

Potential Interface Between Ballot Measure 37 and Region 2050

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This paper begins to address the question of how the Region 2050 process may affect and may be affected by Ballot Measure 37. This is a complex topic that will be explored throughout the Region 2050 process. This paper does not attempt to address all of the issues associated with this topic but merely presents an initial response to the following key questions:

- ✚ What is Ballot Measure 37?
- ✚ How could Ballot Measure 37 affect the outcomes of Region 2050?
- ✚ How could the potential outcomes of Region 2050 affect the response to Ballot Measure 37?
- ✚ In what way, if any, could the assumptions and methods used in the Region 2050 process change as a result of Ballot Measure 37?
- ✚ What course of action is recommended?

What is Ballot Measure 37?

Ballot Measure 37, approved by Oregon voters in the November, 2004 election, went into effect on December 2, 2004. The measure amends Oregon statute to allow an owner of private real property to file a claim with the governmental jurisdiction responsible for implementing or enforcing a regulation when he or she believes the regulation has devalued that property. The government (local or state) receiving a valid claim may either pay compensation for the reduced property value, take action to modify, remove or not apply the regulation to the property, or decline to take any action. If the government does not take either of those actions within 180 days of the written demand, the property owner may pursue the claim in Circuit Court.

There is much uncertainty about how Measure 37 may be interpreted by the courts or the Oregon Legislature. There are two bills being considered by the legislature for amendment to ORS 197 implementing the provisions of the Ballot Measure. In addition, the measure is currently being challenged in the Oregon Supreme Court based on a claim that it violates equal protection provisions of the Oregon Constitution.

How could Ballot Measure 37 Claims affect the outcomes of Region 2050?

When the 11 local governments in the region initiated Region 2050 in the summer of 1999, they each adopted a resolution supporting the concept of a Regional Growth Management Strategy that outlines regional agreement about population and employment growth.

First, Ballot Measure 37 is specific to land use actions which regulate the permitted use of land. A Regional Growth Management Strategy does not apply land use regulations

or compel participating governments to apply such regulations. The Measure does not identify “strategies” as a matter subject to a claim, nor have the courts considered whether such attachment applies.

Second, these recommended land use actions will be designed to guide future growth and public facility development, and may include development of urban reserves, expanded urban growth boundaries, and nodal development areas. These types of changes should mark an increase vs. a decrease in property values for affected areas. For this reason, it is highly unlikely that the actions that will be taken to implement the Regional Growth Management Strategy will devalue affected property and will instead *increase the value of affected property*. The intent is that the Strategy will influence the land use decision process taken by the individual local governments when such decisions are related to matters included in the agreements endorsing the Strategy.

The Regional Growth Management Strategy as outlined by the Region 2050 participants will contain a Preferred Growth Scenario and goals, objectives, and actions in seven quality of life categories. The most likely actions (to be implemented by the individual jurisdictions in accordance with the visions of their communities) are a timetable for location-specific UGB expansions, urban reserves, and increased densities in newly developing areas with infill and redevelopment and nodal development in agreed-upon areas; and public facility plan amendments and project lists.

There may also be rural areas that are identified as potential areas for increased development or densities where that development meets the vision of those rural areas and the impacts of that development would not be harmful to the environment (e.g., water quality degradation) and would not create conflicts with the farm or forest industries. Other actions are likely to be part of the Strategy as well but the above-named actions are the ones that relate to the issues raised by Ballot Measure 37. Any action that may be forthcoming from this Strategy will be considered in light of the requirements of the Measure, and shall not compel any of the governments to act contrary to the requirements of the Measure as they may finally appear in statute.

Third, there is no way to predict the type of development that may occur because of BM 37 claims. The Strategy makes no effort to do so. Rather it provides guiding principles to mitigate future development and encourages regional problem solving. If new development occurs due to BM 37 that is not predicted under the Strategy, this guidance will be invaluable in incorporating this development into a regional planning strategy.

Fourth, the Strategy will be reevaluated on a regular basis to address changing demographics, development, etc., including changes caused by BM 37 claims. Claimants that have owned property prior to regulation may develop that property irrespective of any regulations or agreements between jurisdictions. For example, large big box commercial or industrial development in rural areas could be authorized under BM 37 and these unplanned uses could have significant impacts on transportation facilities. Likewise, development in an area adjacent to a UGB that was not planned to

be expanded in that particular area could cause an effect to the planning efforts, such as public facilities expansion, that would then need to be reformulated to address the different pressures for urban services extensions to areas that were not planned for nor contemplated under the growth management strategy. The Strategy can be revised in future to adapt to changes caused by BM 37 once these changes become clearer (through courts or future legislative action).

