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LandWatch



Fall 2004

Volume 4, Number 2

Measure 37: Fool's Gold

NO on 37

Take a Closer Look Committee

In December 2003, Oregonians In Action (OIA), the anti-environmental protection, anti-land use organization, was circulating an initiative to undo Oregon's 30 years of land use planning and farmland protection. In July 2004, the Secretary of State confirmed that OIA's new ballot measure had qualified for the November ballot.

Measure 37 has a simple and deceptive ballot title: "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value." That might sound reasonable at first glance. But all Oregonians should take a closer look.

Measure 37 would require state and local governments to pay property owners whenever a "land use regulation" reduces a property's value. It's retroactive, applying not just to future

regulations, but existing ones passed after a landowner – or a member of the family – bought a property.

If Measure 37 passes, local elected officials, already facing serious budget pressures, will face a fool's choice: pay landowners millions or billions of dollars, or waive or repeal important safeguards. How much will it cost just to hire all the lawyers and appraisers to figure out who we'll pay and how much we'll pay? The only thing that is clear about how Measure 37 would work is that lots of money would be spent on lawsuits and staffing more than 300 new government positions to process claims. The Oregon Secretary of State's office estimates Measure 37 would burden Oregon taxpayers with up to \$344 million per year in administrative costs alone.

How much will our taxes need to rise? Because

Measure 37 also does not provide any money to pay for claims or the new bureaucracy it would create, governments would have no choice but to increase taxes, cut services (like police or schools), or rollback land use and zoning protections.

Adding insult to injury, under Measure 37 your property values could plummet and Measure 37 would leave you stranded. In fact, if passed, a neighboring property owner may be allowed conflicting uses currently barred by local zoning rules that would in turn lower the property values of you and your neighbors. The only way government could prevent such conflicting uses would be to pay the landowner – with your taxpayer money – for his reduced property value due to zoning rules.

Examples of laws likely to be weakened or eliminated if Measure 37 passes include limits on costly sprawl across farmland, urban growth boundaries, requirements for coastal access and restrictions on coastal walls or barriers, scenic vista protections, tree protection ordinances, and many more.

The bottom line: Measure 37 would destroy Oregon's 30-year legacy of land use planning and farm and forest protection. It would mean higher taxes for Oregon taxpayers, and more red tape at every level of government.

Underlying this measure is the historically incorrect and economically unsupported concept of "it's my land and you can't tell me what to do with it." As Washington, D.C., Republican businessman Donovan Rypkema observed in a 2001 address, "Property rights' proponents screech about how their property rights are sacred,

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but who is talking about property responsibilities?

The so-called property rights movement is the singularly most misguided, historically inaccurate, fiscally irresponsible political movement of the last half century.”

Property rights without responsibilities – without regulations that protect the common good – is a self-serving recipe for chaos.

So who stands to gain from Measure 37? Just follow the money. In the July campaign financing report, a total of only eight contributors gave \$540,000 – or a startling 72% of all contributions – to the pro-Measure 37 campaign. These contributors know their corporations will reap windfall profits at the expense of taxpayers if Measure 37 passes.

Fortunately, a strong campaign has come together to oppose Measure 37. Backers of the No on 37 coalition, currently known as the “Take a Closer Look” campaign, include everyone from Republican former Governor Victor Atiyeh and Democratic former Governor John Kitzhaber, to county farm bureaus, to the Oregon Business Association, to 1000 Friends of Oregon, to the League of Women Voters and many others.

The “Take a Closer Look” campaign urgently needs your support in order to stop Measure 37 from passing. To support or learn more about the coalition, contact the Take a Closer Look Committee at (503) 222-2734 and take a look at www.takeacloserlookoregon.org



LandWatch Elects New President

I’m greatly honored to have been elected president of LandWatch last June and to follow in the footsteps of Robert Emmons, who served as president for three years.

It’s gratifying to know that in the coming year I can count on the talented, hardworking LandWatch board of directors to support my efforts to protect Lane County farms, forests and open space from urban sprawl and inappropriate industrial development. I want to recognize, too, the invaluable assistance LandWatch receives from Lauri Segel, local planning advocate for 1000 Friends of Oregon, and Jim Just of Goal One Coalition.

