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6. **LAND USE:** New plan offered in Ore.'s Measure 37 fracas

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Hoping to quell growing public concern about the potential for rampant development represented by thousands of claims for land-use restriction waivers under Measure 37, a legislative working group last week proposed a new framework for reform of the controversial law. In several respects, the proposal reflects principles previously espoused by Gov. Ted Kulongoski (D) in proposing an "express lane" process for limited development plans. But it no longer calls for a six-month moratorium on the processing of some 3,300 claims for waivers or compensation that were filed before a Dec. 4, 2006, deadline.

In all, more than 9,000 claims have been filed at city, county and state levels, with the best estimate of claims values exceeding \$10 billion ([Land Letter](#), Feb. 8). However, to date, no compensation has been awarded to any claimant.

Despite the attempt at compromise, the new framework immediately ran into criticism from the state's Republican legislators, who said majority Democrats excluded them from behind-the-scenes negotiations. Early indications are that the proposal could be revised substantially as it is fit into bill language, with the likely vehicle being **S.B. 505**. There are at least two other Measure 37 related bills pending in the Legislature. **S.B. 833** would give public agencies another year to review their backlog of claims before property owners could sue for compensation. Another, **S.B. 588**, would put the review of claims into the hands of a new Office of Compensation and Conservation Ombudsman. This new position would be empowered to "review, mediate or negotiate" claims for compensation if land-use requirements restrict use of private property. Introduced in February, both of these bills have been moving slowly through legislative committees.



New legislative proposals to reform Oregon's controversial Measure 37 would retain limits on development of prime farm lands. Public opinion strongly supports maintaining such restrictions. Photo courtesy of the state of Oregon.

In announcing the new framework proposal last Thursday, Gov. Kulongoski expressed a hope that it would be fast tracked by lawmakers.

The plan calls for two new options for resolving claims:

- "Express lane" treatment for claimants who can document continuous ownership of the property since March 1, 1994. They would be allowed to build up to three new residential sites, if local regulations would have permitted at least that many when they bought the property. While pre-1994 applicants can count on at least one new home, there would be restrictions to keep development away from prime farmlands and groundwater sources.
- "Conditional path" is reserved for larger properties, with as many as 10 located in a single development and no more than 30 home sites on a statewide basis. Such developments may not be built on high-value

farmland or where groundwater is in short supply.

While the framework does not provide for unlimited rights on transferred properties, as many parties have been seeking, it will treat owners who had transferred their land to a family-held limited liability company the same as those who employed family trusts. Owners who exercise one of the two option paths will in the future be able to sell or transfer their lands without penalty, as long as the development rights are exercised within 10 years. Those who do not elect either path, but try to litigate at local agencies would not have the right to transfer development rights.

Public opinion swings toward change

The attempt at forging a compromise comes as increasing numbers of Oregonians are expressing concerns about Measure 37's effects and potential costs. In a statewide public opinion survey released March 16, pollsters Fairbank, Maslin, Maulin and Associates found that more than two-thirds of respondents want to either fix what they perceive as serious flaws in Measure 37 or have it repealed entirely. Fewer than 20 percent think the law should be left alone.

A slim majority believes it has already had a negative impact on the state, while nearly three-quarters believe it will cost the state millions of dollars while opening the door to more development.

Asked to rank potential revisions to the law, the vast majority favor requiring adequate documentation of lost values in compensation claims, prohibiting developments that negatively affect water supplies, providing for rapid responses to those seeking to build only one or two new homes on a given property, and extending the current 180-day deadline for agencies to process claims. A somewhat smaller majority of respondents, in the 64 percent to 68 percent range, want to continue certain restrictions on building subdivisions or industrial facilities on agricultural land or forests without compensation to the property owners.

Finally, 58 percent said that any tax breaks previously given to property owners should be subtracted from any compensation claims. This issue was highlighted in a recent study by the American Land Institute that found claimed property value losses due to new restrictions on development have largely been offset by about \$5 billion worth of tax breaks given to Oregon's property owners since 1974.

Litigation continues

Meanwhile, courts are picking through the 135 separate lawsuits that been filed about Measure 37 claims rejections. One case, decided on appeal this week, indicates how difficult it may be for property owners to prevail if their claims are denied by the state. A Yamhill County couple, Merlin and Sandra LaJoie, had initially won county commissioners' approval of a Measure 37 waiver that would allow them to build several homes on their 29-acre parcel near Newberg, Ore.

However, when they filed at the state level, the Department of Land Conservation and Development rejected the claim, saying that zoning restrictions on development to preserve farmland were already in place when the couple bought the property in 1974.

While the couple argued that the restriction was merely a planning goal not a zoning regulation, but the judge held in favor of the state.