respect to the Alexanders' ownership interest in Tax Lot 2301, (2) declare the Claim to be invalid, and deny the Claim, with respect to the Alexanders' ownership interest in Tax Lot 2300, (3) declare the Claim to be invalid, and deny the Claim, with respect to the Alexanders' ownership interest in Tax Lots 1602 and 1604, (4) declare the Claim to be invalid and deny the Claim, with respect to the Nelsons' life estate interest in Tax Lot 1602, and (5) further recommends that the Board of Commissioners modify, remove or not apply certain land use regulations to allow the Alexanders to use Tax Lot 2301 for a use permitted at the time they acquired the Property, which was August 1, 1972; and

WHEREAS, the Board of Commissioners adopts the findings contained in Exhibit A as its own findings; and

WHEREAS, the Board of Commissioners further finds that: (1) Tax Lot 2301 was not subject to any zoning restrictions on August 1, 1972, the date that it was acquired by the Alexanders (although it was subject to other land use restrictions, as indicated in Exhibit A), but was subsequently zoned Exclusive Farm Use ("EFU"), (2) EFU zoning severely restricts the uses that may be made of Tax Lot 2301, and the restrictions imposed by EFU zoning have the effect of reducing the fair market value of Tax Lot 2301, (3) Tax Lot 2300 was acquired by the Alexanders in 2001, and was zoned Exclusive Farm Use ("EFU") at the time of acquisition, (4) There have been no land use regulations adopted subsequent to acquisition of Tax Lot 2300 that have placed restrictions on Tax Lot 2300 or that have diminished its fair market value, (5) Tax Lot 1604 is approximately 2.32 acres in size, and was split from Tax Lot 1602 in 1978, at a time when the existing land use regulations required a minimum parcel size of 5 acres, thus resulting in unlawful creation status for both Tax Lot 1604 and the "parent" parcel from which it came (Tax Lot 1602), and (6) the land use regulations existing at the time that Tax Lots 1602 and 1604 were unlawfully created provided that unlawfully created parcels lose all development rights; and

WHEREAS, the financial condition of Jackson County constrains the county's ability to pay compensation to satisfy the Alexanders' Measure 37 claim with respect to Tax Lot 2301; and

WHEREAS, after careful consideration of the Claim, and competing policy considerations that are implicated by the Claim, the Board of Commissioners believes that the interests of Jackson County are best served by modifying, removing or not applying the land use regulations which reduce the fair market value of Tax Lot 2301 - other than those land use regulations specified in Subsection 3 of Measure 37 - that were adopted by Jackson County subsequent to the date of acquisition of Tax Lot 2301 by the Alexanders, which was August 1, 1972; and

WHEREAS, the Board of Commissioners recognizes that the transferability of the decision contained in this Order to subsequent owners of the Property under Measure 37 is an issue that has not been resolved, but that the Oregon Department of Justice, in a letter of advice dated February 24, 2005 and addressed to Lane Shetterly of the Department of Land Conservation and Development, has

advised the following:

[W]hen a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by “not applying” the law, *that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.* We also consider the result where the public entity elects to “modify or remove” the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. *This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.* (Emphasis added); and

WHEREAS, the Board of Commissioners desires to advise the Alexanders and the Nelsons, any subsequent owners of the Property, and all other interested persons that Jackson County expresses no opinion with regard to whether the decision in this Order may be transferred to subsequent owners of the Property, and that subsequent owners of the Property assume all risks that the decision in this Order is nontransferable; and

WHEREAS, the Board of Commissioners desires to advise the Alexanders and the Nelsons, any subsequent owners of the Property, and all other interested persons that the decision contained in this Order concerns only land use regulations adopted by Jackson County, that a Measure 37 claim may also need to be filed with the State of Oregon for land use regulations adopted by the State of Oregon before a use may be made of the Property that was permitted at the time that the Alexanders acquired the Property, and that Jackson County expresses no opinion in this Order with regard to the need to file a claim with the State of Oregon, the proper procedure for filing a claim with the State of Oregon, or the appropriateness of any decision rendered by the State of Oregon; and

WHEREAS, the Board of Commissioners desires to advise the Alexanders and the Nelsons, any subsequent owners of the Property, and all other interested persons, of the nature of the decision contained in this Order, and therefore wishes that this Order be recorded in the real property records of Jackson County maintained by the County Clerk.

NOW THEREFORE, the Board of County Commissioners of Jackson County, Oregon hereby ORDERS:

1. The Claim is declared to be valid with respect to the Alexanders' ownership interest in Tax Lot 2301.

2. The Claim is declared to be invalid and is denied with respect to the Alexanders' ownership interest in Tax Lot 2300. Tax Lot 2300 was zoned EFU on the date of its acquisition by the Alexanders (July 5, 2001), and there is no evidence that subsequently adopted land use regulations restrict the use of Tax Lot 2300, or reduce the fair market value of Tax Lot 2300.
3. The Claim is declared to be invalid and is denied with respect to the Alexanders' ownership interest in Tax Lots 1602 and 1604, and the Nelsons' life estate interest in Tax Lot 1602. Tax Lots 1602 and 1604 were unlawfully created, and land use regulations existing at the time of their creation provide that they lost their development rights.
4. In order to allow the Alexanders to use Tax Lot 2301 for a use permitted at the time that they acquired it (August 1, 1972), the following Jackson County land use regulations shall not be applied:
 - a. The development standards contained in Chapter 4 of Jackson County's Land Development Ordinance ("LDO");
 - b. The minimum parcel size requirements for Exclusive Farm Use (EFU) zones in Table 8.2-1 of the LDO;
 - c. The subdivision tentative plan review and final plat requirements of Section 10.3 of the LDO;
 - d. The minimum setback requirements of Section 8.5 of the LDO;
 - e. The private road standards of Section 9.5.3 of the LDO, or the public road standards of Section 9.5.2 of the LDO, whichever is applicable;
 - f. The Agricultural Lands Element of the Jackson County Comprehensive Plan;
 - g. The Housing Element of the Jackson County Comprehensive Plan;
 - h. The Rural and Suburban Lands Element of the Jackson County Comprehensive Plan; and
 - i. The Urban Lands Element of the Jackson County Comprehensive Plan.
4. Upon submission of a proper application by the Alexanders, the Jackson County Planning Commission is directed to process the land division application pursuant to and in compliance with the 1959 Subdivision Ordinance, and the 1972 Comprehensive Plan criteria in effect as of August 1, 1972.

5. The Board of Commissioners finds that the land use regulations that will not be applied identified in this Order do not regulate activities that are commonly and historically recognized as a public nuisance, do not protect the public health and safety, and are not required to comply with federal law.
6. All other land use regulations, including but not limited to access and slope management, not specifically identified in this Order as not being applied, shall continue to apply in full force and effect.
7. The decision contained in this Order shall be transferable to subsequent owners of the Property to the maximum extent permitted by Measure 37, if any.
8. This Order shall be recorded in the real property records maintained by the Jackson County Clerk, and the County Clerk shall record this Order without payment of recording fees.

DATED this 16th day of March, 2005, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS

Dave Gilmour

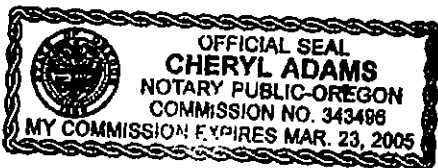
Dave Gilmour, Acting Chair

ATTEST:

Nancy Mitchell
Recording Secretary

STATE OF OREGON)
) ss
County of Jackson)

This instrument was acknowledged before me on March 16, 2005, by Dave Gilmour, as the Acting Chair of the Jackson County Board of Commissioners.



Cheryl Adams
Notary Public for Oregon
My Commission expires: 03-23-05

5-

101-05

**JACKSON COUNTY ADMINISTRATOR'S SUMMARY
COMPENSATION CLAIM FILED UNDER BALLOT MEASURE 37**

CLAIMANTS: Bernard & Carolyn Alexander
3460 Dry Creek Road
Medford, OR 97504

FILE: M372004-00009

REP. DATE: February 15, 2004

Charles F. and Loretta Nelson
3470 Dry Creek Road
Medford, OR 97504

AGENT: Arbee Freeman
PMB 313 - 2019 Aero Way, Ste 103
Medford, OR 97504

Land Use Regulations: 2004 Land Development Ordinance and Comprehensive Plan Elements: (1) Development standards in Chapter 4; (2) the minimum parcel size requirements for EFU zones in Table B-2-1; (3) the subdivision tentative plan review and final plan requirements of Section 10.3; (4) minimum setback requirements of Section 8.5; (5) fire safety requirements of Section 8.7; (6) private road standards of Section 9.6; (7) public road standards of Section 8.3/2, whichever is applicable; (8) Agricultural Lands Element; (9) Housing Element; (10) Natural Hazards Element; (11) Rural and Suburban Lands Element; (12) Urban Lands Element.

RECOMMENDATION: It is recommended the Board of Commissioners deny the land division demand submitted for Tax Lot 2600 as it was acquired by the current owner in the year 2001 and the Claimant has failed to prove that a land use regulation was enacted after acquisition that restricted its use and reduced its fair market value. It is also recommended that the Board deny the land division demand submitted for parcels identified as Tax Lots 1602 and 1604 because at the time of this claim they are not considered lawfully created parcels. It is recommended that the Board approve the land division and homesite development demand submitted for Tax Lot 2600, and that the Board not apply the following land use regulations for this parcel pursuant to Measure 37: 1, 2, 3, 4, 6, 7, 8, 10, and 11. Upon submission of the proper application, the Jackson County Planning Commission is directed to process the land division application pursuant to and in compliance with the 1959 Subdivision Ordinance and the 1972 Comprehensive Plan criteria in effect as of August 1, 1972, the date of acquisition by the Claimants. This action by the Board of County Commissioners is the most extensive use allowed under this Measure 37 claim, and all other requirements not specifically waived by the Board of Commissioners must be met.

MEASURE 37 INFORMATION

DEMAND: In lieu of compensation, applicant requests the Board of Commissioners grant approval for creation of one-half (1/2) and one (1) acre lots from their ownership, which totals 60.78 acres. The claimant requests these properties be given an RR-00 zoning because that zoning would allow them to "maximize the unique landscape, developing lots of various sizes." It is presumed that the claimant would also desire approval to place a single family dwelling on each parcel without application of the development standards in Chapter 4. The claimant does not desire compensation.

CLAIM BASIS: The claimant correctly claims resource zoning (EFU) prevents development of parcels less than 80 acres in size. The RR-00 zoning does not provide for land division, contrary to what the claimant asserts.

EXHIBIT 'A'

6-

DEMONSTRATION OF DIMINUTION IN VALUE: Evidence was submitted that the total appraisal of these four lots by Jackson County is \$1,756,615, and "being developed under the RR-00 zoning guidelines would be worth \$10,000,000 to \$18,000,000 based on lots with valley view, location and size of lots."

