

## **MINUTES OF THE METRO BALLOT MEASURE 37 TASK FORCE MEETING**

Monday, March 21, 2005

Metro Council Chamber

Members Present: Judie Hammerstad (Chair), John Leeper (by phone), Martha Schrader, Todd Sheaffer, Sheila Martin, Doug Bowsby (by phone), Jim Chapman, Mary Kyle McCurdy, Bonny McKnight, Keith Fishback, Domonic Biggi, Jack Hoffman, Robert Liberty, Carl Hosticka

Pending Members: Wayne Kingsley and David Whitehead

Absent Members: Dorothy Cofield, Charlie Gregorio (pending), Margaret Kirkpatrick.

Staff Present: Lydia Neill, Linnea Nelson, Jenny Stein

Others Present: Sparkle Fuller Anderson, Meg Fernekees, Hannah Kuhn, Maureen D. Larsen, Avusi Loprinzi, Michael Morrissey, Elaine Newland, Sherie Nishikawa, Laura Oppenheimer

Chair Hammerstad convened the Ballot Measure 37 Task Force Meeting at 5:38 p.m.

### **1. WELCOME, INTRODUCTIONS, AGENDA REVIEW**

Robert Liberty moved approval of the minutes and Jim Chapman noted a correction to his comments on page 5 which should read he “expressed hope to avoid encircling the UGB with an *impenetrable* barrier of large gentleman farms...” The corrected minutes were approved unanimously. Chair Hammerstad joined the committee as chair. Task force members introduced themselves. Additional members included Domonic Biggi of Beaverton Foods, Wayne Kingsley of Portland Spirit, David Whitehead of REMAX representing the Portland Realtors Association, Mary Kyle McCurdy, staff attorney at 1,000 Friends of Oregon and Todd Shaeffer of Specht Development and the National Association of Industrial and Office Properties. Commissioner John Leeper of Washington County and Doug Bowsby of Bank of America participated by phone. Chair Hammerstad noted the different points of view around the table.

### **2. MEETING SCHEDULE**

Chair Hammerstad noted that a proposed monthly meeting on the last Monday at 5:30 p.m. was pending approval of upcoming agenda topics.

### **3. WORK PLAN REVISIONS**

Chair Hammerstad expressed hope that the task force would conduct an examination and analysis of Measure 37 and how it preferably worked with and not against the regional framework plan (RFP) and the 2040 Growth Concept. Since Measure 37 passed and landowners had legitimate claims, the metropolitan area land use program would need to work in a broader context. At the end of these meetings, the task force would be able to make program recommendations, acknowledging the RFP and 2040 including compact urban growth, and also honoring Measure 37 claims.

#### **4. OVERVIEW OF CONCEPTS FOR IMPLEMENTING MEASURE 37 AND ACHIEVING REGIONAL AND STATE GOALS FOR COMPACT URBAN GROWTH AND FARMLAND PROTECTION**

Mr. Liberty mentioned existing efforts to plan for compact urban growth, protect farmland, not waste money on extending roads and sewers out to leapfrog developments and implement Measure 37. He gave a Power Point presentation (a copy of which can be found in the record) focused on potential Measure 37 claims for home site development on farms and forestland in the three county region. There were other types of claims made inside the UGB, in the City of Portland environmental zones, and on commercial or industrial lands, but most regional and statewide claims were in farm zones so far, in terms of numbers and impact. A "Proposal: A Transferable Development Rights Program" (a copy of which can be found in the record) created by Dick Benner of Metro was also referred to.

##### **a. Four Hypotheticals Illustrating Some Concepts (Liberty)**

Mr. Liberty's presentation addressed transferable development "rights" or "credits". "Donating" land would be a place where a claim existed and its rights to develop could be purchased and used at an authorized "receiving" or "landing" zone site, which could be outside of the UGB. He addressed hypothetical claims and questions concerning conforming vs. nonconforming use of land, zoning, availability of septic and fire protective services and whether a county could waive state requirements. Both TDRs and conservation easements could be negotiated on the open market and by Metro. He mentioned a potential bond measure in November 2006 that could include funding for natural resource acquisition and Measure 37 claims. The federal Farm Bill had traditionally included several hundred million dollars for acquiring conservation easements, but Oregon had never participated in this program because it required matching funds. A TDR program could generate funds that could leverage matching federal funds. Key elements included capturing value through UGB expansion and provision of infrastructure, using those funds to pay for Measure 37 claims, focusing development where it made sense to develop and preserving contiguous blocks of farm and forestland without providing infrastructure to scattered developments.

