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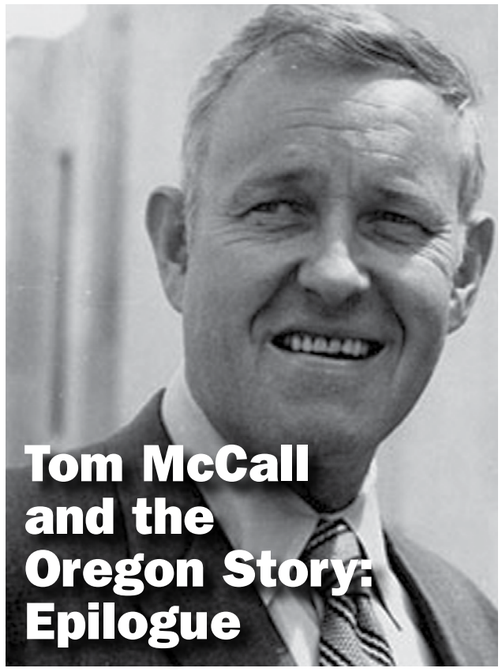


Tom McCall and the Oregon Story: Epilogue

From its inception over thirty years ago Oregon's nationally renowned land use program has been under attack by development interests. Attempts to repeal it were unsuccessful, however, until 2004, when statewide Measure 37 passed. In this issue of the newsletter we take a big look at the skewed interpretation, administrative confusion and devastating effects of this misbegotten offspring of deceit, greed and irresponsibility.

While government bodies continue to rubber stamp unsubstantiated and often bogus claims, we'll look at what is being done and can be done to curb the impacts of Measure 37. But first, as his worst nightmare comes to pass, we ought to recall the man most responsible for protecting Oregon's health and beauty from "the grasping wastrels of the land."

By 1974 Tom McCall, Governor of Oregon (1967-75), was a national phenomenon. Already famous for protecting Oregon's Willamette River from polluters, its beaches from privatization, its roadways from litter and its farms, forests, and natural areas from sprawl, McCall was in the spotlight again, touting the need for a "third force" in politics.

According to Brent Walth's account (*Fire at Eden's Gate*), as the Watergate scandal unraveled a chagrined McCall began to talk of a "government without politics." In this post-Watergate scenario, campaign funding would be severely curtailed, government would be open, the press truly free, and politicians would be "stewards of the land." For a model the nation need only go west – "to visit but not to stay." On NBC's Today show McCall told interviewer Bill Monroe, "The Oregon Story is a hopeful force. I think it shows that the system can work and that people respond if there is leadership with imagination and guts."

All over the state and across the nation McCall had been imaginatively promoting "The Oregon Story" and defending it against those who would rewrite it as a manual for wholesale development. By 1978 however, when, terminally ill and out of step, he decided to run for a third term, his Republican opponents Vic Atiyeh and Roger Martin recast the story as a tale told by an idiot, signifying nothing but hostility to business and damage to the economy. McCall was incredulous. For Oregon's economy had boomed during his administration largely because his land use planning program and other environmental protections had helped make the state a desirable place to live and work.

After losing to Atiyeh in the primary, McCall spent the last year of his life on a successful campaign to defeat a third attempt to repeal land use planning. Like the others, Measure 6 was heavily funded by timber and lumber companies.

As Walth recounts, not long before he died McCall spoke in Portland of his terminal cancer and the stress that may have exacerbated it or even have brought it on. "Yet stress is the fuel of the activist," he said. And "this activist loves Oregon more than he loves life.... The tradeoffs are alright with me. But if the legacy we helped give Oregon and which made it twinkle from afar – if it goes, then I guess I wouldn't want to live in Oregon anyhow."

In the quarter of a century since those words were spoken the state's population has more than doubled, and Oregon's land use regulations have been amended, excepted and otherwise weakened by legislatures, commissions, committees, local hearings officials and land management divisions who readily feed the insatiable appetites of developers and their agents. As a result, urban-style housing

continued on page 2

McCall, continued from page 1

has sprawled onto farms and in forests, along waterways in riparian zones and floodplains, on top of clearcut and eroded hillsides and mountains, on coastal cliffs suitable mainly for the nesting of birds and even on the shifting sands of beaches.