PROPERTY DESCRIPTION: Township 37 S, Range 1 West, Section 3, Tax Lots 2300 and 2301 and Township 37 S, Range 1 West, Section 4, Tax Lots 1602 and 1604, located at 3460 and 3470 Cry Creek Road, Medford, Oregon.

PARCEL SIZE: Tax Lot 2300, 38.79 Acres; Tax Lot 2301, 6.51 Acres; Tax Lot 1602, 13.16 Acres, Tax Lot 1604, 2.32Acres. Total 60.78 acres.

DATE OF ACQUISITION BY PRESENT OWNER: Present owners, Bernard and Carolyn Alexander, acquired Tax Lot 2300 by deed (OR 01-31356) on July 5, 2001; Tax Lot 1602 by deed (OR 94-41820) on November 22, 1994; Tax Lot 1604 by deed (OR 78-22774) on September 27, 1978; and Tax Lot 2301 by deed (OR 72-10318) on August 1, 1972, continuous ownership demonstrated. Charles F. and Loretta R. Nelson retained a life estate on Tax Lot 1602 when they sold the property to the present owner.

ZONING IN EFFECT ON DATE OF ACQUISITION: Tax Lot 2300 was zoned Exclusive Farm Use in 2001; Tax Lot 1602 was zoned Exclusive Farm Use in 1994; Tax Lot 1604 was zoned Rural Residential-5 in 1978; Tax Lot 2301 (6.51 Ac) was acquired when the Subdivision Ordinance, and the Comprehensive Plan was adopted, but Countywide zoning regulations had not as yet gone into effect. Note: When Tax Lot 1604 was created out of Tax Lot 1602 in 1978, it did not meet the minimum 5-acre requirement of the Rural Residential-5 zoning district, and thus cannot be considered as lawfully created parcels.

When Tax Lot 2301 was acquired, the Comprehensive Plan designation for Rural Residential was described as "parcels ranging from one to five acres", and the "county will establish a rural residential zoning district providing for rural land parcels of one, two and one-half, and five acres." The Subdivision Ordinance required a tentative plan, and design regulations which included access, sewage disposal, and water supply. Based in this information, Tax Lot 2301 could have been considered for a subdivision creating maximum one-acre parcels.

OTHER INFORMATION

CURRENT ZONING AND COMPREHENSIVE PLAN DESIGNATION: Exclusive Farm Use (EFU) zone, Agricultural land Map Designation.

ADJACENT LAND USES: Parcels to the north range in size from 3-36 acres assessed as "tract land"; Parcels to the east are 18 plus acres assessed as "tract land" with one 12-acre parcel receiving a "farm" assessment; parcels to the south are 3-30 acres in size assessed as "tract land"; and parcels west of the county road range in size from 5-6 acres receiving a "farm" assessment

KNOWN SITE DEVELOPMENT CONSTRAINTS: As tax lots 1602 and 1604 are currently developed with a residential use, access and potable water are presumed to exist.

LAND USE PERMIT ALTERNATIVE(S): Relative to Tax Lot 1604 not meeting the minimum zoning regulations in effect at the time of its creation, the applicant should be encouraged to consolidate

this parcel with Tax Lot 1602, and pursue a land division application to separate the two existing dwellings under the proper application and criteria.



I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Kathleen S. Beckett - County Clerk

Volume 212 Page 322

After Recording Return To:

Jackson County Board of Commissioners
10 S. Oakdale, Room 200
Medford, Oregon 97501

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF DECIDING THE)
CLAIM FILED UNDER BALLOT)
MEASURE 37 BY CLAUDE A. BENSON)
AND DELORES A. BENSON)

ORDER No. 60-05

WHEREAS, Ballot Measure 37 amended Chapter 197 of the Oregon Revised Statutes by initiative vote of the People of Oregon at the November 2, 2004 general election; and

WHEREAS, Claude A. Benson and Delores A. Benson (the "Bensons") filed a claim under Measure 37 with Jackson County on December 9, 2004; and

WHEREAS, the Bensons' Measure 37 claim concerns certain real property located at 6318 Adams Road, Talent, Oregon, and described in that certain warranty deed which was recorded as document number 88-01246 in the real property records of Jackson County (the "Property"); and

WHEREAS, the Property is located outside of all urban growth boundaries; and

WHEREAS, in their claim the Bensons indicate that in lieu of compensation they desire approval to (1) subdivide the 26-acre Property into five parcels, (2) create home sites for each parcel, and (3) waive private road access requirements; and

WHEREAS, in their claim the Bensons further request compensation for an additional one acre of land that they were forced to purchase to meet a 100 foot fuel break easement requirement if the land division, home site placement and road requirements are not modified, removed or are continued to be enforced; and

WHEREAS, the County Administrator has investigated the claim, and has forwarded to the Board of Commissioners a recommendation, a copy of which is attached hereto as Exhibit A, that the Board of Commissioners declare the claim to be valid, and further recommends that the Board of Commissioners modify, remove or not apply certain land use regulations to allow the

Bensons to use the Property for a use permitted at the time they acquired the Property; and

WHEREAS, the Board of Commissioners adopts the findings contained in Exhibit A as its own findings; and

