



## **Measure 37 and You: What Can You Do?**

Oregon voters approved Measure 37 in November 2004. As a result, depending on when your neighbors bought or inherited their property, some may no longer have to obey the same basic zoning regulations that apply to you and the rest of your neighbors. This pamphlet will help you find out what effect Measure 37 may have on you and how you can get involved to protect your community. (You can find additional information at [www.friends.org](http://www.friends.org).)

### **What the law says**

Oregon's land use laws are designed to protect our neighborhoods from inappropriate development. Measure 37 says that if someone claims that if the government changed a zoning regulation or other land use rule after they purchased their property, and if that regulation:

- restricted what they could do with the property, and
- reduced the value of the property,

then that person can demand compensation for the reduction in value resulting from that regulation. [See Measure 37, Sections (1) and (2)] The state or local government must then either use our tax dollars or other funding to pay those demands for compensation, or allow the owner to be exempted from some or all of the regulations that you and your other neighbors must follow. (This exemption is called a "waiver.")

### **What can happen to my neighborhood?**

Measure 37 does not provide any source of funds to pay these demands. Therefore, state and local governments are choosing to grant waivers that allow some people to ignore the rules that the rest of us have to play by. These special exemptions can lead to significant unplanned, and in many cases damaging, development in our neighborhoods. It does not have to be this way.

### **The threat is real**

The destructive nature of some of these waivers is no longer hypothetical. The poster child for the Measure 37 campaign was an elderly woman that just wanted to build a house for her children. Some of the waivers granted so far are for cases like this. However, state and local governments have also granted waivers for a gravel pit 200 feet from a residence, for a 1 million square foot shopping mall in a rural residential and farming area, and for subdivisions that are next to farms and vineyards that people depend on for their living. This type of development is unfair to neighbors like you and can destroy neighborhoods.

### **What can I do about Measure 37 threats to my community?**

As residents of Oregon, we have used the ballot box many times to say that we value the benefits generated by our land use protection system. Being aware and sharing information with others about



the threats Measure 37 poses to our own property values and quality of life is the best way to minimize its damage and get positive changes made to this bad law.

There are several things you can do to minimize the damage to your neighborhood from inappropriate development resulting from Measure 37 demands.

1. Find out if anyone near you is making a demand under Measure 37. (*See p. 3*)
2. If there are any demands, and they have not yet been acted on by the county (or city) you live in, or by the state, you may have an opportunity to comment on the demand and possibly change what the demander is allowed to do if a waiver is granted. (*See p. 6*)
3. Once a waiver is granted, there is still a process that must be followed before any development can occur. If there is a hearing or other public meeting, attend and participate. Measure 37 is clear that, in lieu of payment for a valid demand, the government may allow a use that was permitted at the time the current owner purchased or inherited the property. However, it is equally clear that it is the government, and not the person making the demand, that has the discretion to decide specifically what use to allow.

For example, instead of allowing 240 acres of farmland to become a large residential subdivision that would harm neighboring farmers, the government may still be able to meet the requirements of Measure 37 by instead allowing one or two new small residential lots, which would have a smaller impact on you and other neighbors. A waiver limited to the value of the actual loss would be the right action for government to take. (*See p. 10*)

In the longer term, the only way to restore fairness to all is to change the law and the way government is implementing it. For this to happen, the officials we elect to represent us in government need to know about the destructive effects of these waivers, and they need to hear it from many people.

4. Let the people you elected to represent you, and who have the power to change the law, know about how it affects you and your neighbors. Get as many people as you can to call and write your County Commissioners, your State Representative and Senator, and the Governor's office. It will also be helpful to contact the Chairpersons of the Senate and House Land Use Committees, where any legislation to fix the problem will have to start. (*See p. 13*)
5. Get as many people as you can to write letters to the editor of your local newspaper. Call the television news stations, local radio call-in shows, or other media. Let as many people as you can know about the situation. (*See p. 15*)
6. Send us copies of your testimony and letters. We are tracking what is going on statewide, and may be able to use your information to convince legislators to take action. We may also be able to put you in touch with resources that can help with your local situation. (*See p. 17*)

The remainder of this packet provides details on how you can do these things to get involved, to protect your community, and to help get this bad law changed.



## **1. FIND OUT—IS THERE A MEASURE 37 DEMAND ON LAND NEAR ME?**

Although voters were not told this before the election, the law does not require public notice or a public hearing for government actions taken in response to Measure 37 demands for compensation. Even though you live next door, your county or city government might not notify you that your neighbor has filed a demand with them. Many counties and cities created a notice requirement when they adopted their local Measure 37 ordinance, but others have not.