For its part, Lane County plans in the next fifty years to accommodate the 160,000 new residents its planning will encourage by expanding urban growth boundaries and opening the remaining farmland in rural communities to residential and commercial development.

Thrice McCall mustered his passionate determination and his skills as a broadcast journalist to help defeat measures that would have destroyed his land use program. A proponent of "smart growth" and "the prudent use" of natural resources, McCall, as Walth notes, believed that people "have a greater capacity for love than to destroy" and that "they will not be able to resist the temptation to make [the world] better."

Could he have looked ahead these twenty-five years to a state without him, could he have seen the rapid growth in population, in timber harvests and in sprawling development that have poisoned the rivers, the soil and the air he was so moved by love to protect, would McCall still believe that growth can be smart and that people – for example, the timber companies, homebuilders associations and real estate industries who underwrote Measure 37 – will do the right thing by choosing to use our natural resources sustainably?

But perhaps the better question is: had we in the twenty-five years since his death leadership at the city, county and state level with the compassion, commitment and courage, with the imagination, drive and integrity – with the love of Oregon – of a McCall, would these words, these questions, be moot? Had we stewards of the land in Salem would the land that LandWatch watches be supporting a steady state economy instead of suffering the depletion caused by growth without limits? Rather than wielding Measure 37 as a bludgeon would the Wildishes "not be able to resist the temptation" to make their 1,400 acres at the base of Mt. Pisgah better by deeding it to the public trust?

Finally, could he see what has become of his legacy, no longer twinkling but ablaze in bright lights and neon, would McCall want to live in Oregon?

Robert Emmons
President
LandWatch Lane County

Developers reap huge profits by planting subdivisions on farm land.

Measure 37 Rewards Greed

Measure 37 was sold to Oregon voters in 2004 with a slick ad campaign appealing to their sense of fairness. It requires compensation for landowners who can show that they've owned their property continuously since before a specific regulation was applied, that the regulation has restricted use of their property and that it has lowered their property value. In lieu of compensation, enforcement of the regulation must be waived.

The poster child for the measure was an elderly woman who said she wanted to build just a couple of houses for her children on her large rural lot – a dream thwarted by supposedly over-restrictive land use laws enacted since she acquired her land decades ago. The ad campaign urged relief for these alleged victims of regulations. Instead, as the majority of claims reveals, supporters of the measure actually were voting for massive subdivisions and the gross enrichment of a few at the expense of everyone else.

An analysis of claims for which information is available – 131 in Lane County as of 10/9/06 – reveals that the "parents-splitting-off-a-few-lots-for-the-kids" scenario is uncommon. The majority of claimants are demanding to subdivide their property for maximum financial gain. Of the 50 Lane County applications that specify a desired use (others are incomplete or purposefully vague), 70% propose to divide their property into five lots or more, with a dwelling on each new lot, most often in one- or two-acre parcels. Half the claims specify ten or more new lots. Three are for over 100. Less than a quarter propose three or fewer new lots and houses – the type of use that voters were led to believe Measure 37 was all about.

While M37 mandates "just compensation" for lost property value resulting from "a" land use regulation, many property owners are seeing big dollar signs. The average amount of monetary compensation demanded by Lane County claimants is over $2.3 million. Statewide, those feeding at the M37 trough think they are owed a total of $5,611,724,576, also over $2 million per claim on average (as of 9/15/06).

Not surprisingly, nearly all the money that funded the M37 campaign came from a handful of timber, sand and gravel, and land development companies. In fact, 48% of pro-M37 contributions greater than $5000 came from Lane County special interests. Clearly, their objective is to roll back Oregon's landmark land use laws and pave the way for unregulated, urban style development. In this climate of unbridled greed, pro-development land use agents have been encouraging landowners to exploit their acreage for maximum financial gain – to agents as well as applicants. Notably, former Lane County commissioner and land use lawyer, Steve Cornacchia, currently finds himself awash in new business representing would-be M37 developers.