WHEREAS, the Board of Commissioners further finds that Jack D. Wagner and Jeanne H. Wagner (the "Wagners"), along with the Bensons, executed a Memorandum of Land Sale Contract on April 6, 1979, which was recorded in the real property records of Jackson County as document number 79-07165 on April 10, 1979, and a Warranty Deed conveying title to the Property from the Wagners to the Bensons was recorded in the real property records of Jackson County on January 21, 1988 as document number 88-01246; and

WHEREAS, the Board of Commissioners further finds that the definition of the term "owner" contained in Measure 37 is "the present owner of the property, *or any interest therein.*" (Emphasis added); and

WHEREAS, the Board of Commissioners further finds that *Black's Law Dictionary* states that a secondary definition of the term "owner" "includes one having a possessory right to land or the person occupying or cultivating it;" and

WHEREAS, the Board of Commissioners concludes that the Bensons have had at least an equitable ownership interest in the Property dating back to April 6, 1979, although the Bensons did not obtain legal title to the Property until January 21, 1988; and

WHEREAS, the Board of Commissioners concludes that the reference to "any interest therein" in the definition of "owner" in Measure 37 includes the secondary definition of "owner" quoted above from *Black's Law Dictionary*; and

WHEREAS, the Board of Commissioners concludes that the Bensons' equitable ownership interest in the Property falls within the definition of "owner" contained in Measure 37, and is sufficient under Measure 37 to give rise to a valid claim for land use regulations that were adopted subsequent to April 6, 1979 and which restrict the use of the Property and which have the effect of reducing the fair market value of the Property; and

WHEREAS, the Board of Commissioners finds with respect to the Property that: (1) the Property was zoned OSD-5 at the time that it was acquired by the Bensons, (2) the Open Space Reserve (OSR) zoning that was placed on the Property subsequent to its acquisition by the Bensons severely restricts the uses that may permissibly be made of the Property, and (3) the severe restrictions imposed by OSR zoning has the effect of reducing the fair market value of the Property; and

WHEREAS, the financial condition of Jackson County constrains the county's ability to pay compensation to satisfy the Bensons' Measure 37 claim; and

WHEREAS, after careful consideration of the Bensons' claim, and competing policy considerations that are implicated by the Bensons' claim, the Board of Commissioners believes that the interests of Jackson County are best served by modifying, removing or not applying the land use regulations which restrict the use of the Property and which reduce the fair market value of the Property – other than those land use regulations specified in Subsection 3 of Measure 37 – that were adopted by Jackson County subsequent to the date of acquisition of the Property by the Bensons, which was April 6, 1979; and

WHEREAS, the Board of Commissioners recognizes that the transferability of the decision contained in this Order to subsequent owners of the Property under Measure 37 is an issue that has not been resolved; and

WHEREAS, the Board of Commissioners desires to advise the Bensons and any subsequent owners of the Property, that Jackson County expresses no opinion with regard to whether the decision in this Order may be transferred to subsequent owners of the Property, and that subsequent owners of the Property assume all risks that the decision in this Order is nontransferable; and

WHEREAS, the Board of Commissioners desires to advise the Bensons, and any subsequent owners of the Property, that the decision contained in this Order concerns only land use regulations adopted by Jackson County, that a Measure 37 claim may also need to be filed with the State of Oregon for land use regulations adopted by the State of Oregon before a use may be made of the Property that was permitted at the time that the Bensons acquired the Property, and that Jackson County expresses no opinion in this Order with regard to the need to file a claim with the State of Oregon, the proper procedure for filing a claim with the State of Oregon, or the appropriateness of any decision rendered by the State of Oregon; and

WHEREAS, the Board of Commissioners desires to advise the Bensons, any subsequent owners of the Property, and all other interested persons, of the nature of the decision contained in this Order, and therefore wishes that this Order be recorded in the real property records of Jackson County maintained by the County Clerk.

NOW THEREFORE, the Board of County Commissioners of Jackson County, Oregon hereby ORDERS:

1. In order to allow the Bensons to use the Property for a use (i.e. subdivide the Property and create home sites on each lot) permitted at the time that they acquired the Property (i.e. April 6, 1979), the following land use regulations shall not be applied: (1) Development standards contained in Chapter 4 of Jackson County's Land Development Ordinance ("LDO"); (2) Minimum parcel size requirements for OSR zones in Table 8.2-1 of the LDO; (3) Forest Lands Element and all of its policies within the Jackson County Comprehensive Plan (the "Comp Plan"); (4) Policy 6 of the Housing Element within the Comp Plan; and (5)

Policies 2 and 11 of the Rural and Suburban Lands Element within the Comp Plan.

- 2. The decision contained in this Order shall be transferable to subsequent owners of the Property to the maximum extent permitted by Measure 37, if any.
- 3. This Order shall be recorded in the real property records maintained by the Jackson County Clerk, and the County Clerk shall record this Order without payment of recording fees.

DATED this 16th day of February, 2005, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS

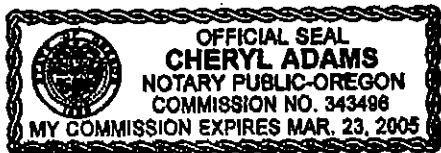

 Jack Walker, Chair


ATTEST:

Donna Bladek
 Recording Secretary

STATE OF OREGON)
) ss
 County of Jackson)

This instrument was acknowledged before me on February 16th, 2005, by Jack Walker, as the Chair of the Jackson County Board of Commissioners.




