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## 2. LAND USE: Compromise seen for Ore.'s Measure 37

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The recent flood of claims for financial compensation or waivers of land-use restrictions under Oregon's controversial Measure 37 has brought a backlash of unfavorable public opinion and new proposals for legislative reform. As a special joint legislative committee meets this week to consider a bill offered by Gov. Ted Kulongoski (D) that would severely limit development under many of the newly filed claims, parties indicated that some compromise might be possible.

A Dec. 4, 2006, deadline for filing Measure 37 claims under less restrictive rules resulted in more-than doubling the number of filings at the state and county levels, overwhelming government planning offices' ability to process them in a timely manner ([Land Letter](#), Dec. 14, 2006).

In December, the rules for filing claims changed to require that development plans must have already undergone a local permitting process before seeking redress for any restrictions imposed. Up until that time, claims for compensation or waivers could be filed on a prospective basis.

In all, there have been 6,491 claims filed with the state, with 3,309 of them logged between Nov. 1 and Dec. 4, reports the state Department of Land Conservation and Development. However, more than 9,000 claims have been filed at all jurisdictions, according to the Institute of Portland Metropolitan Studies, which independently tracks Measure 37 claims. Many of the claims are duplicated at the state and county level.

Sheila Martin, director of the institute, based at Portland State University, recently told a legislative committee that the total value of claims now exceeds \$10 billion and that they cover potential development on more than 514,000 acres. While spread out across the state, the majority of claims are for property in northwest Oregon and the Willamette Valley, and it appears that most target rural property or farmlands for housing subdivisions. A large number of claims do not specify the nature of potential development.

The deluge has caused great consternation at the country level. For example, Clackamas County officials in January wrote to the governor complaining that Measure 37 claims there now amount to 37,000 acres -- roughly half the size of the city of Portland. Over half of the local claims seek to turn land now exclusively used for agriculture over to residential development. That could result in loss of 20,000 acres of farmland and cause a 25 percent increase in the local population, with the resulting pressures on county services and infrastructure. "We want the Legislature to carefully rebalance the land-use system that has been so important in creating the livability of our communities," county commissioners wrote.



Claims filed under Measure 37 represent a potential for \$10 billion of new development in Oregon, much of it converting rural land to housing subdivisions. Photo courtesy of USDA.

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## Governor describes a crisis

On Monday, Kulongoski offered a legislative fix in the form of Senate Bill 505, which would separate out "express line" claims and allow single-family housing developments to proceed while putting a temporary hold on the processing of other claims through June 30. Without the moratorium, government planners have a 180-day period in which to issue decisions on claims.

"Oregon is facing a crisis," the governor told legislators. "Few governments have the resources to process these claims with due diligence in this time period, and none has the ability to pay compensation. Hasty approval of these claims will allow major developments to proceed with irreversible impacts on our communities," he said.

Kulongoski said that claimants who do not qualify for priority processing "will have a time out and maintain their legal standing to follow through with their claims while the Legislature addresses the measure's unexpected consequences." Pending litigation regarding rejected claims, including over 100 active cases, would be able to proceed. Lawmakers would have a firm deadline of June 30 to consider and act on legal revisions.

"The governor's proposal is outrageous," countered Bill Moshofsky, vice president of governmental affairs for the group Oregonians in Action (OIA), which initially sponsored Measure 37 and successfully defended it through several legal challenges. "We're doing everything we can to fight it."

He called the public and media response to the deluge of compensation requests an "overreaction," and added, "The reality is that no one is paying anything."

Indeed, to date there have been no compensation payments made under the law, and many claimants say they have filed merely to preserve their rights to develop land at an unspecified future date. Moshofsky said despite the rush of claims, there are still health and safety limits to successful development that will prevent many plans from reaching fruition. In addition, he said, nothing in Measure 37 guarantees that would-be developers can obtain sewer or utility services.

Moshofsky said that Measure 37 opponents concentrate on the potential cost of claims without recognizing positive economic benefits of increased jobs and property tax revenues. "We think there will be a benefit, particularly in rural counties," he said.

## Negotiating points

Although opposed to the governor's proposal, Moshofsky told *Land Letter* that OIA is willing to negotiate a compromise measure that would ease the pressure on governments while allowing some development plans to go forward.

He did not offer a specific set of negotiating points but said that key issues include the ability of owners to transfer or sell properties to others without losing their waiver rights under the law.

A recent court suit in Jackson County resulted in a judge's finding that Measure 37 claims are not transferable. In addition, ruled Judge Phillip Arnold, the county planning department should have required land owners to also file a claim with the state, and that the county cannot ignore state permitting rules in approving waivers under the law.

Moshofsky said that property owners could get around the transferability issue by taking a development all the way to construction, then selling or transferring the land, but that poses an economic barrier to many individuals. The governor's proposal includes a one-time, single-generation inheritance transfer of rights if "the claimant passes away during the period of delay" but would not allow for sales.

The joint legislative committee has scheduled two public hearings this week to consider the governor's proposal and take testimony. John Atkins, legislative aide for Rep. Greg MacPherson, co-chairman of the committee, told *Land Letter* that right now, S.B. 505 is the only legislative vehicle on the table but that lawmakers will be looking for other ideas.

"There is room for compromise," Atkins said. "But right now, neither side is willing to talk about the gray areas between the extremes." Nonetheless, he suggested there might be "wiggle room" in determining such issues as the number of housing units that might qualify for "express lane" treatment, whether minimum lot sizes might be considered, the amount of time agencies have to process claims, and how to deal with transferability of waiver rights.

"I have no idea how that will resolve," he said.