While successful claimants, developers and their agents pocket windfall profits, taxpayers will pick up the burden of providing infrastructure and public services for the new subdivisions and the people living in them. Taxpayers also pay most of the cost of processing these claims, estimated to be over $3 million and rising. In return nearby landowners will see their property values and quality of life diminish. Our state will continue to lose valuable open space and resource land until Oregon voters realize that good land use laws are more important than short term economic gain for a few.

Lane County Claims

First in line when Lane County began accepting M37 claims was Kenny Gee of Creswell, seeking to divide his 56 acres of farmland into small lots with a dwelling on each. His first application called for two-acre lots and was approved by the County Board of Commissioners (BCC). Mr. Gee then realized that he didn't want to be constrained to only 28 lots and went back to the Board with a request to modify his waiver. The commissioners, with no debate, obliged and rewrote his approval order. Gee has since complained in a letter to the editor to the Register-Guard about the inability to transfer development rights and the burdensome permitting process for his subdivision. Obviously, Mr. Gee had hopes of selling off his waiver to the highest bidder, and never intended to provide homes for family members. Now he is threatening the Creswell area with a multi-unit mobile home park instead.

Bernard and Margaret Bernheim, who filed their M37 claim in 2005, want to create up to 157 parcels on their more than 500 acres off Rodgers Road, east of Creswell. Neighbors in the area have raised concerns about an inadequate supply of water, dangerous traffic and the possibility that the Bernheims might not really own all of the property described in their application. Mr. Bernheim signed a purchase option with the McDougal brothers in 2005 (around the same time he and his wife filed their M37 claim), The McDougals are notorious for their bulldozing of farms and forests, and for permit violations resulting from illegal bridge and road building in wetlands and fish bearing streams.

The neighbors also questioned the involvement of Frontier Resources, a development company headed by a major contributor to the M37 campaign, Greg Demers. Frontier has posted signs on the property claiming to own it. The Bernheim case could test whether a property owner can transfer his or her granted waiver of land use regulations to a developer or new owner.

Recently, the BCC approved the claim of Jon and Lynna Gay Bowers with little examination of its validity, as is their custom (see following article). The Bowers assert that they became owners of nine acres north of Junction City in 1971 via a land sales contract for which no legal documents were produced or required by the County. The State Department of Land Conservation and Development, which also must evaluate the validity of M37 claims, ruled that the Bowers actually acquired their land in 1977 and 1980 in transactions with accompanying warranty deeds. With those later dates of ownership, the Bowers face restrictions on developing their farm-zoned land because adoption of the Statewide Planning Goals occurred in 1975, before the Bowers owned the land. It will be up to the County to abide by the State's evaluation of what dates of ownership and specific laws actually apply to the Bowers.

As the volume of M37 claims continues to grow locally and statewide, more and more damage to our landscape is being authorized everyday. The onslaught can be turned back, but only if conscientious and courageous Oregonians demand a stop to wholesale greed and elect officials who are stewards of the land.

Jim Babson
Board Member
LandWatch Lane County

LandWatch Fall 2006

State and County Officials Rubber Stamp Measure 37 Claims

Scores of Measure 37 claims are currently being approved, many of which probably shouldn't be. State and County officials charged with evaluating them have established a routine of granting waivers of land use regulations to practically every applicant. The few claims being denied are those made by claimants who can't show that they actually own the property in question.

Lane County landowners seeking to profit under M37 must file a claim with both the county and the State. Obligingly, the State Department of Land Conservation and Development (DLCD) and the Lane County administrator continually make decisions that effectively sidestep serious examination of M37's main tenets.

Most glaringly, the requirement that an imposed regulation decreases a claimant's property value has been essentially discarded. Those charged with judging the validity of claims are operating under the blanket assumption that all regulations lower property values and that in every case there is indisputably some loss of value. No standards are used, no consistency is sought, and no process for determining lost value is ever considered. Since neither the State nor the County has any intention of paying cash compensation to claimants, they are uninterested in the exact dollar amounts being demanded or the justifications for those amounts.

DLCD typically states in its ruling that "Without an appraisal or other documentation, it is not possible to substantiate ... [the reduced property value]. Nevertheless...the department determines that it is more likely than not that the fair market value of the subject property has been reduced to some extent... [by enforcement of a regulation]." The county employs a similar routine argument to dismiss the necessity of establishing loss-of-value criteria.