 Notary Public for Oregon

My Commission expires: 03-23-05

JACKSON COUNTY ADMINISTRATOR'S SUMMARY
COMPENSATION CLAIM FILED UNDER BALLOT MEASURE 37

CLAIMANT: Claude A. and Delores A. Benson

FILE: M372004-00006

AGENT: None

REP. DATE: 7 February 2005

MEASURE 37 INFORMATION

DEMAND: The claimant requests the Board of Commissioners grant approval to: (1) subdivide the 26 acre property into five parcels, (2) create home sites on each parcel, and (3) waive private road access requirements. The claimant requests compensation for the additional one (1) acre he was "forced to purchase" to meet the 100 foot fuelbreak requirement if the land division, homesite placement, and road requirements are not approved. After the Board's decision, he would agree to provide an appraisal.

CLAIM BASIS: The claimant correctly claims resource zoning prevents further land division and additional home site development.

DEMONSTRATION OF DIMINUTION IN VALUE: No evidence is provided that demonstrates the value of the property has been negatively affected by Open Space Reserve zoning.

PROPERTY DESCRIPTION: Township 38 S, Range 1 West, Section 28, Tax lot 702, located at 6318 Adams Road, Talent, Oregon.

PARCEL SIZE: 26 acres

DATE OF ACQUISITION BY PRESENT OWNER: April 10, 1979 (Claude A. and Delores Benson), continuous ownership. A minor property line adjustment was approved, and effected in 1989.

ZONING IN EFFECT ON DATE OF ACQUISITION: Open Space Development (OSD-5), which allowed creation of one residence per five acres. County regulations in effect since 1973 require frontage on approved access roads for new land divisions to assure safe access that is adequate for emergency vehicles. There is no record of any such review for the existing road. Effective September 6, 1978 the County reviewed each application for land division and road creation for applicability of Planning Goals 3 and 4. The soils on this parcel have steep slope characteristics, which could affect road safety and the stability of dwelling foundations.

Land Use Regulations: 2004 Land Development Ordinance and Comprehensive Plan Elements: (1) Development standards in Chapter 4, (2) the minimum parcel size requirements for OSR zones in Table 8.2.1, (3) the subdivision tentative plan review and final plat requirements of Section 10.30, (4) minimum setback requirements of Section 8.5, (5) the wildfire safety requirements of Section 8.7, (6) steep slope development standards of Section 9.3.1, (7) private road standards of Section 9.6.3, (8) Forest Lands Element and its policies, (9) Housing Element Policy 5.11, (10) Natural Hazards Element, Policies 1, 5 and 9, (11) Rural and Suburban Lands Element, Policies 2 and 11.

RECOMMENDATION: It is recommended the Board of Commissioners not apply the following Land Development Ordinance and Comprehensive Plan land use regulations: 1, 2, 8, 9, and 11. The applicant should be advised that all other requirements particularly access and slope management and other requirements not specifically waived by the Board of Commissioners must be met.

OTHER INFORMATION

CURRENT ZONING AND COMPREHENSIVE PLAN DESIGNATION: Open Space Reserve zone, Forestry/Open Space Plan Map Designation.

ADJACENT LAND USES: Forest/woodland and scattered homesites characterize the area.

KNOWN SITE DEVELOPMENT CONSTRAINTS: As the parcel is currently developed with a residential use, access and potable water are presumed to exist.

LAND USE PERMIT ALTERNATIVE(S): The County evaluated and denied a mapping error review for the claimant in the early 1980's. In December, 2000 staff advised a change in zoning to RR-5 would be difficult to achieve. Jackson County is not authorized by BM37 to waive statutory requirements such as those contained in ORS Chapter 92 (Subdivisions and Partitions). Thus, division of this land would require the BOC review and approve a tentative subdivision plan and approve the final survey plat. An engineer's design report for the private road would also be required prior to approval of any final plat.

RECEIVED

Volume _____ Page _____

APR 05 2005

After Recording Return To:

JACKSON COUNTY
PLANNING

Jackson County Board of Commissioners
10 S. Oakdale, Room 200
Medford, Oregon 97501



I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon,
certify that the instrument identified herein was recorded in the Clerk
records. Kathleen S. Beckett - County Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF OREGON, COUNTY OF JACKSON

(6)

IN THE MATTER OF DECIDING THE)
CLAIM FILED UNDER BALLOT)
MEASURE 37 BY BILL R. MONTAGUE)
AND RUTH L. MONTAGUE)

ORDER No. 129-05

WHEREAS, Ballot Measure 37 amended Chapter 197 of the Oregon Revised Statutes by initiative vote of the People of Oregon at the November 2, 2004 general election; and

WHEREAS, Bill R. Montague and Ruth L. Montague (collectively, the "Montagues") filed a claim under Measure 37 (the "Claim") with Jackson County on December 3, 2004; and

WHEREAS, the Claim concerns certain real property (the "Property") totaling 3.55 acres in size and located and accessed from the southbound Interstate Highway 5 on and off ramps with the Rogue River Highway east of the City of Rogue River, Oregon, Township 36 South, Range 4 West, Section 25, Tax Lots 2800, and further described in that certain warranty deed recorded as document number OR 78-28254 in the real property records of Jackson County (the "Property"); and

WHEREAS, the Property is located outside of all urban growth boundaries; and

WHEREAS, the Claim does not seek compensation from Jackson County, but seeks approval for a tourist-oriented, alpine-style cheese and nut tasting room; and

WHEREAS, the County Administrator has investigated the claim, and has forwarded to the Board of Commissioners a recommendation, a copy of which is attached hereto as Exhibit A, that the Board of Commissioners: (1) declare the Claim to be valid and not apply certain land use regulations that were adopted subsequent to acquisition of the Property by the Montagues which restrict the use of the Property and which diminish the fair market value of the Property; and