If you do not already know about any demands filed near you, your first step is to find out if any exist.

### **How do I find out if anyone has filed a Measure 37 demand in my neighborhood?**

You need to contact your local planning office to find out what Measure 37 demands have been filed. To find your local planning office, it helps if you know whether you live within the city limits. You may have an address with a city name in it, but live outside the city limits in the county.

Counties: If you have access to the internet, you can get phone numbers for all county commissioners in the state at <http://www.aocweb.org/J-C-Roster.htm>. You can find links to county government websites at <http://bluebook.state.or.us/local/counties/counties.htm>. Follow links from there to your local Planning Department.

Cities: Call your city planning department and ask whether you are within the city limits. The planning department is often part of “Community Development.” If you have access to the internet, go to <http://www.orcities.org/cityinfo/citybooksMain.cfm> to find out how to contact your City planning official.

If you live close to the city limits, you may want to check with the county and the city to see if a Measure 37 demand could affect your property.

### **What do I ask for?**

Ask if anyone has filed a demand for compensation under Measure 37 with the jurisdiction, you are calling. Ask the planning staff to help you find the ones closest to you or in the area that is of greatest interest to you. The files are public information and you have the right to review them.

In most cases you can review, but not copy, documents at no charge. The government can charge a reasonable fee for copying and any staff time needed to collect documents for you. This is the law under ORS 192.410-440. (“ORS” stands for “Oregon Revised Statutes” and is the compilation of all of Oregon’s state laws.) Some local jurisdictions post this information on their websites. If you have internet access, browse the internet for this information (a librarian can help you) or ask your local government if this information is available electronically and where you can find it.

### **Is the County (or City) the only place a demand will be filed?**

No. The law states that only “the governing body responsible for enacting the land use regulation” has the authority to grant a waiver to that regulation [*See* Measure 37, Section (8)]. Many cases involve



both local AND state regulations. Only the state can waive state regulations, which means that before development can occur the owner must file a demand with the state.

Demands filed with the State are submitted to the Department of Administrative Services (DAS). DAS maintains a registry of all state demands. You can view the registry at <http://www.oregon.gov/DAS/SSD/Risk/M37Registry.shtml>. Unfortunately, this registry is not always up to date. Call the DAS Risk Management Division at (503) 373-7475 to make sure you have the most recent information filed with the state.

If no demands have been filed with the state but you want to be notified of any that come up, write DAS to request notice of all demands filed with the state for property within your county or other local area. Send your request to the Department of Administrative Services, Measure 37 Claims Unit, Risk Management – State Services Division, 1225 Ferry Street SE, U160, Salem OR 97301-4292

### **How can I tell if a demand for compensation affects me?**

The way the law is currently written, it is extremely unlikely that anyone will ever be paid compensation for a Measure 37 demand. Instead, governments will issue waivers that will allow some people to develop their land in ways that others cannot. It is the potential for this development that concerns most people.

Once you have found the list of demands that have been submitted, you will need to decide which, if any, are of interest to you or your friends and family. The form filed by the person making the demand should tell you where the property is, and it often will include a request for a specific type of development.

There are three primary ways a demand can affect you:

1. The Measure 37 demand is on the property next door to you. What your neighbor wants to do could reduce the value of your home. There are demands now for new subdivisions with access through a neighbor's property, for power lines to cross private property, for a garbage dump and for a gravel pit next door to houses. Demands for billboards are starting to come in. The added traffic, water, or sanitation needs may affect you. If you are farming or ranching, new development may create conflicts with what you do, which can affect your costs and your ability to get a business loan.
2. The Measure 37 demand is on property that is in your area, but it is not adjacent to you. This can affect your neighborhood and your property values even if you are not next door. There have already been demands filed for a huge shopping mall and for numerous commercial buildings near people's homes. Groundwater may be an issue in your area. Look for development that seems substantially different from what exists now.
3. The Measure 37 demand is on property that is not next to you or in your neighborhood, but it may affect your business or quality of life. For example, a large subdivision may dump traffic on the road past your house or that you use to take your children to school. The numerous demands to put houses on farmland may not affect your farming or tree growing operations



directly, but they might have an impact on agricultural processing facilities in your area by reducing their business and putting their continued operation at risk.

Once you have reviewed the demands, ask whether any of them, taken alone or together, has the potential to affect you in any of the ways described above.