Claims that should be denied based on date of ownership are being approved because the decision-makers are able to pass on the denial to someone else. Several Lane County claims seek to build dwellings on one-acre parcels on property acquired well after the State land use laws were enacted in October 1973 and the Statewide Planning Goals were adopted in January 1975.

When approving a typical claim of this nature, DLCD argues that since many land use regulations besides the Goals have been adopted or revised since the applicant's post-1975 land acquisition it is quite possible that one of these regulations has restricted some use of the landowner's property. When DLCD concludes that the goals do apply to a particular property (usually Goals 3 and 4 restricting development on farm and forest land), their caveat is that, because no specific development proposal was included in the application, DLCD has no choice but to consider the claim valid. A waiver is granted in spite of the fact that most of these applications do express the intent to divide the property and build a dwelling on each new parcel, a use not allowed when the property was acquired after the early to mid-1970s.

Would-be developers who do not clearly demonstrate how a regulation restricts the use of their property are also rewarded for their vagueness. Again, without a specific development plan, DLCD concludes that some regulation probably restricts some use, and, therefore, the claim is valid. Lane County says even less in justifying its approvals. Both bodies pass the buck on issuing a final opinion as to whether a rural subdivision is really allowable.

Why are these officials so reluctant to deny these flawed claims? One reason, certainly, is that the fine print in the M37 statute says government must pay the applicant's attorney's fees if the applicant appeals a denial to Circuit Court and has the decision overturned. Rather than risk losing in court, they defer resolution of these questionable waivers to local planners, who will soon be swamped with proposals to build subdivisions.

It appears likely that the only serious challenge to some of these ill-conceived development schemes will come from concerned citizens. Many rural residents have already received the bad news that a M37 claim has been filed to place a large cluster of houses on farm- or forest-zoned land near them. They are worried about loss of their own property's value, depletion and degradation of their groundwater, increased traffic congestion and related safety concerns, noise, pollution and many other potential negative impacts of unplanned, "build-it-because-we-can" development.

When specific site development proposals come before the County Land Management Division, neighbors will have to get involved in the process to ensure that their concerns are addressed and that applicable regulations are enforced. However, landowners within close proximity to a proposed subdivision will be informed by mail that they have only ten days to comment – a very short time to request a public hearing and organize an effective response.

LandWatch will be assisting neighborhood groups in their work to protect farm and forest land from sprawling development. Well-coordinated citizen efforts are necessary to ensure that Lane County applies the appropriate rules and criteria fairly, consistently and lawfully.

Jim Babson
Board Member
LandWatch Lane County

LandWatch Fall 2006

Oregon As a Role Model

Following the example set by Oregon's Measure 37, Washington, Montana, Idaho and Arizona have qualified similar initiatives on the fall ballot. California and Nevada have proposed constitutional amendments.

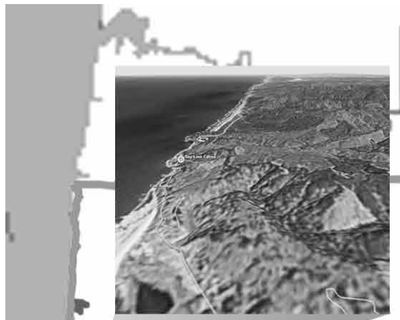
Washington's Initiative 933 has been described as "Measure 37 on steroids." I-933 has fewer exceptions for regulations that address health and safety and also makes no exceptions for laws that prevent public nuisances.

Proposition 207 in Arizona would allow landowners to transfer land free of regulations to anyone, including a developer. And lurking in the fine print of California's Proposition 90 are "extreme provisions that would erode the ability to pass laws that protect natural resources, wildlife and habitat, ensure water quality and adequate water supplies, and regulate growth and development" (*Planning in the West*, 9/8/06).

Major funding in support of these propositions and initiatives comes from Americans for Limited Government, a Chicago organization founded by New York real estate mogul Howard Rich.

Once a national model for environmental and sensible land use protections, Oregon has now established the benchmark for opportunistic greed and unbridled development.