As with many board members, I first came to LandWatch to get assistance with a land use issue several neighbors and I were concerned about. In 2001 cell phone towers were appearing in alarming numbers throughout Lane County.

Few, if any, effective local regulations or guidelines existed for siting the towers. As part of a small local group, I found out the hard way that not only do the wheels of government grind slowly, those wheels may not grind at all if not given a good kick. Except for a couple of county commissioners, we found county bureaucracy blind to the need for standards to ensure placement of towers a safe distance from residences and schools.

A chance call to LandWatch gave us the direction and encouragement we needed to press on with our efforts. We eventually succeeded in getting a reasonable ordinance in place. Unfortunately, the cell phone tower siting guidelines are currently being revised and may be weakened, proving once again that constant vigilance is necessary in our quest to protect the health, beauty and integrity of Lane County’s resource lands and the waterways that serve as their lifeblood.

Thanks to members and supporters for all that you do. I look forward to serving you, so please free to contact me with your issues and concerns at monancraig@pacinfo.com

Mona Linstromberg,
President

Citizen Action Restricts Veneta Wetlands Development

Veneta, a small rural community 13 miles west of Eugene, is laced with wetlands. Following a building moratorium to get adequate water and sewer infrastructure in place, it is also laced with development. The wetlands are often reconfigured, channeled, and run through culverts to accommodate this development.

The City of Veneta has a comprehensive body of ordinances that support a vision of livability, including the protection of its natural and cultural resources. However, like most communities, Veneta also has provision for variances to certain ordinances – and a propensity to use them liberally. When a city continually approves variances, as Veneta does, the exception becomes the rule.

Earlier this year the City’s approval of two variances to its Wetland Protection Ordinance compelled our group, Neighbors 4 Responsible Growth (N4RG), to appeal these decisions to the Land Use Board of Appeals (LUBA). Thanks to the exceptional work of Jim Just of Goal One Coalition and attorney Jan Wilson, LUBA ruled with us. As a result, an 81-home subdivision has been redesigned to



Wetlands are being destroyed near Veneta to make way for yet more urban sprawl.

have little or no impact to the wetlands, and an ill-conceived road through the wetlands has been halted.

But abuses continue. A woman dug a three-foot wide, four-foot deep trench in a wetland – once duck habitat – along the entire length of her property. And, because new development has been built on top of wetlands, sump pumps are now under new homes, foundations and retaining walls have cracked, and backyards flood when neighbors water their yards. Streets, driveways, concrete pads, and sidewalks all create stormwater runoff, continually challenging the already overtaxed drainage system, and often resulting in flooding.

Compounding the problem, Veneta often tries to shift its responsibility for wetlands protection to the Department of State Lands and/or the Army Corps of Engineers, a responsibility the agencies do not appear to want. As a result of weak or nonexistent enforcement, oversight has devolved to concerned citizens.

Our group continues to monitor development and to challenge the City when appropriate. We attend Planning Commission meetings as well as meetings of the policy-making body, the Veneta City Council. We write letters to the editor, circulate petitions, and speak to our neighbors. Perhaps our biggest success to date can be seen in the willingness of people to step forward and be heard. People do not feel as isolated when they know their neighbors have the same concerns. We may even have emboldened a few of our local decision makers to ask unpopular and probing questions.

Veneta is slated for urban growth, but good planning should inhibit urban sprawl. To fulfill its vision of livability, the City must look at the big picture instead of viewing, as it does now, each new development proposal in isolation. To protect its cultural and natural resources, the City of Veneta must let developers know that it has comprehensive standards and intends to enforce them.

Mona Linstromberg,
Neighbors for Responsible Growth, Veneta

First County, Now City Rewards Speedway Outlaws

In August 2003, the Boundary Commission approved the annexation of the Cottage Grove speedway into Cottage Grove. Cottage Grove begged the Commission for oversight because Lane County had begun to fine the speedway for its illegal activities. Even so, fines amounted to a paltry \$5,000. Though the county could legally fine up to \$50,000, it justified the low fines by claiming that it was short-handed and had undergone personnel changes.