##### **b. Discussion About Incentives, Landing Zones and Funding Sources**

Chair Hammerstad noted this was just one tool that would avoid leapfrog developments and protect resource lands, and asked if TDRs had been done in Oregon. Mr. Liberty replied that a larger Deschutes County program was created to address septic contamination in LaPine. The federal government contributed land that became a landing zone, and it had the authority not to authorize development due to pollution. It offered permits for this other site. The City of Portland had used TDRs several times and there may have been others.

Jim Chapman asked if the hope to fund a TDR program from landowner profits within the UGB required that landowners would agree to this arrangement. Mr. Liberty replied in this hypothetical situation, the UGB would be expanded to fund the program and profits from landowners would be used for TDRs. Philosophically, the idea was if taxpayers were to be paid for a reduction of value they should also give up some of the value realized from government action. Secondly, it would be complicated if landowners did not cooperate within landing zones, but if a landing zone on rural acreage had increased development potential with higher density, then owners would receive more value, even with questions about non-conforming use.

Todd Sheaffer wondered how many people would agree to sell credits for a 5-acre home site at a lower price if they would be bought at a higher price for a higher density development. Mr. Liberty emphasized that landing zones would need to be very attractive and contain or capture enough value to make the system work. Involved parties would set prices, but unresolved Measure 37 claims would add to existing uncertainty in any real estate transaction and some discounting would occur. It would be an optional program. Scaling could occur in different ways, depending on how many claims there were.

Chair Hammerstad asked committee members how people would respond to a TDR program. Jim Chapman responded it would depend on whether it was mandatory or not. It would be difficult to administer areas that were adjacent to the UGB, such as requiring credits for development in Damascus. If designated landing zones were adjacent to the UGB and had infrastructure, this could be of benefit to builders and claim holders. Mr. Shaeffer added there would be some acceptance but he was not sure what would be captured, given current uncertainty. If legislation were passed that allowed development rights to be passed on to future owners then credit prices would go up. Some people would find a conservation credit or easement attractive, while others would prioritize capturing value for retirement.

Mary Kyle McCurdy specified that a statute of limitations on Measure 37 claims would alleviate the uncertainty of how many claims existed. Governments would have a limited amount of landing areas and funds to provide infrastructure to make those areas attractive. TDRs would not be available for every claim, since there could be a limit to public investment, and banks would be in a position to decide which to buy based on farmland value. 1,000 Friends of Oregon would want to keep claims out of the best metro area farmland. Mr. Liberty replied that high value farmland claims were factored in because conservation easements were targeted. Measure 37's uncertainty would make it difficult to determine how large landing zones should be. Lydia Neill had mentioned that it was difficult to determine when land was acquired. A rolling amount of land in the landing area could be created as it was needed. It would be hard to put a total value on claims because of all the uncertainty.

Mr. Sheaffer asked whether an east side industrial landing area for housing or offices would be a relevant example. Mr. Liberty provided five examples of landing areas: 1) expand the UGB with extended city services and up zone from rural residential, farm or forest zoning to urban development. Carl Hosticka clarified this expansion would be conditioned on enough credits targeted for that area to make it work. 2) Zoning could be changed as credits came in. 3) Select an area inside the UGB like Damascus, and create incentives by partially financing infrastructure with captured value increases. 4) A higher demand for density than permitted in areas inside the UGB could be met by releasing the market to allow for increased density. The South Waterfront could be an example of this. Intergovernmental agreements could provide incentives for the City of Portland. 5) An incremental and permit based system could be used for adding an extra floor, or a duplex credit instead of a single family home. Mr. Liberty opined that a mix of options would best meet varied demand and interest in landing areas. The UGB could be expanded to target areas where there were many Measure 37 claims, and this would increase value.

Keith Fishback asserted that many claims were fragmented in EFU zones and agricultural industries in Washington County needed to be isolated from residential areas and protected from urban development. He noted a consensus regarding too many houses in EFU zones and the appealing idea of placing dwelling units on less valuable farmland. Mr. Liberty added there could be clustering on a claim basis. Instead of 80 1-acre lots, there could be 80 small lots with

the rest in open space and this would result in dispersed clustering on some farmland. Ms. Kyle McCurdy added that a sewer system would be necessary for this development.