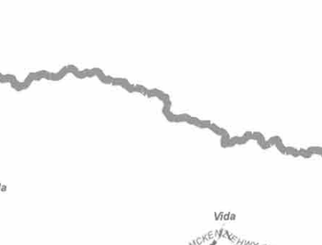
Measure 37 Claims in Lane County



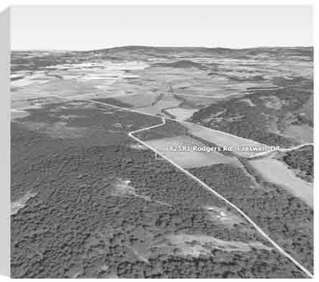
Davidson Industries
Near Sea Lion Caves
Forest Land
115 acres
100 home sites requested

28123 Benson Rd., Crow
Farm and Forest Land
125 acres
50-125 home sites requested

83505 Tolman Rd., Creswell
Forest Land
67 acres
2-acre home sites requested



81778 Highway 99, Creswell
Farm Land
56 acres
1-acre home sites requested



82581 Rodgers Rd., Creswell
Farm Land
515 acres
157 home sites requested

Summary as of 10-9-06
131 claims
9,594 acres

Measure 37 Claims

Interview with Tom Lininger

Tom Lininger teaches at the University of Oregon School of Law, where he is one of the advisors for the Sustainable Land Use Program. He formerly served as a Lane County commissioner. In this interview, Tom discusses the implementation of Ballot Measure 37.

LW: How have government agencies been responding to Measure 37 claims?

TL: The claims present the government with two options: compensate the landowner for the reduction in value, or waive enforcement of the regulation. To the extent that government agencies have adjudicated such claims, the most common response is to waive application of the regulations. Every once in a while an agency will deny a claim altogether, sometimes on procedural grounds.

LW: For what purpose have landowners been filing Measure 37 claims?

TL: The advertising for M37 implied that claimants wanted permission to develop their land for their own residential use. The statewide numbers tell a different story. Among 1,276 claims in which landowners specified their purpose, 1,168 indicated that they wanted to subdivide their land, presumably so that they could sell some or all of the lots. In other words, over 90% of the claimants sought to subdivide their land.

LW: Is Oregon considering any follow-up measures relating to Measure 37?

TL: This November we'll be voting on Measure 39, which is part of a national movement to prevent governments from condemning land and then reselling it to a private party. Measure 39 also require governments to pay landowners' court costs in all condemnation cases if the final purchase price is higher than the initial offer. Proponents say that this measure is necessary to protect property owners from unfair coercion by the government. The measure is supported by Oregonians in Action, which sponsored Measure 37.

LW: What do the critics say about Measure 39?

TL: Opponents have argued Measure 39 would hinder the development of projects such as Pioneer Place in Portland and Orenco Station near Hillsboro. Opponents are particularly concerned about the provision in Measure 39 shifting court costs when the final purchase price is higher than the initial offer. This provision (which is not limited to condemnation of land for resale to private parties) would increase court costs for governments using condemnation power.

LW: Does the U.S. Supreme Court's decision in Kelo v. New London, (Connecticut) necessitate a response like Measure 39?

TL: In the Kelo case, the Supreme Court rejected a constitutional challenge to the condemnation of private party where the city sought to make the property available for private development. Some critics – including dissenters on the Supreme Court – expressed alarm that condemnation for this purpose is permissible. Sandra Day O'Connor used particularly strong words in dissent: "Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory." Yet, even if the prohibition of condemnation for private purposes were a worthy proposal, Measure 39 might still be objectionable because it goes much further. For example, consider the provisions that would require the government to pay the opponent's attorney's fees whenever the initial offer is lower than the final compensation. This provision would extend beyond the context of condemnation for private purposes, and it could significantly shift the balance of power in condemnation proceedings.

LW: There's been some talk about TDRs as a possible solution for private property owners who want to develop their land, but are thwarted by regulations taking effect after the purchase date. How would TDRs work?

TL: The term "TDR" is shorthand for transferable development rights. The idea is that the government would give landowners a right to develop property outside the areas of greatest sensitivity. So in exchange for foregoing development of prime farmland or forestland, the property owners might gain a right to develop land in some other area. Of course, the TDR concept wouldn't work in every situation.

