

1 **BEFORE THE BOARD OF COMMISSIONERS**  
2 **FOR LINCOLN COUNTY, OREGON**

3  
4 In the Matter of )

5 )  
6 *The Ballot Measure 37 Claim of J. S. Morrill* )  
7 *Case File No. 3-LURCC-05* )

**ORDER NO. 6-05-182**

8  
9 WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37.  
10 The Measure amends ORS Chapter 197 to require, under certain circumstances, actions to address claims  
11 of owners of real property if government land use regulations reduce fair market property value; and  
12

13 WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property must  
14 make a "written claim for compensation" to the government entity enacting, enforcing or applying a land  
15 use regulation that allegedly restricts the use of the owner's property and has the effect of reducing its fair  
16 market value; and  
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18 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures with  
19 certain limitations; and  
20

21 WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim that  
22 reduces fair market value of real property or, in the alternative and in lieu of payment of just  
23 compensation, allows the County to modify, remove or not apply the land use regulation allegedly  
24 supporting a claim reducing a property's fair market value; and  
25

26 WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for compensation  
27 and make decisions on those claims. A determination to modify, remove or not apply a land use regulation  
28 or compensate a property owner must be based on substantial factual information and analysis; and  
29

30 WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and ambiguous  
31 provisions and that future litigation or legislative action will be necessary to clarify the measure's terms.  
32 The County, therefore, adopted procedures in Board of Commissioners Orders 12-04-318 and 4-05-120 to  
33 assess claims in a timely manner and to require factual and analytical information as part of the claim so  
34 the County will have a rational basis for its decision on each claim; and  
35

36 WHEREAS on January 3, 2005, J. S. (Steve) Morrill filed a Measure 37 claim seeking  
37 compensation, or the modification, removal or non-application of land use regulations that establish a two-  
38 acre minimum parcel size for land divisions in the RR-2 zone on property located on the east side of  
39 Highway 101 approximately one-half mile north of the intersection of Bayview Road and 101. The  
40 property is identified as Tax Lot 900 on Lincoln County Assessor's Map 13-11-18. County records and  
41 the filed claim are found in Lincoln County Planning Department File No. 3-LURCC-05 and by this  
42 reference are incorporated into this order as if fully set forth; and  
43

44 WHEREAS, after notice to surrounding property owners in accordance with Order #4-05-120, a  
45 hearing was held on May 12, 2005 on the claim before the Planning Director as Hearings Officer for the  
46 purpose of receiving facts and evidence related to determining the validity of the claim. The Claimant's

1 representative provided testimony in support of the claim. There was no testimony in opposition to the  
2 claim.

3  
4 WHEREAS the Planning Director has issued his Department's Staff Report and Recommendation  
5 which is attached to this order as Exhibit "A" and by this reference incorporated herein. That report finds  
6 and concludes that the claim when submitted was valid, and recommends that the Board, lacking funds for  
7 compensation, in the alternative modify, remove or not apply the restrictions (commonly referred to as a  
8 "waiver") by not applying the current minimum parcel size requirements in the RR-2 zone. This would  
9 allow the claimant to divide the subject property into additional parcels of not less than one acre in size, as  
10 permitted by the RR-1-2 zoning in effect at the time of his acquisition of the subject property in  
11 accordance with the requirements of Subsection (8) of Ballot Measure 37; and

12  
13 WHEREAS the Board has considered the report and recommendations of the Planning Director  
14 and County Counsel and finds it is in the public interest, due to the lack of resources to pay compensation,  
15 to modify, remove or choose not to apply the challenged land use regulation to the subject property and  
16 issue the "waiver" to claimant.

17  
18 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

19 1. The Measure 37 claim of J. S. (Steve) Morrill, Lincoln County Case File No. 3-LURCC-05, was  
20 a valid claim when filed on January 3, 2005. The Board of Commissioners declines to pay just  
21 compensation for the claim. In lieu of compensation, Lincoln County Code (LCC) Section 1.1345 is  
22 modified, removed or not applied for J. S. Morrill against the subject property to the following effect:

- 23  
24 • The non-application of regulations would be limited to the current two acre minimum  
25 parcel size requirements provided for in LCC 1.1345. All other provisions of the Lincoln  
26 County Code would continue to apply, including the previously effective one-acre  
27 minimum parcel size requirement of the RR-1-2 zone.  
28  
29 • Establishment of additional land parcels on the subject property would be subject to all  
30 applicable public health and safety regulations, including but not limited to land division  
31 procedures, building codes, on-site sewage disposal rules and requirements, and state  
32 highway approach permit requirements.

