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### 3. LAND USE: Oregon flooded by last-minute Measure 37 claims

Arthur O'Donnell, *Land Letter* editor

More than 1,000 claims poured into state offices on the last day before a change in rules governing claims under Oregon's Measure 37 took effect Dec. 2, part of a deluge of new claims filed during the past month that has swelled the total number filed since the controversial land-use initiative was passed into law in November 2004.

Under the law, the owner of private real property is entitled to receive just compensation when a land-use regulation is enacted after the owner or a family member became the owner of the property -- if the regulation restricts the use of the property and reduces its fair market value. Instead of compensation, the measure also provides that the government responsible for the regulation may choose to "remove, modify or not apply" the regulation.

While there is a lag in the state's processing on new claims, a public database managed by Portland State University's Institute of Portland Metropolitan Studies showed that as of Oct. 31, there had been 3,611 claims for compensation filed, covering nearly 250,000 acres of land. According to a state report, the value of compensation claimed under these filings exceeded \$6.1 billion as of mid-November.



New Measure 37 claims include thousands of acres of timber forests that could become housing developments. Photo courtesy of state of Oregon.

According to Alice Beals, manager of the Measure 37 claims unit for Oregon's Department of Land Conservation and Development (DLCDC), the prospect of a change in regulations brought a flood of new claims -- 1,865 claims during November and 1,008 claims received on the last filing day Dec. 1.

The unit is trying to secure additional temporary staff to process the new claims, Beals said. "We've not even had a chance to review the claims," she said this week.

The Dec. 2 date -- specified in the original initiative, but because it fell on a Saturday, the actual change took effect Monday, Dec. 4 -- did not represent a deadline for new filings but a more stringent process for seeking redress. Previously a claimant could file a Measure 37 application based on an existing claim without going through any land-use planning application process. Now, a claimant must go through a standard land-use planning process with the county or other appropriate government agency and be denied before filing a valid Measure 37 application.

While some claims do not flow through the state, the Portland State University analysis indicates that about 70 percent of claims have been filed with both the state and the county or local jurisdiction, or only with the state. Sheila Martin, director of the Institute of Portland Metropolitan Studies, which manages the database at PSU said that attorneys for landowners generally recommend their clients file at both local and state levels.

Despite the apparent \$6 billion in claims liability, "No level of government is paying compensation," said Michael Morrissey of the DLCDC's Measure 37 services division manager. "We are entirely in the waiver business."

#### Rimrock compensation controversy

There has been one recent case in which a local jurisdiction, the city of Prineville in central Oregon, in October offered to pay a couple \$47,750 in compensation rather than allow construction of a three-bedroom house on a 2-acre parcel of land along a protected ridge. Though the couple, Grover and Edith Palin, has owned the property since 1963, local land-use restrictions meant to protect the rimrock area took effect in 1978 by prohibiting construction within 200 feet of the rim's edge.

The Palins, however, have rejected the offer. While at first they appeared adamant about obtaining a waiver so they could proceed with construction, this week, they indicated they would seek a much higher level of compensation.

The couple could not be contacted by *Land Letter* for comment this week.

According to DLCD's Morrissey, although there have been over 1,600 final orders approving or denying Measure 37 claims -- with most resulting in waivers -- there has been "very little development" undertaken to date.

PSU's Martin agreed. "There are a number of obstacles to new development," she said. The biggest is lack of transferability. "The waivers cannot be transferred unless the original landowner has significantly invested in the development," at the time of ownership transfer, she explained.

Still, in a recent review of the effects of the initiative, Martin concluded, "Measure 37 has disabled the tools used over the past four decades to prevent sprawl and preserve agricultural and forest land in Oregon."

## Timber to housing

While the state is still sorting through the paperwork, some high-profile claims have surfaced via county information, including "some big claims from forestry holders," Morrissey said. In one case, the Plum Creek Timber Co., based in Seattle, has entered nearly 100 claims covering about 32,000 acres in Lincoln and Coos counties, near the coast.

The \$94.8 million worth of combined claims are based on a potential for housing development on the land, although company spokeswoman Kathy Burdineck told *Land Letter* there is no immediate plan for development. "We recognize that our land in Oregon is well suited for forestry for the long term, but we filed to protect the future value of our property," she said. The claims cover less than 10 percent of Plum Creek's holdings in the state, she added.

Other reports indicate that Stimson Lumber Co. of Portland has filed as many as 135 new claims in various counties prior to the deadline. While all the details of these claims are not yet available, they may follow a pattern seen in claims filed with Washington County last July seeking to subdivide a 1,218-acre property into 57 lots for housing. Under previous rules, the minimum sized lot for subdivision in the county was 20 acres but that has since changed to 80 acres. In all, Stimson filed for compensation amounting to \$7.8 million to make up for the difference in development value but was ready to accept a waiver of the restrictions.

Although approval of a waiver had been scheduled for the county Dec. 5 meeting, the Washington County board of commissioners continued the case after receiving complaints from neighbors that Stimson's application was not complete. However, Mark Brown, land development manager for the county, told *Land Letter* that Stimson on Dec. 1 filed an additional 37 claims covering about 1,000 acres of timberland, seeking compensation or waivers to subdivide into 5-acre to 20-acre lots.

Washington County, near the northwest corner of the state, has received the largest number of Measure 37 claims of any county, according to the PSU database. "It's a lot of work," Brown said.

## Litigation abounds

DLCD's Morrissey said that there are about 125 lawsuits pending over Measure 37. The highest profile case, *McPherson v. Department of Administrative Services* reached the state Supreme Court this year, which overturned a lower court's finding that Measure 37 was unconstitutional ([Greenwire](#), Feb. 22).

However, many of the pending suits challenge claim denials, with a large number of them related to the question of ownership rights under the act, he said.

One pending case may determine whether Measure 37 applies to land-use restrictions imposed by the federal government as well as to state or local regulations. The case involves county restrictions passed as a result of federal designation of the Columbia River Gorge National Scenic Area [*Columbia River Gorge Commission v. Hood River County, et al.*; Oregon Court of Appeals No. CA A129652].

In oral arguments before the appeals court Dec. 8, an attorney for Oregonians in Action, which sponsored Measure 37, argued that restrictions on buildings passed by the commission should be subject to the state law covering compensation claims because they exceeded what was required by the federal designation.

There was no indication of when the court would issue a ruling.