**What do I do if there are demands that affect me?**

If you know there are demands that affect you, your next step depends on whether or not the demand the local and state governments have reviewed the demands. You can find this out by asking the same people you talk to when finding out what demands exist.

If the county or the state have not acted on the demands, see Section 2 below. If the demands have already been acted on, skip to Section 3 below.



## **2. I AM AFFECTED BY A MEASURE 37 DEMAND. WHAT DO I DO NOW?**

If you believe approval of a Measure 37 demand will harm you, you should participate in the decision process. For a normal land use decision, neighbors would receive notice and you would have the right to participate in a public hearing. That is not necessarily the case under Measure 37. Although some counties and cities have adopted ordinances that provide notice to neighbors and a public hearing, some have not.

### **What is the process for making a decision on a Measure 37 demand at the local level?**

The first step is to find out whether your local government has adopted a Measure 37 ordinance. Find out by calling your local planning department and asking them. In some cases, you can get this information at their website. Read the ordinance and ask yourself if it is clear how the process works. If it is not clear, call the planning department and ask a planner there to answer your questions or walk you through the process. Find out the status of the demands that concern you. Some counties are acting very quickly and the demands that might affect you may have already been approved.

Find out when or whether there will be a hearing on the demand. Ask if they will take public comment – that is your chance to speak out about your concerns. Governments have the authority to require a hearing for every Measure 37 demand and many are doing so.

In some jurisdictions, the Measure 37 demand is on the agenda for a meeting, but it is only a public meeting and not a hearing. In these cases, you may not have a chance to testify. However, you still have the right to tell your elected officials what you think about the demand and about not having a chance to be heard. You may be able to submit written comments prior to the meeting or make comments during a “public comment” period at the beginning of the agenda.

If you have to choose between writing comments and participating in the hearing, it is better to show up in person. You will have a greater impact. The best solution is to show up ready to speak and with several copies of your written comments to hand in as well. If you are going to the trouble to organize your thoughts to say in public, putting them on paper will not take any more time.

You do not have to be a lawyer, planner, actor, or expert to testify. Everyone gets nervous before speaking. What is important is that you show up and tell the decision-makers what you think. If you write down your comments, share them with reporters, the state government, your state legislators, and your neighbors.

You will have more impact if you find other friends and neighbors who will be willing to testify or write comments also. Talk to your neighbors and give them a summary sheet of information about the demand and when and where the hearing will take place. Write letters to the editor to let people in your community know what is proposed and what they can do about it. (*See Section 5, below.*)

### **What do I include in my comments?**

Answering the questions listed below will help you analyze a Measure 37 demand and make meaningful comments to your local government. If you have the chance to comment, you want to be effective. To do that, your comments need to address specific criteria and not just your personal views



about the demand. For more information, you can review the State of Oregon's Q&A on Measure 37, which is available online at <http://www.oregon.gov/LCD/docs/measure37/m37qanda.pdf>.

Try to address as many of the following points as you can.

Is the local process democratic and open? If it is difficult to get information about the demands, or if there is no option for a public hearing, comment on that. Request that the process be changed to be more open and democratic. Your comments should specifically request written notice of any hearings, copies of any staff reports, and a notice of the jurisdiction's decision.

Does the demand satisfy local procedural requirements? If your local government adopted an ordinance to process Measure 37 demands for compensation, determine whether this demand complies with it. If you are not sure what the ordinance requires, talk to your local planning office and ask them to explain it to you.

Is there adequate evidence to support the demand? A valid demand must demonstrate that the land use regulation was changed **AFTER** the owner obtained the land, and that the new regulation **RESTRICTED** the use of the land, and that it **REDUCED** the value of the property. We believe that local governments may require specific information to ensure that the demand is valid under the measure. This information could (and should) include, at least the following:

- 1) A legal description of the property for which compensation is demanded,
- 2) A description of each ownership interest, including trustees, lien holders, and lessees,
- 3) The date the claimant acquired ownership of an interest in the property,
- 4) Proof of that ownership (such as a current title report),
- 5) Identification of the specific land use regulation(s) that restricts the owner's use of the property,
- 6) A statement showing the manner and the extent to which the regulation(s) restricts the use of the property and has the effect of reducing the fair market value of the property, and
- 7) The amount of the demand based on the reduction in fair market value resulting from the regulation.

If the demand does not include sufficient written information to demonstrate that it qualifies under Measure 37, a local government can reject it. Your comments should urge them to do so.