Soon after bringing the speedway into Cottage Grove’s jurisdiction, the city council wrote new land use law, based on the advice of city speedway attorney Bill Kloos, that would allow all pre-existing uses legal or illegal to continue to operate. This meant that anything the speedway wants to do would be allowed until it goes through the usual permitting process.

A year after the property was annexed into Cottage Grove, the speedway is still operating illegally. Not a single structure has been permitted, and, because it is sited on the edge of the Coast Fork of the Willamette, the entire property is within the Willamette Greenway. The speedway has not applied for

land use approval nor has it applied for any building permits as of this writing.

As a result of our appeal, in August 2004 LUBA ruled that the city of Cottage Grove could not enact code that allows illegal uses to continue and that they must go through the permitting process. Nonetheless, the city continues to ignore this ruling and to allow the speedway to operate without restrictions.

Once again the burden is placed on taxpaying citizens to also pay attorneys to make government bodies enforce the law. Cottage Grove’s refusal to carry out the LUBA decision forces us to petition the Land Conservation and Development Commission for an enforcement order or to initiate a mandamus and/or nuisance action in Circuit Court.

Cottage Grove likes to think of itself as an “All American City,” and in fact it functions like the oligarchy America has become. In effect, those of us required to get permits before we can build a structure or run a business are discriminated against by policy that allows the privileged few to operate outside the law. Apparently against the American grain, we are simply asking that the law apply equitably and fairly to everyone. In August LUBA agreed with us that it’s the right thing to do.

Kris and Larry Okray



Coburg Power Boondoggle Still Looming

The proposed 900-Megawatt Coburg power plant is still under active consideration by state and local officials. Though decisions by LRAPA and Oregon Energy Facility Siting Council will likely be delayed 18 months, if approved the plant, known as West Cascade Energy, will have profound impacts on Lane County. Here's a quick summary of the proposal.

At 900 MW, West Cascade Energy would be the largest gas-fueled power plant in Oregon, exceeding the 649 MW plant located in Hermiston. It would be so big that it would consume more natural gas than all the residential gas customers in Oregon combined.

The proposed plant dwarfs local power needs. EWEB's total power sales average about 300 MW and the combined power demand for the greater Eugene-Springfield Metro Area (including EWEB) is a little more than 600 MW. There is no need for additional power today, and power plant developer Gary Marcus has no contracts with local utility companies to purchase any of his power.

Based on forecasted growth rates from the Northwest Power Plan, we can expect power needs to increase at about 1 percent per year. In the 20 years from 2005 to 2025, this leads to the need for an additional 132 MW to serve all of the region's growth, not the 900 MW planned. Thus, many astute observers conclude that power will be sold to distant markets in California and

Nevada, while the pollution is delivered to Lane County.

Speaking of pollution: the plant would emit 2.3 million pounds of EPA-regulated air pollutants and almost 2 million tons of carbon dioxide annually into the local airshed. It would use thousands of gallons per day of chemicals, including aqueous ammonia, sodium hypochlorite, sulphuric acid, sodium hydroxide, and sodium bisulfite.

Visitors driving south on I-5 will see the twin 195-foot smoke stacks just a few minutes after crossing the Linn/Lane county line, but they may be unable to see the Three Sisters through the stacks' emissions. Over 100 acres of farmland would be rezoned to allow a variety of huge structures associated with the plant, including six smaller 90-foot tall smokestacks; three 175-foot

Over 100 acres of Coburg farmland would be sacrificed to a sprawling natural gas plant.

tall transmission towers; an 80-foot high by 80-foot wide water tank; a chemical lagoon, waste discharge swales, a 500 kV transformer yard; and a two-mile-long transmission line crossing I-5 on 19 new 85-foot power poles.

The plant would draw up to 6.5 million gallons daily from the McKenzie River, negatively impacting threatened Spring Chinook by reducing flows throughout the final seven miles of the river.

To voice your concerns about this proposal, please contact your elected officials as soon as possible. For more info about the plant see: www.saveourvalley.com

Eben Fodor



At the Izaak Walton League shooting range, tests have found toxic levels of lead in sediments in Spencer Creek. The League's discharge of lead to streams is aggravated by flooding, unlawful development, and shooting at metal targets.