LW: What can Oregon do to preserve land use planning in the aftermath of Measure 37?

TL: I don't think Oregonians would approve a ballot measure that throws out Measure 37 – at least not at the present time. I also don't think that government officials will generally want to pay to enforce land use restrictions in the face of Measure 37 claims. Hopefully, the Legislature will explore solutions that would exempt from Measure 37 certain additional land where the enforcement of land use regulations is particularly urgent. Governments should be prepared to pay off Measure 37 claimants if necessary to enforce certain important land use restrictions.

LandWatch Fall 2006

Radical Measure and Radical Claims Require Reasonable Deterrents

The Fifth Amendment to the U.S. Constitution requires that "just compensation" be paid when the government takes private property for public use. The courts over the years have interpreted the Fifth Amendment to require compensation when a regulation leaves an owner in possession of his property but deprives him of any viable economic use of that property. Measure 37 dramatically lowers the threshold for a "regulatory taking," providing that it occurs at the first penny of loss. Oregon now has the country's most extreme and radical "takings" law. Consequently, our ability to regulate land uses to promote the public interest or the common good has been largely destroyed.

We now have quite a bit of experience with how M37 is being implemented around the state. Claimants aren't interested in compensation, and no government body – local or state – is offering to pay compensation, no matter how little the amount demanded. The issue of when the alleged loss must be measured is being ignored. And no government body, local or state, is requiring that land uses allowed by waiver of regulations be proportional to any loss suffered.

Portland State University has been compiling Measure 37 claims from around the state and now has about 95% of all claims in its database. As of August 2006, 2970 claims have been filed with counties, cities, Metro, and the state, involving 161,468 acres. This number doesn't "double count" claims – if a claim has been filed with both a county and the state, it is only counted as one claim. About 40% of people filing claims with local governments have not also filed a claim with the state.

Measure 37 Claims in Oregon

Two-thirds of the claims, and half of the total acreage, are in Northwestern Oregon/Willamette Valley:

Region	Claims	Total acres	Maximum	Average
NW/Valley	1,927	79,805	1,400	42
Coast	215	13,429	587	65
Southern	531	37,581	2,367	71
Central	181	15,822	1,902	88
Eastern	116	14,833	1,293	128
All Claims	**2,970**	**161,468**	**2,367**	**55**

Jackson County leads the pack, with claims totaling almost 20,000 acres. Washington County is close behind, at 17,928 acres. Clackamas and Yamhill counties have 14,907 and 12,518 acres respectively, and acreage in both Marion and Linn counties is fast approaching 10,000. Lane County is in the middle of the pack, with affected acreage totaling about 9,500.

Almost all of the claimants are seeking "land divisions with dwellings": subdivisions or partitions to be built out with houses. 75% of the claims, and 85% of the affected acreage, involve farm or forest lands.

Although the Oregon Supreme Court has declared the measure constitutional, there are numerous lawsuits pending throughout the state over the measure's many ambiguities. As of mid-September, the State of Oregon is a party to 69 such lawsuits. In resolving these cases the courts will have to address issues of ownership, date of acquisition, and the applicability of state statutes, goals and rules to local decisions following waivers of local ordinances.

Private parties are raising more fundamental and challenging issues. In a Hood River case Cascade Resources Advocacy Group (CRAG) is arguing that M37 authorizes a waiver only to allow "a use," not a land division; that loss must be measured at the time of enactment of the regulation so as to avoid windfall and ensure that any compensation be "just"; that any allowed use must be proportional to the loss in value; and that DLCD is exceeding its authority in waiving statutes. A Marion County case also raises issues of valuation and DLCD authority to waive statutes.

Circuit court rulings have begun to answer some questions. In July the Circuit Court of Hood River County held that land use regulations applicable within the Columbia Gorge National Scenic Area are required to comply with federal law and are therefore exempt from Measure 37. The circuit court's ruling has been appealed and is now before the Court of Appeals.