When did the current owner acquire the property? Measure 37 only allows a jurisdiction to waive or modify a regulation enacted after the *current owner* inherited, purchased, or otherwise acquired the property. It cannot waive a regulation enacted after the family member (a grandparent, for example) acquired the property but before the current owner acquired it. If ownership is or was held by a trust, the date of transfer in or out of the trust may be the date of acquisition. Your county clerk's office will have records of all property transfers in your county and its cities. Their staff can help you look up deeds to determine when the current owner acquired the property.

Is the person filing the demand the sole owner? Are all ownership interests, including mortgage holders such as banks, aware of the demand and have all consented to its filing? If not, or if uncertainty exists, be sure to point this out in your comments.

Was the local zoning in place at time of acquisition later found to violate state rules or state law? The Statewide Planning Goals became effective on January 25, 1975. They protect land in farm and forest



zones, land along the coast, and other land as well. Some of the plans and ordinances adopted by cities and counties were later found to violate the Statewide Goals. For example, some counties adopted Exclusive Farm Use (EFU) zones with minimum lot sizes too small to comply with Goal 3 (Agricultural Lands) or improperly placed farm or forest land in rural residential zones. These local provisions were later overturned. In these cases, you can argue that the proposed use still must comply with the Goals, even if it was allowed by the local code at the time of acquisition. For land outside of urban areas that was acquired after January 25, 1975, the proposed use will need to comply with the Statewide Planning Goals.

Does current state law also govern the proposed use? Most county and some city land use regulations implement state requirements. For almost all land outside of urban growth boundaries (UGBs), the proposed use will remain prohibited by state regulation even if a local government allows it. Development cannot legally proceed without a waiver from the state. Examples of this are restrictions on urban uses outside of UGBs and restrictions on residential development in farm and forest zones.

If the Measure 37 demand is for land zoned for farm or forest use, make sure your comments address this issue. Be sure you also notify the state of your concerns regarding this demand. (See below.) For more information on this issue, see the Attorney General's February 24, 2005 opinion that local governments cannot waive state requirements. You can download this letter from <http://www.oregon.gov/LCD/docs/measure37/m37dojadvice.pdf>.

Is the demand for a specific amount of compensation? Measure 37 requires a written demand for compensation, not a demand for a waiver of regulations. If the demand does not include compensation, your jurisdiction cannot waive any regulations "in lieu of compensation."

Is the amount demanded justifiable? In many cases the amount demanded by the claimant may not accurately represent the amount of compensation allowed by Measure 37. Instead, it often represents the windfall increase in value that could result from an individual waiver of the regulation. In other words, the demand may be artificially high because it represents a theoretical amount that could be realized with a development monopoly in the neighborhood.

Under Measure 37, "just compensation" is the actual reduction in value resulting from the regulation. If a land use regulation does, in fact, reduce fair market value, the reduction occurs when the regulation takes effect. From that time forward the "fair market value" will include the effect of that regulation.

Many Measure 37 demands are based upon use restrictions that were applied to farm and forest lands in 1975 following the enactment of Senate Bill 100 in 1973. Many farm and forest lands that were valued based primarily on farm and forest uses (the highest and best uses at the time) prior to 1973 were, no doubt, still valued based upon farm and forest uses (still the highest and best uses) after Goals 3 and 4 took effect. It is not clear, therefore, that such land use regulations actually reduced the value of such lands.

If there was any actual reduction, it was likely small. It is the present value of this reduction that is due under a Measure 37 demand. The first step, therefore, is for the governmental body reviewing the demand to recognize that, in many situations, there is a big difference between the windfall demanded and the "just compensation" deserved.



Is what the claimant is asking for the only solution? One of the biggest misconceptions about Measure 37 is that if the government does not pay the amount demanded, then that landowner may do anything she wants to do with the property. This is not so. Measure 37 is designed to make property owners whole, not grant them huge windfalls.

Your city or county government has discretion under Measure 37 to limit the scope of the waiver it grants. Section 8 of the law states that absent payment the government may “modify, remove, or not ... apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.” Your local government does not have to approve whatever the claimant demands.

If the demand is based solely on the windfall increase in value that would result from an unlimited individual exemption, argue that the demand must demonstrate (and the government must find) that there was an actual reduction in value due to the regulation. Then, of course, the government should use its authority under Section 8 to create a waiver that addresses the compensation deserved rather than the windfall demanded.