33  
34 2. A state of Oregon "waiver" under Measure 37 may be required for the development or use of  
35 the subject property. Lincoln County lacks authority to waive state regulations or laws. This Order does  
36 not affect any land use regulations of the State of Oregon. The Claimant is responsible for seeking  
37 compensation or "waiver" from the state of any applicable state laws. The Planning Director shall send  
38 notice of the Board's decision to the Director of the Department of Land Conservation and Development.

39  
40 3. This "waiver" provision is void if the property owner or property owner's successors are  
41 compensated by another governmental agency, including the state, for a reduction in value resulting from  
42 the same or similar land use regulations on the subject property.

43  
44 4. Excepting new land use regulations imposed after the date of this decision, and subject to  
45 applicable review rights as permitted under Measure 37, this final decision bars a subsequent Measure 37  
46 claim against the County as to the subject property.

1  
2 5. Transferability of the "waiver" granted by the County under this decision is unknown under the  
3 current status of Measure 37. Transferability of the "waiver" is allowed to the extent permitted by law.  
4 Granting of this "waiver" does not commit the County to issuance of development or building permits, if  
5 those actions are not allowed under law.

6  
7 6. This Order be recorded in the Lincoln County Deed Records maintained by the Lincoln County  
8 Clerk without payment of recording fees.

9  
10 7. Copies of this Order be provided to the Planning Director, County Counsel, and claimant's  
11 representatives.

12 DATED this 15<sup>th</sup> day of June, 2005.

13 **LINCOLN COUNTY BOARD OF COMMISSIONERS**

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15   
16 \_\_\_\_\_  
17 TERRY N. THOMPSON, Chair

18 Excused  
19 \_\_\_\_\_  
20 DON LINDLY, Commissioner

21   
22 \_\_\_\_\_  
23 BILL HALL, Commissioner

24  
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26 J:\LCJEAMES\Measure 37\M-37 Orders\order Steve Morrill #3-LURCC-05.DOC



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## DEPARTMENT OF PLANNING AND DEVELOPMENT

210 S. W. 2nd ST  
Newport, OR 97365  
(541) 265-4192  
Fax (541) 265-6945

# LAND USE REGULATION COMPENSATION CLAIM

## PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

**CASE FILE:** 3-LURCC-05

**DATE FILED:** 01/03/05

**CLAIMANT:** J. S. Morrill

**REQUEST:** The claimant seeks compensation for, or the modification or removal of, land use regulations that establish a two-acre minimum parcel size for land divisions in the RR-2 zone.

### **A. REPORT OF FACTS:**

1. **Lot Size:** 3.09 acres
2. **Property Location:** The property is located on the east side of Highway 101 approximately one-half mile north of the intersection of Bayview Road and 101. It is identified as tax lot 900 on assessor's map 13-11-18.
3. **Zoning Designation:** RR-2 (Rural Residential)
4. **Plan Designation:** Dispersed Residential
5. **Surrounding Land Use:** Adjacent uses in the area consist primarily of single family residences at densities varying from rural to suburban.
6. **Topography & Vegetation:** The property consists of a benched hillside sloping upward from Highway 101. It is vegetated with typical coastal forest

species.

7. **Existing Structures:** None
8. **Utilities:** The following utilities are proposed to serve the subject property:
  - a. Sewer: On-site sewage disposal
  - b. Water: Seal Rock Water District
  - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:** None identified.

