A G E N D A

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METRO

Agenda

MEETING: METRO MEASURE 37 TASK FORCE
DATE: April 25, 2005
DAY: Tuesday
TIME: 5:30 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

5:30 PM

1) **WELCOME AND INTRODUCTIONS**

2) **APPROVAL OF MINUTES**

3) **LEGISLATIVE UPDATE**

4) **REVIEW TASK FORCE OBJECTIVES: ASSESSMENT, COORDINATION AND POLICY RECOMMENDATIONS CONCERNING IMPACT OF MEASURE 37 ON 2040 GROWTH MANAGEMENT POLICES (SEE ATTACHED)**

5) **STAFF PRESENTATION: CLAIMS UPDATE AND MAPPING EFFORTS**

6) **CASE STUDY DISCUSSION – TWO SCENARIOS:**

   a) **Claim for subdivision near UGB within Stafford Triangle.**
   b) **Claim for subdivision on Pete's Mountain**

7) **NEXT MEETING**

7:30 PM **ADJOURN**

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 Bowlsby (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 Bowlsby 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 statue 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 Generals 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 25th, 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

M E M O R A N D U M

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METRO

Date: April 18, 2005

TO: Judie Hammerstad, Measure 37 Task Force Chair

FROM: Lydia Neill, Principal Regional Planner

RE: Implications of Measure 37 on 2040 Growth Management Policies

Introduction

Measure 37 has the potential to directly impact a number of adopted Metro plans and policies. Regulations implementing minimum densities, designation of regionally significant industrial areas (RSIA's) and natural resource protection may trigger Measure 37 claims. There are a number of tools that could be used to respond to claims filed under Measure 37 and facilitate the implementation of the 2040 Growth Concept. This memorandum discusses the impact of claims that have been filed, provides background on Metro's policies and briefly discusses some tools that may be helpful in fulfilling the goals of the 2040 Growth Concept Plan.

Discussion of Claims Filed

There are 390 claims that have been filed in the Metro region that are on approximately 6,000 acres.[1] Almost all of the claims target regulations that restrict the construction of single-family homes or subdivisions of land for residential purposes although more than half of the claims do not specify the proposed land use (236). Approximately 70 percent of the claims are located on exclusive farm use land (EFU) lands. Of the 154 applications that specified the number of residential units or parcels requested 20 percent are for single-family homes (not in a proposed subdivision). Lot sizes of the claims range from less than one acre up to 115 acres although the majority of claims seem to fall on lots smaller than 10 acres (182) or are between 20 to 40 acres in size (67). Most subdivisions requested were for one acre to five-acre size lots. The average number of lots per subdivision was 13 lots.

The majority of claims are located in Clackamas County (204) and Washington County (153) and in the following general areas: Stafford Basin (both north and south of I-205), east and south of Oregon City and near the City of Banks. The Washington County claims are dispersed over a larger area than those filed in Clackamas County. Some of the largest acreage claims are located near the City of Banks, north of Highway 26. Since January, claims have been filed at a rate of 130 claims per month. If this current rate is sustained, a total of 1,500 claims will have been filed by the end of 2005 on approximately 24,000 acres of land. This land area is roughly equivalent to an area the size of the Damascus urban growth boundary (UGB) expansion area. Over a five-year period this could amount to approximately 7,500 claims being filed in the Metro region.

Discussion of Impacts of Measure 37 on 2040

The 2040 Growth Concept was adopted in 1995 to provide an alternative to sprawling development that was taking place during the 1980's and 1990's. The goals of the 2040 Plan

[1] Metro Measure 37 database updated through April 11, 2005.

include development of a compact urban form by encouraging the efficient use of land in cities, protection of natural areas, efficient delivery of urban services including transportation and the protection of farmland.

The Urban Growth Management Functional Plan (UGMFP) requirements that are discussed below were first adopted in 1997. The UGMFP has been amended since the initial adoption in 1997 and most recently include changes to Title 11, Planning for New Urban Areas, and Title 4, Industrial and Other Employment Areas. The purpose of each title and the general effects of waiving these regulations in response to Measure 37 claims are discussed below.

Title 1, Requirements for Housing and Employment Accommodation
Title 1 contains policies that require that local jurisdictions to adopt regulations that require 80 percent of the underlying zoning densities be achieved. All local jurisdictions have adopted regulations to implement this requirement. Adoption of this regulation guarantees that densities meet a minimum of 80 percent of local zoning although anecdotal evidence suggests that most development is taking place at a more efficient rate due to market pressures. If these regulations are not enforced (waived), it is likely that market forces will continue to drive densities above the Title 1 minimum of 80 percent. No effect is anticipated if Measure 37 is applied to Title 1.

Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation
Title 3 contains policies to protect water quality through the management of riparian areas and floodplains. Most local governments have adopted regulations that protect riparian areas and floodplains to achieve this goal. Implementation of Title 3 could result in portions of a property having a reduced development area. Whether the reduced development area has an economic impact can only be determined on an individual basis. Density transfers, planned unit development standards and clustering may mitigate some of the effects of Title 3 regulations. Waiving Title 3 requirements due to Measure 37 claims could result in the loss of riparian habitat areas, decreased water quality and increased flood effects.

Title 4, Industrial and Other Employment Uses
Metro revised Title 4 to provide protection for key industrial and employment areas from other uses. Title 4 identifies RSIAs that have additional protection applied to them to limit the size of commercial uses and the division of land in these areas. Measure 37 has the potential to waive these requirements that prohibits commercial uses from locating in industrial areas. Allowing commercial uses in industrial districts could have significant impacts on remaining industrial uses due to land use conflicts, traffic impacts and market pressures due to increases in land values. Of particular concern are industrial areas that have freeway access; conversion from transportation dependent industrial uses to large format commercial uses which could have significant impacts on the region’s transportation system.

Title 11, Planning For New Urban Areas
Title 11 provides guidance for the planning and conversion of rural to urban uses for areas brought into the UGB. Interim protection measures include prohibiting land divisions that would create parcels that are less than 20 acres in size and prohibiting churches and commercial uses in any area that was designated as an RSIA. Waiver of these regulations could have detrimental effects on developing industrial areas and possible effects on concept planning that is required to take place in these areas prior to urbanization. A scattered rural residential development pattern makes it very difficult to develop an efficient urban form.

Tools to Address Impacts on 2040 Policies
There are a number of tools that could be used to address the unwanted impacts of Measure 37 and positively mitigate the partial takings issues that the measure seeks to address. Tools such as transfer of development rights or credits (TDR/TDC), conservation easements, and incentive programs could be used singularly or in concert to achieve Metro’s growth management goals and offer property owners a mechanism for recouping a partial reduction in property values.

The Metro region has more tools available than other parts of the country due to our existing growth management policies--the designation of urban reserves, select UGB expansions, annexations and the use of the functional plan to plan the use of land on a regional basis. These tools can be developed and used on a voluntary basis or portions of these programs could be required (i.e. transfer of development rights). Use of some of these tools may require legislative changes (state and local) to be fully implemented.

- ***Conservation Easements***

Conservation easements can be used to compensate claim holders for the loss of development potential and encourage the maintenance of agricultural uses or limit development in natural areas. Many areas of the country have successfully purchased easements to protect farmland through a Federal matching grant program. The Federal program requires a match of 50 percent of the value of the easement in exchange for an easement restricting use of the property for farming. This tool may be valuable because almost all claims are occurring on farmland

- ***Transfer of Development Rights of Credits***

A Transfer Development Rights or Credit system (TDR/TDC) is a tool that encourages development to be transferred from sending areas (agricultural or rural residential areas) to areas of the region that may be more appropriate for urbanization (receiving areas). These TDR or TDC programs have been used throughout the country with varying degrees of success and in limited ways in Oregon. The use of this tool is complicated in Oregon due to the use of the UGB as a growth management tool. UGB's introduce additional complexity to the system because it already emphasizes developing at higher densities inside of the boundary with little or no development on EFU or rural residential (RR) lands outside of the boundary making transfer of units outside of the UGB inside difficult. Selection of appropriate receiving areas that are desirable form a market perspective is a key component to this type of program's success.

- ***Incentive Programs***

Incentive programs could be developed to provide infrastructure, concept planning or permit and fee waivers to attract development to appropriate areas with a TDR/TDC program. Lands newly added to the UGB generally do not meet the region's short term land needs due to lack of infrastructure or required concept planning and implementing zoning. Most communities charge fees for new development to offset planning and servicing requirements for parks, sewer, water and storm water. These systems development fees do not completely cover the costs of providing these services and do not address all of the larger infrastructure system needs required to urbanize rural areas. Depending upon whether local jurisdictions have concurrency requirements that require that infrastructure be developed prior to development, the sequencing of development may be dictated by a local government's ability to construct streets and sewer and water systems. Local jurisdictions may need to provide incentives in the form of concept planning and infrastructure in those areas where they wish to encourage appropriate development. Fees could also be reduced or waived to create further incentives to encourage development.