Point out what probable impacts there would be if the demand were granted (costs to the jurisdictions, existing property owners, etc.). Propose a different allowed use. For example, what might happen if your neighbor puts 100 houses on the 100 acres next to you? That will create traffic problems and septic system failures. As an alternative, propose five 20-acre lots, which were also allowed at the time and may more accurately reflect the actual reduction in value. Argue that this is a more reasonable scale of development for the neighborhood.

### **How does the process work at the State level?**

Keep in mind that most county decisions will also involve state standards, which the county cannot waive. This means that a county cannot legally issue a building permit for a Measure 37 demand that requires a waiver of state regulations if the state has not issued such a waiver. (See *Attorney General letter of February 24, 2005* available at <http://www.oregon.gov/LCD/docs/measure37/m37dojadvice.pdf> )

In general (but not always), the state process of reviewing demands and granting waivers is behind the local jurisdictions. If you miss the local process, you may still be able to participate in the state’s process. After DAS registers a demand, the Department of Land Conservation and Development (DLCD) processes it. The State prepares both a draft staff report and a final staff report for each demand. DLCD makes the draft staff report available to neighbors who have contacted either them or DAS, and allows 10 days for neighbors to comment on the draft staff report. (See <http://www.oregon.gov/LCD/m37draftstaffreports.shtml>) DLCD then publishes a final report, with a final decision about the demand. (See <http://www.oregon.gov/LCD/m37finalstaffreports2006.shtml>.) If you provided comments to the state, you may be able to take the decision to court. (See ORS 183.484.)

Submit comments to Department of Administrative Services, Measure 37 Claims Unit, Risk Management – State Services Division, 1225 Ferry Street SE, U160, Salem, OR 97301-4292. Send a copy to George Naughton, Department of Land Conservation and Development, 635 Capitol Street NE, Salem, OR 97301. Be sure and address the issues covered in your local comments as well as anything specific to state regulations.



### **3. PARTICIPATE IN THE LAND USE HEARINGS FOR DEVELOPMENT BASED ON MEASURE 37 WAIVERS.**

A waiver by itself does not allow for development. Before any building can take place, the property owner must get permits and, in many cases, a land use hearing must take place. This process occurs the same way any similar type of development would occur, including in most cases notice to neighbors and the chance for public input.

Call or write your local planning department and ask to receive notice of any applications for development on the property you are concerned about.

#### **I received a Notice for a hearing. What should I do?**

Call or visit your local Planning Department. Ask to review or get a copy of the application. Get a copy of the Staff Report and Recommendations. This document provides a review of the application and the relevant regulations, and is usually available at least one week before the hearing. Also, get a copy of the final order and any staff reports for the Measure 37 waiver.

Find out if the State granted a waiver, and, if so, get a copy ([http://www.lcd.state.or.us/LCD/measure37.shtml#Final\\_Staff\\_Reports\\_and\\_Final\\_Orders](http://www.lcd.state.or.us/LCD/measure37.shtml#Final_Staff_Reports_and_Final_Orders)). You will have to go through the lists for 2005 and 2006 separately, but you can search by County or by Applicant Name to find what you are looking for quickly (press Control + F on your computer keyboard). Review this document to see if it is consistent with the local waiver. In many cases, the state waiver is more restrictive than the local waiver.

Armed with this information, the most important things you can do are to get people involved, get the word out, and participate in the hearing. You can participate by either writing a letter or appearing in person. If you have to choose between writing comments and participating in the hearing, it is better to show up in person. You will have a greater impact. The best solution is to show up ready to speak and to bring several copies of your written comments to hand in as well. If you are going to the trouble to organize your thoughts to say in public, putting them on paper will not take any more time.

If you write down your comments, share them with reporters, the state government, your state legislators, and your neighbors. (See Section 4 and Section 5 below.)

You will have more impact if you find other friends and neighbors who will be willing to testify or write comments also. Talk to your neighbors and leave them a summary sheet of information about the demand and when and where the hearing will take place. Write letters to the editor to let people in your community know what is proposed and what they can do about it.

#### **What should I include in my comments?**

General tip: No government can deny an application based on feelings, emotions or general concerns. Testimony should include specific references to goals, statutes, rules, ordinances or case law. Most of what you need can be found in the county's staff report and in the in the state's Measure 37 waiver report and order. You can find tips on testifying at our website [www.friends.org](http://www.friends.org).



If you write a letter, ask in the first paragraph that it be placed in the record for this matter, and list the file number (which is on the staff report). Ask for notice of the decision and notification of any appeals.