WHEREAS, the Board of Commissioners adopts the findings contained in Exhibit A as its own findings; and

WHEREAS, the Board of Commissioners further finds that: (1) the Property was subject to Farm Residential (F-5) zoning restrictions, and designated Interchange Commercial (IC) in the county's Comprehensive Plan on December 12, 1978, the date that it was acquired by the Montagues,

129-05

but was subsequently zoned Exclusive Farm Use ("EFU") and designated Agricultural Lands on the Comprehensive Plan map, and (2) EFU zoning and Agricultural Lands designation severely restricts the uses that may be made of the Property, and the restrictions imposed by EFU zoning and Agricultural Lands designation have the effect of reducing the fair market value of the Property; and

WHEREAS, the financial condition of Jackson County constrains the county's ability to pay compensation to satisfy the Montagues' Measure 37 claim with respect to the Property; and

WHEREAS, after careful consideration of the Claim, and competing policy matters that are implicated by the Claim, the Board of Commissioners believes that the interests of Jackson County are best served by modifying, removing or not applying the land use regulations which reduce the fair market value of the Property – other than those land use regulations specified in Subsection 3 of Measure 37 – that were adopted by Jackson County subsequent to the date of acquisition of the Property by the Montagues, which was December 12, 1978; and

WHEREAS, the Board of Commissioners recognizes that the transferability of the decision under Measure 37 contained in this Order to subsequent owners of the Property is an issue that has not been resolved, but that the Oregon Department of Justice, in a letter of advice dated February 24, 2005 and addressed to Lane Shetterly of the Department of Land Conservation and Development, has advised the following:

[W]hen a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by "not applying" the law, *that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.* We also consider the result where the public entity elects to "modify or remove" the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. *This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.* (Emphasis added); and

WHEREAS, the Board of Commissioners desires to advise the Montagues, any subsequent owners of the Property, and all other interested persons that Jackson County expresses no opinion with regard to whether the decision in this Order may be transferred to subsequent owners of the Property, and that subsequent owners of the Property assume all risks that the decision in this Order is nontransferable; and

WHEREAS, the Board of Commissioners desires to advise the Montagues, any subsequent owners of the Property, and all other interested persons that the decision contained in this Order concerns only land use regulations adopted by Jackson County, that a Measure 37 claim may also need to be filed with the State of Oregon for land use regulations adopted by the State of Oregon before a use may be made of the Property that was permitted at the time that the Montagues acquired the Property, and that Jackson County expresses no opinion in this Order with regard to the need to file a claim with the State of Oregon, the proper procedure for filing a claim with the State of Oregon, or the appropriateness of any decision rendered by the State of Oregon; and

WHEREAS, the Board of Commissioners desires to advise the Montagues, any subsequent owners of the Property, and all other interested persons, of the nature of the decision contained in this Order, and therefore wishes that this Order be recorded in the real property records of Jackson County maintained by the County Clerk.

NOW THEREFORE, the Board of County Commissioners of Jackson County, Oregon hereby ORDERS:

1. The Claim is declared to be valid.
2. In order to allow the Montagues to use the Property for a use permitted at the time that they acquired it (December 12, 1978), the following Jackson County land use regulations shall not be applied:
 - a. The EFU zoning designation contained within Jackson County's Land Development Ordinance ("LDO"); and
 - b. The Agricultural Lands comprehensive plan map designation.
3. In order for the Montagues to operate a tourist-oriented, alpine-style cheese and nut tasting room on the Property, they must submit an application, and receive approval for, a Zoning Map Amendment and commercial Site Development Review. Upon submission of a complete application, Jackson County shall consider the Comprehensive Plan designation of the Property to be Interchange Commercial (IC) and the zoning designation as Farm Residential (F-5), as it existed on December 12, 1978.
4. The Board of Commissioners finds that the land use regulations that will not be applied identified in this Order do not regulate activities that are commonly and historically recognized as a public nuisance, do not protect the public health and safety, and are not required to comply with federal law.
5. All other land use regulations, including but not limited to access and slope management, not specifically identified in this Order as not being applied, shall continue to apply in full force and effect.

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- 6. The decision contained in this Order shall be transferable to subsequent owners of the Property to the maximum extent permitted by Measure 37, if any.
- 7. This Order shall be recorded in the real property records maintained by the Jackson County Clerk, and the County Clerk shall record this Order without payment of recording fees.

DATED this 30th day of March, 2005, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS



 Dave Gilmour, Vice Chair

ATTEST:




 Recording Secretary

STATE OF OREGON)
) ss
 County of Jackson)

This instrument was acknowledged before me on March 30, 2005, by Dave Gilmour, as the Vice Chair of the Jackson County Board of Commissioners.