Jury Finds Shooting Range is Polluting Spencer Creek

On July 9, a jury unanimously found the Izaak Walton League shooting range to be a public nuisance for polluting Spencer Creek with lead and other toxic waste. The private range is about one mile south of Eugene.

The verdict came in a Lane County circuit court suit brought by downstream neighbors. The suit now moves to a remedy phase. The Oregon Department of Environmental Quality added the range to the state's list of hazardous

waste sites in 2002. Testing has found toxic levels of lead in sediments in Spencer Creek and a seasonal tributary. Testing has also found dissolved lead in the tributary's waters and toxic levels of lead in adjacent soils. The League closed the site's shotgun range in 2000, but the site's pistol range and rifle range continue to discharge lead to Spencer Creek. Last February, DEQ advised the League that implementing measures "to reduce discharge of lead to sensitive environments (such as Spencer Creek) and off-site areas is critical to limiting environmental damage."

Since 2000, DEQ has cautioned the League to shield the banks of Spencer Creek from gunfire at the rifle range. However, the League

continues to expose the creek and its banks to gunfire and bullet fragments. In violation of range rules the League shoots across the creek at low hung targets placed on both sides of the stream, aggravating the discharge of lead to its banks. The targets in front of Spencer Creek violate a 1975 conditional use permit (CUP), which prohibits any development or improvements beyond those shown in a 1975 site plan.

The League unlawfully developed the pistol range in the 1990s, in violation of the 1975 CUP. The range abuts Spencer Creek and was constructed on top of the seasonal tributary.

Lead pollution from the pistol range is aggravated by chronic flooding, unau-

thorized earthwork, and routine shooting at metal targets. Metal targets cause bullets to explode, spraying lead fragments and creating hazardous amounts of lead dust. Spencer Creek and the tributary are littered with bullet fragments. Microparticulate lead is transported by sediment in runoff, which drains into Spencer Creek.

In 1996, Spencer Creek flooded the floor of the pistol range under 1 to 1-1/2 feet of water, and, in 2003, flooding carried bullet-ridden barrels from the range more than 1/3 mile downstream. Defying DEQ's warnings, the League has repeatedly excavated the floor of the pistol range to build a visibly contaminated berm on top of a spring. The berm has repeatedly collapsed, sending sediment toward Spencer Creek.

The League agreed to delineate and clean up its hazardous waste in 2002, in response to a suit I brought under the Clean Water Act and the Resource and Recovery Act. However, the delineation remains incomplete more than a year after the deadline passed, and it is unclear if or when cleanup will occur.

Apparently, the League does not recognize that its contamination of streams is a serious community issue. Last year, League president Gary Thomsen told the Spencer Butte Neighborhood Association that the lead in Spencer Creek "normally all gets washed away." Spencer Creek drains into Fern Ridge Reservoir via Coyote Creek.

Adam Novick



Interview with Tim Hermach

by Chris Berner, LandWatch Vice President

Tim is the President of the Native Forest Council. Since 1988 he has been an uncompromising voice crying out to save what little remains of our endangered native and old growth forest ecosystems. He is a tireless activist, a writer and a very fast thinker.

CB: What are the biggest threats to Oregon's forests?

TH: *The greatest threat to our forests today is the timber industry's dishonesty, greed, waste and fraud combined with an epidemic of corporate-spawned disinformation and public apathy. Big timber and the Forest Service have bought and paid for so-called "science" that justifies unsustainable extraction of timber. We've already cut far more than our ravaged ecosystems can bear. We need a complete revolution in the way we manage natural resources if we wish to survive for long on this earth.*

CB: What do you think of new Forestry, the idea that thinning is better than clearcutting?

TH: *One company, Anderson-Tully, of Memphis, Tennessee, and a couple of local private tree farmers, Fred Behm and Roy Keene, have been sustainably cutting forests for years, and I support them. But the majority of corporate logging on both private and federal lands constitutes strip-mining, and in national forests this increasingly happens on steep slopes in fragile watersheds. The effect of all this overcutting has been devastating to our watersheds and drinking water sources, including loss of snowpack, landslides, water siltation, dead fish, bug infestation and increased fire danger.*

CB: What is your opinion of Measure 37, the initiative before voters this fall that would allow compensation for a loss in land value as a result of land use restrictions?