- ***UGB Expansion or Designation of Urban Reserves***

Selective UGB expansions or designation of urban reserves could be used to either create receiving zones or to allow urbanization of areas that receive a high demand for claims. There may be areas that have received or are expected to receive a disproportionate number of claims and therefore would make them ideal for development to urban standards. Designation of urban reserves would stimulate a discussion of which future areas are most appropriate for future urbanization and facilitate a system of metering land into the boundary to either respond directly to claims filed or market pressure. Depending upon the schedule for review of the UGB and the timing and need for possible UGB expansions, a discussion of the designation of urban reserves may be appropriate. Designation of urban reserves are subject to the same procedures for evaluation of land and expansion of the UGB and they include examination of the capacity of land under consideration, existing farm uses and impacts, provision of public facilities and natural resource impacts. All of these issues would be addressed in an Alternatives Analysis Study. In preparation for an upcoming UGB expansion decision Metro studied over 65,000 acres of land.

To designate urban reserves, a similar level of effort would be required in order to meet state requirements.

- ***Use of Strategic Annexations***

Annexations may be able to be used as a tool to extend services to areas outside of City boundaries (extra-territorial service extensions) or to extend city boundaries to permit development at urban densities. By using annexation as an incentive to receive city services like sewer and domestic water, these areas will have greater development potential for applicants and development to take place at urban densities. Annexation could be used to respond to individual claims.

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M37 Task Force Objectives based on Metro Resolution No. 04-3520: Assessment, Coordination and Recommendation of Policy Options

Three directives:

1. Advise Metro Council on potential consequences of M37 claims.

    - Identify potential claims outside the UGB and assess potential consequences; Evaluate with respect to size, potential for affecting orderly development; issues of available services;
    - Compare impact of waivers vs. compensation within the region.

2. Advise Metro Council on need for coordination among public entities in the region in handling and responding to M37 claims; recommend range of options for coordination.

    - Compare M37 claims processes and approaches of local governments within the region.
    - Evaluate need for local governments within region to adopt uniform ordinance provisions with respect to key features of M37 claims process.
    - Consider role Metro should play in claims processes throughout region.
    - Consider need and advisability of uniform responses on issues of providing infrastructure.

3. Develop policy options to address impact of M37 on the policies of the Regional Framework Plan and the objectives of the 2040 Growth Concept.

    - Identify tools and alternative methods for achieving the policies of the Regional Framework Plan: TDR/TDC; Conservation easements; purchase and negotiation; other.
    - Annexation, UGB expansion, Designation of Urban Reserves
        - Impact on orderly growth patterns;
        - Infrastructure issues;
        - Pros and cons of providing extra-territorial service.

<u>Additional Issues</u>

- Necessary Legislative Changes
- Track M37 interpretations regarding key provisions: transferability, etc.
- Response to claims that arise immediately that have potentially significant adverse consequences. Identify Metro's role.

032105m 37-01

Overview of Transferable Development Credits & Related Efforts to Implement Measure 37 & Achieve 2040 Growth Concept

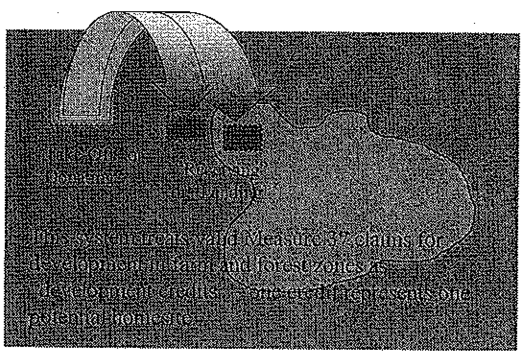
Metro Measure 37 Task Force

Meeting March 21, 2004

Disclaimers

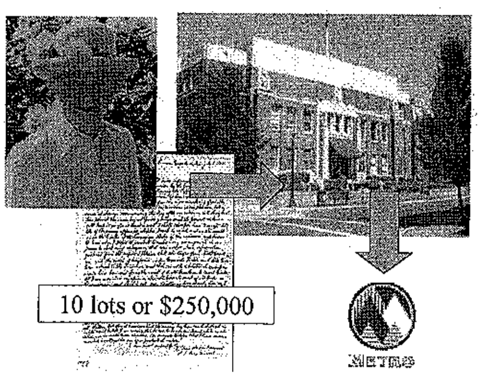
- One person's illustration of how such a system might work
- Only addresses claims for development on farm and forest lands in the three-county portion of the Metro region
- Focuses only on claims for homesites & homes