Describe the Project. Describe how the demand will affect you and the area you live in. How close are you to the development? How long have you lived there? Why did you move there? Do you depend on your land for income? What is being proposed? How will that impact water, traffic, or the ability of neighbors to continue to use their land?

This is important to establish your standing to appeal a decision to the Land Use Board of Appeals (LUBA) or beyond them to the Court of Appeals. This is a simple process, but you need to do it at the County level because LUBA and the Court of Appeals generally will not allow evidence that was not presented at the local level.

Is there a local waiver? Is the proposed development consistent with that waiver and with other applicable laws? Unless specifically listed in the order granting the waiver, all current regulations still apply. Look through your local development ordinance to see if there are any current regulations that would limit or restrict the proposed development. Remember that current requirements involving public health and safety (including water, sewer or septic, traffic and fire safety) cannot be waived under Measure 37 and continue to apply.

Is there a State waiver? Does it allow this type of development? If the proposed development requires a state waiver, the county cannot take any action until the state makes its ruling. If there is no state waiver, or if the state's waiver does not allow the type of development proposed, the county cannot approve the development.

Is what the applicant is asking for the only solution? One of the biggest misconceptions about a Measure 37 waiver is that if the government does not pay, then that claimant may do anything she wants with the property. This is not so.

Section (8) of the law states that absent payment the government may “modify, remove, or not ... apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property” (emphasis added). If the waiver is not specific, and simply allows “a use” permitted at the time the owner acquired the property, then the county does not have to approve whatever the claimant demands. Point out what probable impacts there would be (costs to the jurisdictions, existing property owners, etc.). Propose a different allowed use that would still comply with Measure 37, such as fewer, larger lots.

Keep the Decision-making Process Public. Measure 37 eliminates normal public notice and hearing requirements Oregonians rely on as part of the land use process. Under Measure 37, no notice is required to anyone, even next-door neighbors. No hearing is required to process a waiver. Although the law does not require notice and hearings, it also does not prohibit them.

If your county refuses to hold a public process, point out that had the county allowed other input through public notice and a hearing at the waiver stage—as many other counties are doing—they



might have received more information that would have resulted in a decision on the waiver that would not have generated in the conflict and criticism that often follows.

Conditions for approval. It may be appropriate for the county to place conditions on any approval. Go through the staff report and find the ones you agree with (all is okay). Are there any missing? Typical conditions include requiring the applicant to demonstrate that all current roads, culverts, and structures comply with applicable ordinances and regulations. Use whatever language you feel comfortable with in pointing out alleged illegal dwellings or other code violations that you know of. If groundwater is an issue in the area, point this out and send a copy of your comments to the State Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301.

Supporting documentation. Be sure to attach anything that you want to have in the record, including court cases, language from state goals or ordinances or rules, and, if you rely on them, the Measure 37 waiver orders. If it does not go in at this level, you may not get it in at the LUBA or Court of Appeals.

### **Do we need to hire an attorney?**

You do not need an attorney to participate at the local level. If you choose to represent yourself, you can also do that at LUBA or the Court of Appeals. However, you cannot represent other individuals or a group of people. Getting a group of concerned neighbors together and hiring an attorney is often an effective strategy because it decreases the likelihood of having the case thrown out for lack of standing, and it is a good way to share costs. If this issue is important to you, you might consider contacting an attorney at the beginning of the process just to make sure that you do the right things in the early stages so that if you need an attorney later her job is easier.

### **Can I submit a claim for a decrease in my property value due to a neighbor's Measure 37 demand?**

As written, Measure 37 is about being fair to the person making the demand, but not to his neighbors. Measure 37 itself does not allow you to seek compensation for the reduction in your property value due to uses granted under a Measure 37 waiver. However, there may be a private right of action and/or the ordinance adopted by your local government may allow you to seek compensation from the person with the Measure 37 waiver. You will need to read the ordinance and ask your local planning department if the ordinance specifically creates a right to sue for a decrease in your property value.



#### **4. LET THE GOVERNMENT OFFICIALS THAT WERE ELECTED TO REPRESENT YOU KNOW THAT A WAIVER IS HURTING YOU.**

As of October 25, 2005, the State had received 1255 demands. Over 85% of these are for subdivisions and other land divisions, and almost 90% seek to develop farm and forest land.