TH: *The corporate and individual promoters of this measure represent the worst of the American public, feeding at the public trough and demanding they get whatever they want – no matter who gets hurt. Oregon's current land use laws work to protect property values from irresponsible use; Measure 37 would promote it.*

CB: Talk to me about riparian setbacks. How close should people be allowed to build next to Class I, II, III or IV streams?

TH: *Current riparian setbacks, while better than nothing, are but a minor band aid solution for a gaping wound on streamside health. It is unethical and immoral to radically cut away vegetation in any watershed no matter what class stream is impacted. At least 200 feet of riparian vegetation should protect each side of waterways. Our watersheds are the lifeblood of our environment, our life support system, the lungs of the planet, yet industrial forest practices continue to treat our creeks and rivers like sewers. Now all of us are suffering the consequences of years of agency and corporate mismanagement. The old forests used to soak up the rains and release water slowly in the dry months. But too much vegetation is removed along our waterways to hold the banks. Corporate land-owners should be educated or restrained, and those who refuse to be responsible good neighbors should lose their property, just as we would take abused children away from abusive parents.*

CB: What do you see for our children's future?

TH: *If people continue to tolerate liquidating and trashing the earth – our forests, soil, air and water – then we are doomed to extinction. In the U.S. we throw away enough wood fiber every year to build 1 million housing units. Politicians are increasingly bought and paid for by corporations they now represent. Our children are increasingly victims of the greed and short-sightedness of corporate profiteers and their government lackeys. Global warming and destruction of natural environments are causing wild animal and plant populations to free fall. Our public assets are being cannibalized for a quick buck: their profits, your costs; their money, your lives. We've got to reverse this trend.*

CB: What advice would you give our readers?

TH: *Don't act like sheep. Listen to the land. Experience both healthy forests and clearcuts. Do everything in your power to stop the insanity that passes for "sustainable forestry." We've compromised for far too long, and must work hard to save the healthy environments that remain and promote healing of those that are ailing.*



LandWatch Teams with Goal One Coalition Against Business as Usual

Over the last year LandWatch Lane County and the Goal One Coalition have been working closely together on a number of land use issues vital to Oregon's future.

The proliferation of houses in farm and forest zones poses the greatest threat to the farm and forest economy and to the environment of Lane County. These houses arise in a number of esoteric, technical contexts, such as nonresource lands, marginal lands, woodlot dwellings, and template dwellings. However, the result is the same: the conversion of working farms and forests to rural McMansions.

Development of all these types of rural houses is governed by state law, as implemented by Lane County code. But the development community – the "land use practitioners," as they call themselves – aided and abetted by the Lane County Land Management Division, have systematically ignored or evaded the rules in getting these houses approved and built.

It took a fight with the Land Management Division for LandWatch to get notice of these applications as they arose. We've since been participating in every proposal to convert farm or forest land to residential uses, providing evidence and argument why approving houses isn't allowed. Our participation has slowed down the development machine locally as the "land use practitioners" find that it's no longer business as usual.

A couple of these cases are now beginning to wind their way up to the Land Use Board of Appeals. LandWatch has filed an appeal of the county's approval of a "nonresource lands" application, where the county said that the land wasn't protected by statewide planning goals and therefore could be developed with houses. Christine Cook is representing LandWatch through 1000 Friends of Oregon's Cooperating Attorney Program. We're arguing that the land does meet the state definition of farm or forest

land, and that the land is part of an existing farm unit. We're expecting county approval of a "marginal lands" application soon. This will allow the county to claim that resource land isn't good for farm or forest uses, thus paving the way for residential development. I will likely argue this case myself.

A great number of abuses in Lane County stem from illegally using roads to create new parcels and then using illegal property line adjustments to reconfigure those parcels into rural subdivisions. We've been challenging those practices wherever we can. And our efforts have prompted the Board of Commissioners to convene a work group to look at the county's code relevant to these practices. Case by case, Goal One and LandWatch Lane County are working together to put an end to Lane County's long history of land abuse.

Jim Just, Executive Director, Goal One Coalition

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