 Notary Public for Oregon
 My Commission expires: 03-23-09

4-

**JACKSON COUNTY ADMINISTRATOR'S SUMMARY
COMPENSATION CLAIM FILED UNDER BALLOT MEASURE 37**

CLAIMANT: Bill R. and Ruth L. Montague
2089 Rogue River Highway
Gold Hill, OR 97525

FILE: M372004-00004
REP. DATE: March 14, 2005

AGENT: None

Land Use Regulations: 2004 Land Development Ordinance and Comprehensive Plan Elements (1) Comprehensive Plan and Zoning Map amendment requirements of Section 0.1 (2) Map Designations Element, Policy 1 (3) Agricultural Lands Element (4) Forest Lands Element (5) Economy Element (6) Energy Conservation Element (7) Goal Exceeding Element (8) Public Facilities and Services Element (9) Rural and Suburban Lands (10) Transcendental Element (11) Urban Lands Element 6

RECOMMENDATION: We recommend the Board of Commissioners recognize the acquisition date of December 12, 1978 for Bill and Ruth L. Montague, claimant, and not apply the current Comprehensive Plan designations Agricultural Land and Zoning Map designation of Exclusive Farm Use. It is further recommended that the Board consider the Comprehensive Plan designation of this property as Interchange Commercial and the Zoning designation of Rural Residential as it existed on December 12, 1978 to accommodate a type of application pursuant to 2004 Section 0.1.3 and 2.7.3 for a Zoning Map Amendment and Commercial Site Development Review to establish a tourist oriented alpine style center with a cheese and nut tasting room. This request is the most extensive use allowed under this Measure 37 claim. Further, the applicant should be advised that all other requirements not specifically waived by the Board of Commissioners must be met.

MEASURE 37 INFORMATION

DEMAND: In lieu of compensation, applicant requests the Board of Commissioners grant approval of a Comprehensive Plan and Zoning Map amendment to Interchange Commercial for a 3.55 acre parcel. The claimant does not desire compensation.

CLAIM BASIS: The claimant correctly claims resource zoning (EFU) prevents development of a tourist oriented alpine style center, "with a cheese and nut tasting room." Claimant correctly asserts the property was designated Interchange Commercial on the County Comprehensive Plan, and zoned Farm Residential (F-5) at the time he acquired the property.

DEMONSTRATION OF DIMINUTION IN VALUE: Evidence was submitted that at one point in time (1978) Jackson County Assessment and Taxation valued the property at \$46,150; after the rezoning in 1991 it was valued at \$19,680.

PROPERTY DESCRIPTION: Township 36 S, Range 4 West, Section 25, Tax lot 2800, located at and accessed from the southbound Interstate (I-5) on and off ramps with Rogue River Highway east of the City of Rogue River, adjacent to 2089 Rogue River Highway.

PARCEL SIZE: 3.55 acres

DATE OF ACQUISITION BY PRESENT OWNER: Present owners acquired Tax Lot 2800 by deed (OR 78-28254) on December 12, 1978, continuous ownership demonstrated.

EXHIBIT 'A'

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ZONING IN EFFECT ON DATE OF ACQUISITION: Tax Lot 2800 was zoned Farm Residential (F-5) and designated Interchange Commercial on the County Comprehensive Plan in 1978.

OTHER INFORMATION

CURRENT ZONING AND COMPREHENSIVE PLAN DESIGNATION: Exclusive Farm Use (EFU) zone, Agricultural Lands Map Designation.

ADJACENT LAND USES: To the south is a 6+ acre vacant parcel, and south of that is a preexisting mobile home park; to the east are three wooded parcels developed with single family dwellings (5-22 acres in size) one receives a forest assessment; to the north is an 11+ acre parcel developed with two dwellings, and assessed as "tract land".

KNOWN SITE DEVELOPMENT CONSTRAINTS: The parcel to the south (Tax Lot 2700) had submitted a proposal to change the zoning on that parcel to a commercial designation, which was eventually withdrawn. Access via the Interstate ramp was of great concern to ODOT. Access for this parcel might have that same concern.

LAND USE PERMIT ALTERNATIVE(S): An application to change the Zoning Map designation to Interchange Commercial (to coincide with the Comprehensive Plan designation) for Tax Lot 2800 was submitted in 1979. One of the criteria in Article VIII, Section 6 of the Zoning Ordinance required that rezoning be based upon demonstration of a public need for the rezoning, and that public need is best met through that proposal (also indicated in the text of Fasano v. Board of County Commissioners, 1973). The Jackson County Board of Commissioners concluded that the property owner did not meet that burden of proof and denied the rezoning request on May 9, 1979. Section 4 of this Article states where the Board denies a request for a zone change, no similar application may be submitted for a period of six months from the date of denial.

On October 28, 1980 new countywide zoning regulations were adopted along with new Comprehensive Plan and Zoning Maps. This parcel was again designated as Interchange Commercial on the Comprehensive Plan Map, and the Zoning Map designated the parcel as Farm Residential (F-5). This zoning effort was not acknowledged. Another effort was made, and the 1982 countywide zoning regulations were adopted, along with new Comprehensive Plan and Zoning Maps, which was acknowledged in 1983.

There is no record of a subsequent application for change in zoning or comprehensive plan designation made on behalf of the Claimant since the 1979 attempt.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Myhra**

File No. ZC010-04

Order No. 2005-85
Page 1 of 2

Claimant/ Property Owner: Harold and Marjorie Myhra

Date Filed: December 22, 2004

Legal Description: T2S-R1E-SECTION 33DA-TAX LOT 400

Location: 23275 SW Bosky Dell Lane; Northwest side of SW Bosky Dell Lane, approximately 650 feet south of its intersection with SW Borland Road.

Proposal/ Relief Requested: The claimant is asking that the existing RRFF-5 zoning not be applied, allowing creation of an unspecified number of additional home sites consistent with the previous RA-1 zoning district that was in place when the applicants acquired the property.

Ownership History/Date Acquired by Current Owner: The claimant acquired the property on July 1, 1970. Deed records demonstrate that the claimants have held a continuous property interest since acquisition in 1970.