How could the potential outcomes of Region 2050 affect the response to Ballot Measure 37?

The Regional Growth Management Strategy could help mitigate some of the negative impacts of Ballot Measure 37 in three ways:

1. The establishment of urban reserves and the identification of UGB expansion areas within those reserves not only increases the value of those properties, it prevents some of the more negative effects of BM 37 development by placing those properties within the policy framework of urban and metropolitan land use plans, readying those lands for future urban development. However, for imminent claims by property owners requesting immediate action, urban reserves will not provide this mitigating effect; and there may be BM 37 claims on lands that do not lie within urban reserve areas.
2. One possible implementing action now being discussed in two of the other metropolitan regions in Oregon – Medford and Portland – is Transfer of Development Rights (TOD) with density bonuses. This tool has been used successfully in Deschutes County as an outcome of that region’s Collaborative Regional Planning Project. If this tool were adopted in Lane County, it would provide incentives for property owners to transfer their BM 37 development rights on land where the impacts would be high to lands where the impacts would be low. Under BM37, a property owner has no incentive to move development to another property. They can develop their own land as desired even if the impacts are high to environmentally sensitive areas or lands that, for other reasons, perhaps should not be developed. The use of tools such as TODs would therefore be an important mechanism to provide such incentives.
3. Even if no implementing tools are adopted to address BM 37 impacts, the evaluation of the Rural Growth Scenario provides a wealth of information about the potential impacts of rural development that will be valuable in assessing how to process BM 37 claims as they arise, although the larger BM 37 claims will be outside the fiscal capacity of the cities and county.

In what way, if any, could the assumptions and methods used in the Region 2050 process change as a result of Ballot Measure 37?

In order to answer this question, there would first need to be an assessment of the areas or parcels that fall within the framework of legitimate BM 37 claims. This would be especially important for the rural lands since the zoning in the cities in the region

date back much further than the county comprehensive plan adopted in March 1984, although there may be claims within UGBs as well.

In response to a request by Lane County staff, an initial investigation was conducted by regional geographic information system (GIS) experts at LCOG into the possibility of conducting such an assessment. The investigation revealed that, outside of reading the deeds and records paperwork involved in the change of ownership and reviewing each property on a case-by-case basis, the results of a GIS analysis would be inconclusive and not very accurate or complete.

For this reason, even if the Region 2050 process *could* be changed to include the specific parcels with BM 37 development rights, there is no cost-effective way to identify those parcels. Conversely, the Region 2050 process, as it is now designed, does provide insights into the possible effects of BM 37. The three alternative growth scenarios, taken together, are inclusive of areas where the geography and topography allow development to occur. In other words, the scenarios cover the range of possible development activity because they were created using a base map of constraints to development (slopes greater than 25%, wetlands, floodway, etc.).

The Rural Growth Scenario is the most inclusive in that it assumes that the rural area would develop in ways that are not allowed under current land use laws, BM 37 notwithstanding. The evaluation of this scenario will look at the entire rural area and examine how increased development and housing densities would affect quality of life in seven topic areas. This scenario assumes that the Rural Unincorporated Communities would develop at one acre lots, the Rural Residential lands outside Rural Communities and Marginal Lands would develop at two acre lots, and that some of the lower quality farm and forest lands surrounding rural residential lands and UGBs could also develop at two acre lots. These assumptions would capture a large portion of the area that would be subject to BM 37 claims, providing valuable information on their potential impacts on quality of life in the region.

What course of action is recommended?

The Regional Growth Management Strategy, when it is in final proposal form, will be based on the best available data using the most up-to-date technology. The technical and scientific knowledge that the local and state staff and officials use in their decision-making will be comprehensive and thorough, resulting from six years of intensive research, analysis, fact-finding, and deliberations, and extensive public outreach efforts. It will not, and cannot, answer every question, current or future; and it cannot anticipate the effects of changing technology, such as magnetic levitation, or unanticipated rural development. For this reason, the Strategy will need to be a “living document,” as directed by the participants. The intergovernmental agreement that is the vehicle for endorsement of the Strategy will need to identify how the Strategy will be monitored, evaluated, and modified over time; and, as more is known about the potential impacts of BM 37 over the next year, those impacts can potentially be addressed in specific actions in the Strategy such as suggested above.