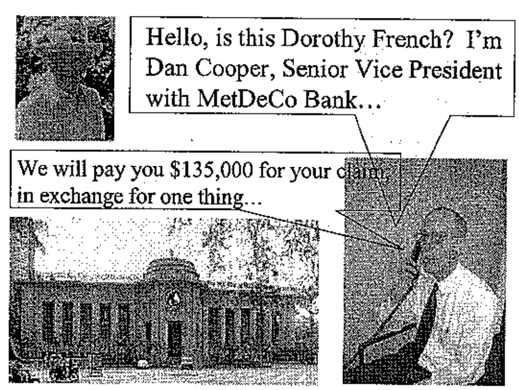
Transferable Development "Rights" or "Credits"



Dorothy French

- 50 acres purchased in 1960
- Could have been divided into ten 5-acre homesites





$135,000!?!? That's only little more than half of what I deserve!!

What will be the cost of proving your claim with the county?

Will a bank finance the purchase and development of the lots viz. will they be a conforming or nonconforming use?

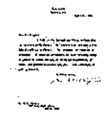
Can you or the purchasers get approval for septic systems?

Isn't this governed by state law? What is the state going to do?

Will the rural fire district provide protection?

We will pay you $145,000 for your claim, provided……………

Dawn Moreisless, CEO



Century 37 Land Development Company

Sure Grandma, I can process your claim, and I'll give you a discount…

…a $6,000 deposit for 40 hours work and $2,500 for expenses. It'll take about 6 months….

OK, it's a deal. We'll pay you $142,500 for a waiver of all of your Measure 37 claims for this property….

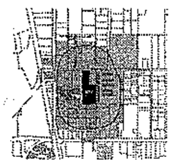
HA! Beat her to the punch!

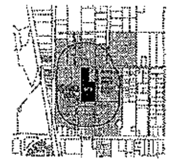
OK, we'll sell 10 TDCs for $165,000…..

Tom Landerzonen
Receiving zone owner
and co-investor

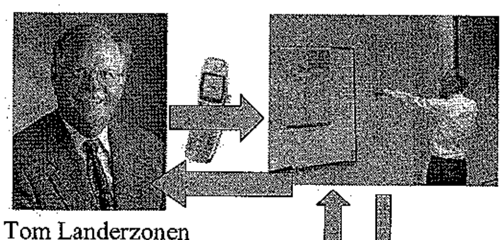
Valley View Planned Community
(560 dwelling units on 120 acres)

- 80 apartments
- 80 mid-rise condos
- 100 townhomes
- 220 single family homes on 5,000 square foot lots
- 40 estate homes on 1-acre lots
- Neighborhood commercial & services
- Neighborhood park





$$$$????



Tom Landerzonen

Deliver conservation easements to Metro on 120 acres in the Washington County Rural Reserve area.....

Some Key Points

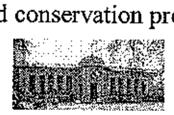
- Requires a TDC bank mechanism
- Requires capital for the bank
- Requires very attractive receiving areas

Some Other Elements

- Requires intergovernmental agreements between local governments, state, Metro service districts
- Can include incentives through targeted infrastructure investments (existing money)
- Can be used to pay for masterplanning in UGB expansion areas

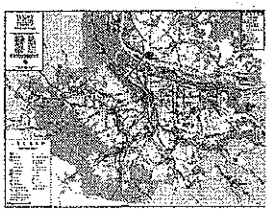
Some Options for Capitalizing the Bank

- Bond Measure
- Recapture 50%(?) of Property Value Increased by UGB Expansions, Upzoning, etc. ("Givings")
- Auction/Fees for UGB expansion
- Legislative appropriation
- Federal land conservation program



Some Options for Landing Zones

- Inside Current UGB (Damascus)
- In expanded UGB
- In noncontiguous UGB expansion area



Other Uses for the TDC Bank System

- Rural conservation easement program
- Urban conservation easement program
- Infrastructure finance
- Affordable housing

The Beginning….