Chair Hammerstad confirmed this would be most applicable to high value farm or forestland. Mr. Liberty replied that policy questions of types and quantity of property use would make it difficult to ascertain how attractive such a system would be. Immediate successes would be important.

Martha Shrader noted that Damascus was in the midst of concept planning and had land availability within the UGB. She asked how this would affect long term planning until they crafted a land use framework, and if densities were required under Metro auspices, where would new housing go if it were not yet zoned. Mr. Liberty replied such a plan would implement and not replace the framework. Any UGB expansion would require master planning. A bank would provide the infrastructure as an incentive and guarantee it if developers came with enough credits.

Mr. Sheaffer stated it would be more complicated and expensive to develop in the private sector. Mr. Liberty clarified that current UGB and master planning would not need to be different. There had been problems implementing planning and funding infrastructure. Banks could help make landing zones attractive and be a transaction facilitator by paying landowners directly.

Sheila Martin asked why Metro would pay for an unproven claim in the hypothetical example, and whether the alternative would be awarding a credit instead of money, and a claimant would enter the market to determine its worth. Mr. Liberty responded that Metro's development and conservation bank would have researched claims as part of its negotiation strategy, and would be confident about which ones were valid. Purchase dates would need to be compared to regulations and if this were not feasible then a lower offer could be made. Awarding credits could be part of a newly created system, but would not be allowed under Measure 37. Additional legislation would likely be necessary. Mr. Hosticka commented that market conditions could make it more attractive to sell a credit than execute a waiver.

Mr. Sheaffer spoke to creating properties in the UGB and tapping part of this value creation to either use toward infrastructure or to compensate for Measure 37 claims. Mr. Liberty used both in his hypothetical examples because the options had to be attractive and first transactions would be the most important. It would be a policy call whether to use it for parks, schools, roads, sewers or reimbursing governments for planning. Sonny Condor in Metro's Data Resource Center has data on how much value could be captured, but this would not help in determining what claims were worth in the market, given multiple uncertainties.

Wayne Kingsley asked with jurisdictions making it expensive and difficult to prove Measure 37 claims, whether people would be suspicious of complicated procedures as an attempt to devalue claims and property rights. Mr. Liberty replied it would be the opposite: the opportunity to put money in people's hands without going through a complicated process. It would be like any value negotiation, but the uncertainty was not created by Metro but was inherent in Measure 37, which could be changed by the legislature. Value of the credits would fluctuate a lot, and then settle out.

Mr. Kingsley asserted that a majority of Multnomah County voters approved Measure 37 and needed to be convinced of a fair plan to address their frustrations, while jurisdictions were working against Metro in making it difficult to prove claims. Mr. Liberty responded that TDRs would not be a mandatory solution, but could provide rapid compensation and be one way of

implementing Measure 37. Financing questions could come from banks. Dorothy English went to the legislature to get another bill passed because of Measure 37's uncertainty. It contained 8 paragraphs about compensation with no funding provisions.

Sheila Martin pointed out the difficulty of determining claim worth until the number of claims was known. With any market-based mechanism, value would fluctuate with supply and demand, and would be clearer if there were a claim deadline.

Dominic Biggi referred to his time as a Washington County Planning Commissioner where he saw many land use decisions. Most of the claims have been from Washington County and have been for single-family homes. Most owners did not want compensation, but they wanted the ability to build a house on land they had owned a long time before land use regulations took this ability away. This hypothetical discussion does offer solutions for this real problem and address why people voted for Measure 37.

Commissioner Leeper indicated that as of March 16th, 2005, Washington County had received 97 claims; 85 are rural and 2 are urban. 30% of claims were seeking one home and 15% were seeking 2 or 3 homes or lots. 46 claimants wanted subdivisions of 4 lots or more. In addition, although payment was not necessary, most rural claims have required a companion state claim to address either lot size or income standards, which was an unresolved issue. The State's Department of Land Conservation and Development (DLCD) and the Attorney General's office had given guidance, but it was not especially pertinent to this real issue. He understood the Attorney General's ruling to mean that claims were not transferable.