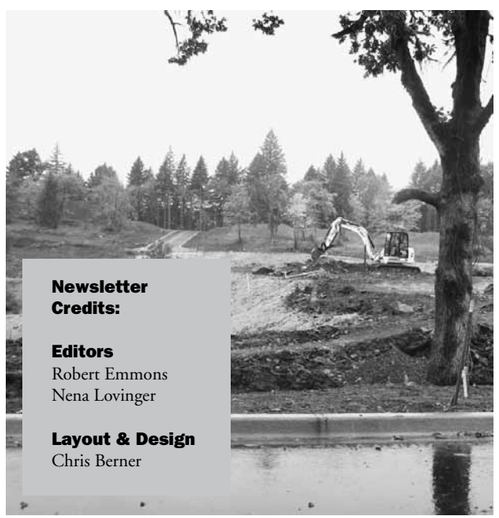
The most contentious issues that remain to be resolved involve transferability of waivers. The Office of the Attorney General, on February 25, 2005, issued a letter opining that waivers are personal to the current owner of the real property. In August 2006, the Crook County Circuit Court sent out an advisory letter ruling that Measure 37 waivers are not transferable. If the courts agree with the attorney general's opinion, rights obtained under M37 waiv-

ers are very limited indeed. If the property is transferred before the new use is established, the right to that use is lost. An established use could not be transferred and would expire with the death of the claimant. For example, a house built under a waiver right could not be sold to another person while the claimant was alive or inherited after the claimant's death.

However, it is possible that the courts will apply the doctrines of nonconforming uses (uses not allowed outright in the zone) and vested rights to M37 claims, which would allow a use to be transferred. Currently, nonconforming uses may be sold or otherwise transferred. Even an unfinished nonconforming development may be sold to a new owner and the development completed if the development is far enough along so that the right to complete the development and implement the use has become "vested." Similarly, a landowner may have a vested right in the use granted by a Measure 37 waiver if the landowner has taken substantial steps toward implementing that use. Then the use allowed by the Measure 37 waiver could pass to subsequent owners as a nonconforming use.

It will take some time for the answers to the questions posed by M37 to become clear as cases slowly wend their way through the trial courts and appeals process. But we can't forget that our challenge is not simply to get the best results we can from litigation. The real challenge is to restore the notion of the common good to its rightful place in our polity.

Jim Just
Executive Director
Goal One Coalition



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Lane County Land Use Update

Amid all the Measure 37 claims, other development and associated rezoning proposals continue to flow into the county's Land Management Division with the usual frequency. LandWatch is committed to the task of reviewing every proposal in order to determine if it has the potential to impose negative impacts on farm and forest land.

Two longstanding applications for rezoning from Agricultural Land (EFU) to Marginal Lands (ML) total almost 400 acres (320.5 acres and 73.74 acres). These proposals would allow hundreds of acres of agricultural land to be sub-divided into 10-acre parcels. The Board of Commissioners (BCC) voted to approve the 320 acre proposal, overturning the Planning Commission's (PC) recommendation of denial. The case will be heard at the Land Use Board of Appeals (LUBA) on behalf of neighbors and LandWatch later this fall. The 73-acre proposal recently received a recommendation of denial from the PC, and is pending a recommendation from the BCC. LandWatch is working with Goal One Coalition on both these cases.

In the past several months, LandWatch has taken note of two applications requesting re-designation and rezoning from Forest/F2, to Nonresource/RR5. These proposals allege that non-productive soils are prevalent throughout the subject properties, and, therefore, the highest and best use of the properties is for 5-acre parcels with a home on each. LandWatch is working with Goal One Coalition staff who have already prepared comments challenging each of these applications and who are in contact with neighbors opposed to them. One of the proposals has received a recommendation of denial from the Lane County Planning Commission but has not yet received a public hearing date before the BCC. The second is scheduled for a public hearing before the Planning Commission in mid-October.

A third application, high on the list of threatening actions, is for a rezone from Non-impacted Forest Land (F1) to Impacted Forest Land (F2) of 118 acres near Noti. The F2 zoning would open the door to residential development, initially for one single family dwelling and possibly more sometime further down the road. The rezone was first requested in 1999, denied by the Planning Director, and subsequently denied by a Hearing's Official on appeal. The current proposal does not correct the insufficiencies of the previously denied application, and Lane County staff has indicated the current proposal is not approvable. A public hearing before the Hearing's Official, originally scheduled for September 21, has been rescheduled at the request of the applicant's agent. LandWatch will participate in the hearing, currently scheduled for Thursday, November 16, at 9 a.m.