## **B. EVALUATION OF THE REQUEST:**

### **1. Background:**

J. S. Morrill filed a Land Use Regulation Compensation Claim on January 3, 2005. This claim was filed with the Department of Planning and Development in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The Morrill property is located north of Waldport on Highway 101 near the intersection of Seafarer Court. The current zoning of the property is RR-2, Rural Residential, two-acre minimum. The claimant asserts a diminution in the value of the property resulting from the restrictions of the RR-2 applied after their date of acquisition, more specifically, the restriction on new parcel creations to a minimum of two acres. The claimant states that his desired remedy to the claim is the removal or modification of the RR-2 lot size restriction in a manner that will permit the division of the subject property into parcels of one acre in size, which was, according to claimant, permitted at the time of his acquisition.

Deed records researched by the department document the claimant's acquisition of the subject property in 1990. At that time, acknowledged county code provisions applicable to the subject property permitted the creation of 40-acre parcels.

On May 12, 2005, a public hearing was held on the subject claim for the purpose of receiving facts and evidence related to determining the validity of the claim. Notice of the hearing was provided in accordance with Board of Commissioners order #4-05-120. The claimant provided testimony in support of the claim. There was no testimony in opposition to the claim.

2. **Measure 37 Claim Requirements:** Measure 37 provides the following criteria for establishing eligibility for the supplemental right of compensation created by the measure:

- a. **Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” of property, which is defined in Measure 37 as the “present owner of the property, or any interest therein.”**

The claimant, J. S. Morrill acquired his original interest in the property by warranty deed in 1990 (recorded at Book 219, page 2252, Lincoln County Deed Records). Records of the Lincoln County Assessor’s office confirm that J. S. Morrill remains an owner of the subject property.

- b. **A public entity enacts or enforces a land use regulation that restricts the use of private real property:**

The current RR-2 zone regulations (LCC 1.1345) at issue in the subject claim were enacted by Lincoln County in their present form by ordinance #396 in 2000. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the RR-2 zone. These regulations restrict the use of this private real property to only those uses expressly authorized in the RR-2 zone. Specifically, in the case of the subject property, these regulations prohibit the further division of the property through the establishment of a two acre minimum parcel size requirement.

- c. **The land use regulation has the effect of reducing the fair market value of the property:**

As noted, the currently effective minimum lot size requirements of the RR-2 zone prohibit any division of the subject property.

Claimant asserts that these restrictions reduce fair market value of the property. In support of this claim, claimant has provided his estimate of the value of two additional parcels that could be created based on the acquisition date regulations. This estimate is based on the claimant’s previous sale of similarly situated parcels in the area. Based on this estimate, claimant asserts a net (sale proceeds minus development costs) diminution in value of \$250,000. Because this estimate is not supported by any substantiating expert testimony or evidence, it is difficult to substantiate the specific dollar amount demanded by the claimant as compensation. Nonetheless, the information on its face; i.e. the market value difference between one home site versus the three potential home sites permitted at the time of acquisition, leads the department to conclude that it is more likely than not that there has been some reduction in fair market value of the subject property as a result of the enactment of the cited land use regulations.

- d. The land use regulation complained of is not a regulation; (a) restricting or prohibiting activities commonly and historically recognized as nuisances under common law; (b) restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; (c) required to comply with federal law; (d) restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or (e) enacted prior to the date of acquisition of the property by the owner or a family member of the owner.

The regulations addressed by the subject claim are the restrictions on land divisions imposed by the RR-2 zone. These restrictions were enacted to comply with Statewide Planning Goals 11 and 14, which mandate limiting development intensity in areas outside of urban growth boundaries to rural levels. The purpose of the RR-2 zone is to limit development in rural areas to rural types and levels. It does not directly address common nuisances, health and safety, adult businesses or activities, nor does it have any federal nexus.

The claimant has provided documentation that the claimant's original interest in the property was acquired July 31, 1990. The two-acre minimum lot size requirement in the RR-2 zone was enacted in 2000, so the regulation giving rise to the claim was enacted after the date of acquisition of the present owner.

- e. For claims arising from land use regulations enacted prior to December 3, 2004 (the effective date of Ballot Measure 37), written demand for compensation shall be made within two years of the effective date of the act.

The land use regulations for which compensation is sought, the RR-2 zone restrictions on land divisions, were enacted in their present form in 2000, prior to the effective date of Ballot Measure 37. The subject claim was filed on January 3, 2005, within two years of the December 3, 2004 effective date of Ballot Measure 37.