Mr. Hosticka commented that claimants did not determine Measure 37's intent; even though claimants wanted houses, the measure as it was written said they wanted compensation. Voters may have thought they were voting for housing and not compensation. Mr. Leeper clarified that many who voted for the measure in Washington County wanted homes.

Mr. Liberty asked whether it was accurate to say the Clackamas County claims tended toward larger parcels with development potential. Martha Shrader answered the initial claims heard in Clackamas County were for partitions to build a home on each acre of land that had been changed to rural residential. All of the Clackamas claims were outside of the UGB and although some were clustered near the Stafford Triangle or Petes Mountain urban areas, with larger subdivisions, most were for smaller home sites. Clackamas County did not have resources for compensation and could not guarantee claim transferability if land was sold. Its first four claims were straightforward. Clackamas County had 78 claims estimated at \$130 million.

Chair Hammerstad noted that this preliminary discussion of transfer of development rights (TDR) would help the task force determine whether it was a promising tool worth pursuing, as compared to other available tools to be evaluated in the context of larger Measure 37 claims. Member opinions were solicited.

Mr. Fishback agreed that TDRs should be looked into further. He asserted that contrary to Mr. Biggi's comments, the majority of people seeking to build a single-family home on agricultural land wanted to build on smaller acreage or next to their parents and purchased undeveloped land more recently. A lot of the Banks area claims were children of landowners. Many farm families who owned land for a long time would be eligible for Measure 37 claims but were morally tied to keeping their properties as agricultural land. Family could be counseled to make a claim because of the cash benefit, even though they had no intention of filing a claim. Todd Sheaffer concurred

that a TDR approach could increase the potential for more claims driven by this financial incentive, which would risk expenditure of more public funds.

Mr. Kingsley asked how TDRs would apply to future claims with additional government regulations, such as the 80,000 acres mapped by Metro that would be restricted to wetlands protection. Mr. Liberty replied that credits could be a form of compensation, though the number and scale of claims would be difficult to predict without complete program design. He emphasized that this system would be voluntary, and if landowners wanted more than a house, there would be more complication and uncertainty. Measure 37 was open ended, and if the property was not sold but kept in the family, the problem of additional claims mentioned by Mr. Sheaffer, could go on for decades and occur even without a TDR program. A not one-time, 90-day window or "first 1,000 claims" limit of available credits would serve as an incentive to make decisions, help determine program potential and test the market.

Bonnie McKnight noted that banks could choose not to participate, which would be a disincentive for additional claims. TDRs would be an interesting tool to fund regional infrastructure that every city had problems acquiring, and with or without Measure 37, should be explored as an approach to building livable cities throughout the region.

Mr. Leeper spoke to Washington County's strong interest in retaining agricultural land for agricultural purposes. It had partnered with Metro and the City of Hillsboro in looking at agricultural industries and this would be studied further. Measure 37 was almost a side issue that was significantly occupying people's minds. Metro and state residents shouldn't think that Measure 37 would run amok in Washington County. The county was doing all it could to retain a vibrant and viable agricultural industry.

Chair Hammerstad affirmed the importance of his comments and this group meeting to make Measure 37 work and still preserve resource lands. The group concentrated on especially large parcels of prime farmland, which could be subject to claims, though there were certainly other concerns.

Mr. Liberty suggested if the committee was interested in TDRs, the work program might need to be restructured, due to policy discussion and substance. The committee's charge included a list of topics, including the claims process against Metro. Mr. Hosticka clarified that Council directed that achieving the 2040 vision while implementing Measure 37 was the committee's most important charge, and that TDRs could be one potential solution.

Chair Hammerstad recommended the committee step back, look at a map of Measure 37 claims, and evaluate the development potential on farmland, leapfrog development and threats to protections the committee would like to have. Policy issues needed to be discussed in order to have a 2040 Framework Plan that would work and still honor claims, or use TDRs or other tools. Mr. Biggi agreed he'd like to see a map and the scope of claims.

Martha Shrader brought a map that showed claims clustered in Clackamas County and noted that the substance of claims would drive this process. Mary Kyle McCurdy added that Washington County's website displays a claims map with simple dots.

Lydia Neill referred to Metro's work with PSU in gathering information and tracking known claims in 25 cities and 3 counties. Unless staff called continually it would be difficult to maintain an up to date and accurate list. Claimants often gave incomplete information when claims were

filed. Some Washington County claims only said they want a single family house for a son or daughter. Others did not specify a dollar amount or what they were exactly looking for. Several City of Portland claims were in Environmental Protection (P&C) zones. The majority was targeted toward subdivisions or single-family homes, with a minority focused on environmental waivers.