Numerous provisions of Measure 37 are unfair and threaten our quality of life. If you are concerned about the impacts of Measure 37, your elected officials need to hear from you. Potential topics to cover include:

Describe the Harm from the Project Being Proposed (or Already Approved) Near You. Your elected officials need to understand that for every one person they make happy by granting a development waiver, they potentially damage many neighbors. Describe the area you live in. How long have you lived there? Why did you move there? Do you depend on your land for income? What is being proposed? How will that impact water, traffic, or the ability of neighbors to continue to use their land?

Keep the Decision-making Process Public. Measure 37 eliminates normal public notice and hearing requirements that Oregonians rely on as part of the land use process. Under Measure 37, no notice is required to anyone, even next-door neighbors. No hearing is required. Neighbors may not know about a demand until the bulldozers show up. The legislature must act to guarantee that Oregonians receive notice of demands filed and have a chance to address those demands in a public hearing.

In addition, through the Department of Administrative Services (DAS) the State has established a centralized system for tracking all demands filed with the State. This registry should apply to all Measure 37 demands (state, county and city), which will enhance cooperation and efficiency amongst government jurisdictions and provide public access to demand records.

Oregon Voters Support a Fair System of Compensation. The ballot title of Measure 37 led many voters to believe they were approving compensation for those who are pinched by land use regulations that promote the greater public good. However, the measure includes no source of revenue. In a cash-strapped environment, governments are forced to waive or repeal our land use protections. Oregonians support land use planning and deserve a compensation system to complement those efforts, not forced waivers that undermine our neighborhood and farmland safeguards. A fair system of compensation takes into account the benefits as well as the costs of planning to land values. Those benefits include the increased land value that comes from having a systematic land use planning program that investors, landowners and taxpayers can all count on.

Waivers Hurt Neighbors. Suspending land use rules for only certain people will create chaos for landowners and taxpayers. It is inherently unfair to authorize governments to issue waivers arbitrarily for select property owners. In the absence of adequate funding, the effect of Measure 37 is to force government to issue such waivers. Problems with land use rules should be addressed through modification of those rules. Elected officials need to take a stand against waivers, and address needed changes to the land use rules after careful review of the land use system, such as through the Governor's call for a "30 year review."



**Who to contact:**

Counties: If you have access to the internet, go to <http://www.aocweb.org/J-C-Roster.htm> to find phone numbers for all county commissioners in the state.

State Representatives, Senators, and the Governor: You can find your state legislator and your state Senator at <http://www.leg.state.or.us/findlegsltr/findset.htm>, or by calling toll-free (800) 332-2313.

It also helps to let the House and Senate Land Use Committee chairs know what you think about your experience with Measure 37 because any legislation to change the measure will come from one of these committees.

In the Senate, the Senate Environment and Land Use Committee chair is Senator Vicki Walker (D-Eugene), who can be reached at (503) 986-1707 or [sen.vickiwalker@state.or.us](mailto:sen.vickiwalker@state.or.us).

In the House, Rep. Bill Garrard (R-Klamath Falls) is chair of the House Land Use Committee and he can be reached at (503) 986-1456 or email at [rep.billgarrard@state.or.us](mailto:rep.billgarrard@state.or.us).

Finally, contact the Governor: Ted Kulongoski, 160 State Capitol, 900 Court Street, Salem, OR 97301-4047. You can call his office at (503) 378-4582, or fax him at (503) 378-6827.



## **5. HELP EDUCATE THE PUBLIC ABOUT THE TRUE IMPACTS OF MEASURE 37.**

Surveys and polls are showing that the more people know about what is happening under Measure 37 the less they support it. Even people who voted for the measure are realizing that the large-scale developments being proposed are not what they voted for. People want fairness—but they want it for everybody. That includes fairness to neighbors who bought their property later or who depend on their land to make a living.

One effective way to get the word out in your community is through letters to the editor of your local or regional newspaper. A series of letters from you and your neighbors can keep the issue in front of readers for a period of time. Potential topics to cover might include:

Describe the Project Being Proposed (or Already Approved) Near You. People need to understand that there is real damage happening on the ground. Describe the area you live in. How long have you lived there? Why did you move there? Do you depend on your land for income? What is being proposed? How will the proposed development impact water, traffic, or the ability of neighbors to continue to use their land?

Oregonians Voted for Fairness, but Government has Not Delivered. The ballot title of Measure 37 gave many voters the reasonable expectation that they were approving compensation for those who are pinched by land use regulations that promote the greater public good. However, the measure includes no source of revenue. In a cash-strapped environment, governments are forced to waive or repeal our land use protections. Oregonians deserve a fair system of compensation with adequate funding that takes into account the benefits—as well as the costs—of planning to land values.