### **C. Recommended Findings and Conclusions:**

The director recommends for the board's consideration the following findings and conclusions:

Findings:

1. J. S. Morrill filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on January 3, 2005.
2. The claim is based on an assertion of a reduction in fair market value of real property due to the enforcement of land use regulations by Lincoln County.
3. The subject property is identified as tax lot 900 on Lincoln County Assessor's map 13-11-18, which is taxed as real property by Lincoln County.
4. The RR-2 zone provisions (LCC 1.1345) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The RR-2 zoning restricts uses; specifically, the RR-2 zone standards prohibit the division of the subject property through the imposition of a two-acre minimum parcel size requirement.
6. The claimants have submitted evidence of a diminution in value caused by the RR-2 zone restrictions in the form of an estimated value based on the claimant's previous sales of similarly situated properties. The estimate concludes that the land use regulations that prohibit the division of the subject property have the effect of reducing the fair market value of the subject property by \$250,000.
7. According to the Lincoln County deed records, the claimant, J. S. Morrill, first acquired an interest in the subject property in 1990, and has maintained an ownership interest continuously since that time.
8. The currently effective RR-2 zone regulations governing land divisions were enacted by Lincoln County in 2000 (Ordinance # 396), after the claimant's date of acquisition.
9. The RR-2 zone restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in Subsection (3) of Ballot Measure 37.
10. The subject claim was filed on January 3, 2005, which is less than two years from the December 3, 2004 effective date of Ballot Measure 37.

Conclusions:

Based on the above findings of fact, the Board reaches the following conclusions:

1. The subject claim for compensation for reduction in value of private real property from the enforcement of land use regulations was timely filed on behalf of the owner, J. S. Morrill, pursuant to Subsection (5) of Ballot Measure 37.
2. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions imposed by LCC 1.1345 (RR-2 zone), are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37; they restrict the use of the subject private real property; and they have the effect of reducing the fair market value of the property.
3. The owner of the property, J. S. Morrill, is therefore entitled to the payment of just compensation equal to the reduction in the fair market value of the subject property caused by the enforcement of the RR-2 zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of the RR-2 zone restrictions, may modify, remove or not apply these restrictions in order to permit the owner to use the property for a use permitted at the time of his acquisition.

#### **D. Recommended Decision**

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires either the payment of just compensation, or the modification, removal or non-application of the offending land use regulations. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of the subject land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that the Board direct that the current minimum parcel size requirements in the RR-2 zone not be applied to the subject property. This would allow the claimant to divide the subject property into additional parcels of not less than one acre in size, as permitted by the RR-1-2 zoning in effect at the time of his acquisition of the subject property. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the time of the owner's acquisition. This recommendation is based on the following considerations:

1. No funds are currently budgeted in the county general fund for the payment of monetary compensation.
2. Not applying the current two acre minimum lot size restrictions of the RR-2 zone would permit the claimant owner to create two additional home sites on a parcel of approximately three acres. The creation of two sites one acre in size would be generally consistent with the prevailing land use pattern in the area.
3. Not applying the land division restrictions of the RR-2 zone in order to permit the establishment of additional home sites is the claimant's desired resolution.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the current two acre minimum parcel size requirements provided for in LCC 1.1345. All other provisions of the Lincoln county code would continue to apply, including the previously effective one-acre minimum parcel size requirement of the RR-1-2 zone.
- Establishment of additional land parcels on the subject property would be subject to all applicable public health and safety regulations, including but not limited to land division procedures, building codes, on-site sewage disposal rules and requirements, and state highway approach permit requirements.

If the Board concurs with the above recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation. This order will incorporate the above recited findings of fact and conclusions, and the appropriate directives for the allowance of the creation of one acre parcels on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director

<i>Name</i>	<i>Address</i>	<i>City</i>
DLCD Attn: Laren Woolley		
North Coast Reg Rep	PO Box 451	Waldport, OR 97394-0451
Morrill, Steve & Patsy	PO Box 1629	Waldport, OR 97394

03-LURCC-05  
MORRILL