Zoning History: The first zoning of the property was RA-1, Rural (Agricultural) Single Family Residential District, 1-acre minimum lot size. The RA-1 zone was adopted on December 14, 1967. The property was zoned RRFF-5, Rural Residential Farm Forest 5 Acre on June 18, 1979.

Reduction in Land Value: The claimant contends that the application of the RRFF-5 zoning district reduces the value of the property by \$350,317. The applicant has provided evidence in the form of several recent property sales in the area that justify the claim.

DECISION

- (1) The claimants have a valid claim.
- (2) Monetary compensation for any reduction in value is not available.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Ballot Measure
37 Claim for Myhra

File No. ZC010-04

Order No. 2005-85

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(3) The minimum lot size provision of the RRFF-5 zoning district is removed to allow the property to be developed under the lot size standard of the previous RA-1 zoning.


Conditions/Comments

- (1) The State of Oregon also will have to evaluate a claim for this property. OAR 660, Division 4, has specific standards regulating lot divisions and development in areas outside the urban growth boundary.
- (2) The applicant will need to receive approval of a partition to allow creation of new lots.
- (3) Approval of building and septic permits for new residences also will be required.
- (4) The recommended action does not resolve several questions about the application of Measure 37, including the question of whether the rights granted to the claimant by this decision can be transferred to an owner who subsequently acquires the property.

DATED this 13TH day of April, 2005.

BOARD OF COUNTY COMMISSIONERS


Chair


Recording Secretary

**PLANNING STAFF REPORT TO THE BOARD OF COUNTY COMMISSIONERS
MEASURE 37 CLAIM**

File Number: ZC010-04
Report Author: Greg Fritts, Senior Planner
Hearing Date: March 16, 2005
Report Date: March 9, 2005

Claimant/ Property Owner: Harold and Marjorie Myhra

Date Filed: December 22, 2004

Legal Description: T2S-R1E-SECTION 33DA-TAX LOT 400

Location: 23275 SW Bosky Dell Lane; Northwest side of SW Bosky Dell Lane, approximately 650 feet south of its intersection with SW Borland Road.

Proposal/ Relief Requested: The claimant is asking that the existing RRFF-5 zoning not be applied, allowing creation of an unspecified number of additional home sites consistent with the previous RA-1 zoning district that was in place when the applicants acquired the property.

Ownership History/Date Acquired by Current Owner: The claimant acquired the property on July 1, 1970. Deed records demonstrate that the claimants have held a continuous property interest since acquisition in 1970.

Zoning History: The first zoning of the property was RA-1, Rural (Agricultural) Single Family Residential District, 1-acre minimum lot size. The RA-1 zone was adopted on December 14, 1967. The property was zoned RRFF-5, Rural Residential Farm Forest 5 Acre on June 18, 1979.

Reduction in Land Value: The claimant contends that the application of the RRFF-5 zoning district reduces the value of the property by \$350,317. The applicant has provided evidence in the form of several recent property sales in the area that justify the claim.

Discussion: The claimant's property is a 3.01-acre parcel. There is an existing residence on the parcel. The property was zoned RA-1 when the claimants acquired it in 1970. The claimants propose to divide the lot into additional building sites pursuant to the RA-1 zone, which has a one-acre minimum lot size. Under the current RRFF-5 zoning district, the minimum lot size for new parcels is 5 acres, and thus no additional

EXHIBIT 1
Page 1 of 2

development is allowed on the property. The subject property comprises three acres, making it possible to create a maximum of three lots under the RA-1 zoning. The suitability of the property for on-site sewage disposal will determine the actual number of lots that can be created. This determination can be made when a partition application is reviewed.

The claim is not clear as to whether factors other than the minimum lot size of the RRFF-5 district are claimed to reduce the value of the subject property. The information submitted with the claim includes sales information for similar properties in the area and does not provide any basis to conclude that anything other than the minimum lot size is affecting the opportunity to develop the property as requested by the claimant. The previous RA-1 district, like the RRFF-5 district, allowed residential development as a primary use. Given these facts, it is reasonable to conclude that only the difference in minimum lot size has been shown to cause a reduction in value.

The facts discussed above demonstrate a valid Measure 37 claim. The minimum lot size standard of the current RRFF-5 zoning district reduces the value of the property, compared to the development opportunity if the property was zoned RA-1, as it was when acquired by the current owner.

Remedy: The Board of County Commissioners must decide whether to compensate for the reduction in value, or modify, remove or not apply the land use regulations that have caused the reduction in value. There has been no money allocated to compensate for the reduction in value. The claimant would prefer to have the regulations modified, removed or not applied, so that additional lots could be created.

Recommendation: Based on the facts discussed above, staff recommends the Board of County Commissioners not apply the minimum lot size standard of the RRFF-5 zoning district (ZDO 309.08 B) and allow the property to be developed under the previous RA-1 zoning district's one acre minimum lot size.

Additional Comments:

- (1) The State of Oregon also will have to evaluate a claim for this property. OAR 660, Division 4, has specific standards regulating lot divisions and development in areas outside the urban growth boundary.
- (2) The applicant will need to receive approval of a partition to allow creation of new lots.
- (3) Approval of building and septic permits for new residences also will be required.
- (4) The recommended action does not resolve several questions about the application of Measure 37, including the question of whether the rights granted to the claimant by this decision can be transferred to an owner who subsequently acquires the property.

EXHIBIT 1
 Page 2 of 2