Measure 37 Undermines Neighborhood and Farmland Safeguards. Measure 37 is an unfunded mandate with one clear objective: to roll back Oregon's basic zoning protections. The measure makes the false promise of payments to property owners, but local and state governments simply do not have the money for such payments. It is inherently unfair to authorize, and then bully, governments into allowing development that would otherwise be illegal. Oregonians support land use planning and did not vote to undermine land use laws.

Waivers Threaten Nearby Property Owners. If a Measure 37 waiver is granted, neighboring properties may decrease in value. Waivers that are out of proportion to the value lost are hurting people who depend on their land for their livelihood. Land use laws must be fair to ALL Oregonians.

Measure 37 Leaves the Public in the Dark. Measure 37 eliminates the normal public notice and hearing requirements that Oregonians rely on as part of the land use process. Under Measure 37, no notice is required to anyone, even next-door neighbors. No hearing is required. We need local rules that implement Measure 37 to provide notice to neighbors and the community as a whole. Local governments should also participate in the statewide registry that the Department of Administrative Services (DAS) has established. One central registry will enhance cooperation and efficiency amongst government jurisdictions, provide public access to claims records and save taxpayers money.

The Legislature Must Act to Ensure Fairness. The legislature has the responsibility and obligation to honor the will of the voters and fix the most destructive and poorly written provisions of Measure 37.



A fair land use system means transparent and open government decision-making processes, public participation, a funded compensation system for cases of individual hardship due to land use rules, and the application of rules in an even and certain manner. The legislature should fund a system of compensation that considers both benefits and costs of land use regulations to properties. Lawmakers must repeal authority to grant land use waivers and instead fund a comprehensive review of the land use system so that appropriate changes can be made to the rules by which all Oregonians abide. If the legislature does not act, perhaps the people should.

### **Guidelines for Letters to the Editor**

- Submit letters to your regional paper(s) or statewide papers only, and address them "To the Editor."
- Check the editorial page or website of each paper for specific guidelines regarding length and format.
- Most papers will not print letters without contact information. Please be sure to include your name, address, and a daytime phone number. Include your legal signature on letters that you do not submit electronically.

### **How to Contact Your Local Paper and Get Information about Their Letters Policies**

The Oregonian will publish letters from around the state. They have a 150 word limit. You can reach the editor care of the Oregonian, 1320 S.W. Broadway, Portland, OR 97201. You can fax the paper at (503) 294-4193, or send e-mail to [letters@news.oregonian.com](mailto:letters@news.oregonian.com).

You can find addresses, phone numbers, web links and e-mail contact information for most of the papers in the State at <http://www.friends.org/issues/M37/LTE-guide.html>.



## **6. SUPPORT 1000 FRIENDS OF OREGON'S EFFORTS TO GET THIS BAD LAW CHANGED.**

1000 Friends of Oregon is working hard to change Measure 37 from something that gives special privileges to a few into something that is fair to all Oregonians. Our long-term goal is the creation of an adequately funded compensation system for property owners who have experienced individual hardship in the application of our state's land use regulations. When combined with the elimination of waivers that can result in inappropriate development that harms neighboring property owners, such a fund can address the voters' expectation of fairness for everyone.

In the short term, we are assisting homeowners and citizens like you to minimize the damage to our communities and our livelihoods that waivers will bring. We are doing this by providing resources such as this packet, getting citizens in touch with each other and with additional resources, being involved in local and statewide hearings and court cases, and working with local governments, the legislature, and the governor to create replacement legislation that will be fair to all Oregonians. To help us do this, we need to know what is happening in your neighborhood.

If you provide any testimony or written comments, or if you write to the local officials elected to represent you, or if you write any letters to the editor, we are interested in seeing them. PLEASE e-mail a copy of these materials to [julie@friends.org](mailto:julie@friends.org) (write "M37 comments" in the subject line) or mail a copy to 1000 Friends of Oregon, 534 SW Third Avenue, Suite 300, Portland, Oregon 97204.

Finally, if you are not already a member of 1000 Friends of Oregon, please consider joining. You can contribute to our work by visiting [www.friends.org/support/index.html](http://www.friends.org/support/index.html), or by calling (503) 497-1000.

***Note: This material is provided for general information purposes only, and is not intended to serve as legal advice. You are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. If you have any questions or feedback concerning this summary, contact 1000 Friends of Oregon at 503-497-1000 or [info@friends.org](mailto:info@friends.org).***