Chair Hammerstad noted that even though the claims map would constantly change, it would illustrate subdivisions, single-family homes, and the potential for leapfrog development, which would serve as a premise for discussion of how the 2040 plan would work when these developed pieces of properties were outside of the UGB. She expressed hope that by the end of September, the committee would make a recommendation on how the 2040 concept plan could still work with Measure 37 development, including concept planning outside of the UGB, considering the available tools of TDRs, open space preservation and clustering of development to avoid rural sprawl. Legitimate claims would either be honored or addressed in the future. Given the complexity of this work, taking a conceptual approach first, identifying tools and then getting into more complex details as staff prepared them would place the committee in a better position 9 months from now. She stated that no one, including farmers, wanted to see willy-nilly farmland development.

Mr. Liberty added that Ms. Neill had developed claims maps from a database. He welcomed the discussion of other approaches at the next meeting. He asked for feedback regarding TDRs and the general consensus was TDRs were a valid concept that deserved further study.

Chair Hammerstad advocated for a TDR presentation that would be much broader based on a variety of circumstances and would explain how the bank would be initially funded. Ms. Neill noted that information on funding options and brainstorming opportunities would be provided at the next meeting. Mr. Kingsley noted whether Metro could enact TDRs without state legislation would be another topic before too much time was spent on it. Ms. Neill added that Dan Cooper would be at the next meeting to address this.

Mr. Liberty handed out copies of the Attorney General's opinion dated February 24, 2005 (a copy of which can be found in the record).

Mr. Hoffman differentiated between claims and actual structures as depicted on claim maps. Development would not happen overnight because financial institutions were not financing Measure 37 developments. Mr. Liberty mentioned that some Measure 37 campaign examples included some that would not be able to be developed based on the income test adopted in 1994. The most basic limitations on building houses referred to state legislation passed in 1973 and implemented in 1975. Some claims would not prove out depending on when they were acquired.

Chair Hammerstad stated that the committee should not spend time on what would not happen, and if claims were not developable, then the committee's work would change.

Ms. Neill attended a Measure 37 conference and spoke with First American Title's Counsel regarding title insurance and whether claims were personal and not transferable in the future. Allan Brickley of First American Title would be willing to give a presentation.

Mr. Hoffman stated that Mr. Brickley confirmed that title companies would not issue zoning endorsements, which were required by commercial lenders for commercial loans and

demonstrated title company certification of a permitted use. Under current uncertainty and without title insurance, banks would not loan money.

Mr. Liberty cautioned the committee that only 6 meetings and 9 hours remained and all of the alternative measures included complicated policies that could be reviewed as prioritized.

**c. Next Steps**

PDFs of all handouts would be made available to the committee.

The next meeting would be on Monday, April 25<sup>th</sup>, 2005 from 5:30 p.m. to 7:00 p.m at Metro.

**5. UPDATES ON CLAIMS, STATUS OF LEGISLATION AND OTHER MATTERS**

None.

**6. ADJOURN**

There being no further business to come before the Metro Measure 37 Task Force, Chair Hammerstad adjourned the meeting at 6:58 p.m.

Committee members reviewed maps provided by Martha Shrader after the meeting.

Prepared by,

Jenny Dempsey Stein



**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 21,  
2005**

Item	Topic	Doc Date	Document Description	Doc. Number
Memo	Measure 37	2/22/2005	Links to Measure 37 Websites	032105m37-01
Minutes	Measure 37	2/15/2005	Minutes of Metro Measure 37 Task Force Meeting	032105m37-02
Powerpoint Presentation	Measure 37	3/21/2005	Overview of Transferable Development Credits & Related Efforts to Implement Measure 37 & Achieve 2040 Growth Concept	032105m37-03
Memo	Measure 37	Undated	Proposal: A Transferable Development Rights Program	032105m37-04
Letter	Measure 37	2/24/05	Office of The Attorney General Letter to Lane Shetterly, Director of Oregon Dept. of Land Conservation and Development.	032105m37-05
Directory	Measure 37	3/21/05	Measure 37 Work Group Membership contact information	032105m37-06