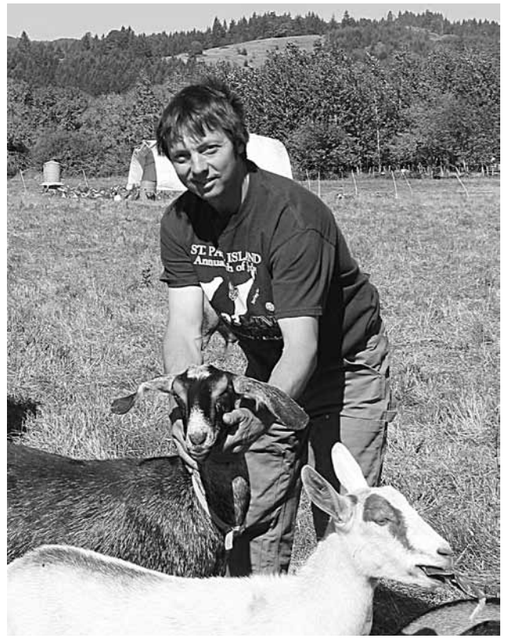
LandWatch has also submitted written comments to the Planning Director on an application that is not subject to a public hearing. The proposal requested verification of a vested right to allow completion of a replacement dwelling in the EFU (E40) zone. The vested rights approach is rarely used, as there is a relatively strong benchmark for applicants to establish that they have a vested right to build. This proposal posed many unsubstantiated assurances of compliance with the criteria, prompting LandWatch to participate in the decision while the written record was open. A decision has been pending since mid-September.

LandWatch counts on citizens throughout Lane County to help us protect our farms, forests and natural areas. Lane County's land management staff process hundreds if not thousands of land use applications every year. Citizens have the essential responsibility of holding county employees and officials publicly accountable in their review of land use proposals.

Lauri Segel
Community Planner
Goal One Coalition

LandWatch Fall 2006

In Land We Trust: Prologue



Paul Atkinson and some of his laughing stock on the land he wants to save.

I grew up on a farm here in Lane County, hiking, hunting, swimming, fishing the land and waters that I love. At an early age I saw the parcelization of our special places, the paving of our best river bottom soils, and mourned their loss.

As a high school student, I wrote to Governor Tom McCall, pleading that he "do something" to stem the dissipation of our common wealth. After Senate Bill 100 put the often praised and maligned Oregon land use system in motion, I imagined zones in place that would be sacrosanct, protecting farms and forests permanently. This would give Oregonians the possibility of a sustainable, steady-state economy, blessed by the beauty and natural wonders of our state.

What I have witnessed instead is a constant erosion of our land base by UGB expansion, zonal exceptions and manipulation of law, fueled by real estate speculation. In spite of the best efforts of thousands of us to improve and uphold land use law, I see ominous disregard for the ideals of planning and conservation, punctuated by Measures 7 and 37.

Law can only be effective when it affirms the will of the majority of voters. Apparently this state has lost, or never possessed, the will of the majority to subjugate some private property rights in order to uphold our common responsibilities.

How might we begin to build majority support for taking care of Oregon? One way would be to put in place a mechanism for permanently monitoring and managing voluntary conservation easements on farms and forest lands held by committed Oregon caretakers. Those of us who want to lead by example need assurance that restrictions put on the property we hold will be made a permanent part of the title and monitored, so that our legacy will be a bit of the Oregon we know and love preserved as we imagine it.

There are several models of land trusts in the U.S. which successfully hold conservation easements on private land. These enable land holders to make their vision of a landscape part of the title, with assurance that their wishes will be complied with over generations.

Paul Atkinson
Owner and Farmer
Laughing Stock Farm

The following web sites have information on privately constructed land trusts, and/or conservation easements:

American Farmland Trust Information Center
www.farmlandinfo.org

Marin Agricultural Land Trust
www.malt.org

Colorado Cattleman's Agricultural Land Trust
www.ccalt.org

McKenzie River Trust
www.mckenzieriver.org