

Report gives possible fix for Measure 37

It advises lowering claimants' inflated land-use values

By MITCH LIES
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Lowering inflated land-use values in Measure 37 claims would minimize the measure's impact on farming, yet keep it in line with Oregon voter intent, according to a co-author of a 92-page report unveiled this week by a land-use planning group.

The American Land Institute, a nonprofit research and education organization in Portland, said state and local governments are acting in error by accepting compensation claims much higher than the actual loss in value suffered by Measure 37 claimants.

Henry Richmond, executive director of the institute and a co-author of the report, said the problem originates when claimants calculate the development value of farmland under a 2007 scenario, rather than under the scenario in place in

More online

The complete text of the report, titled Oregon's Public Investment in Conservation, Prosperity and Fairness, can be accessed at www.oregonpublicinvestment.com.

1974, when most Oregon land-use laws were implemented.

Even by adding 30-plus years of interest, the system advanced by the institute dramatically reduces claimant compensa-

tion awards.

"In most cases, it would result in modest compensation awards and won't be a threat to agriculture," Richmond said.

The study also showed Oregon's farm tax deferral system has provided farm owners dramatic compensations in property tax reductions — to the tune of \$3.8 billion since the system was implemented in 1974.

Forestry owners gained \$1 billion in tax deferrals during that same time period, according to the report.

"This is the biggest public

investment ever made in the state of Oregon," Richmond said, noting it's bigger than the costs of constructing Bonneville Dam and Interstate 5.

The farm and forest tax deferrals were implemented when the state instituted its land-use laws to compensate farmers and foresters for a loss in property value, Richmond said. It saved Oregon farmers an average of \$245 an acre in total property taxes between 1974 and 2004.

Tax reductions for farmers in the Willamette Valley were

much higher, hitting nearly \$3,500 per acre in Washington County over the 30-year period, Richmond said.

"What we were attempting to do," former Gov. Vic Atiyeh said in the report, "was to give some goodies for being in a farm zone." Atiyeh was a state senator at the time Oregon's land-use laws were adopted.

He carried the bill that instituted the farm and forest tax deferrals, Senate Bill 101, on the Senate floor in 1973.

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Latest Measure 37 bill opposed

SALEM — Whether you're for or against Measure 37, chances are you're opposed to the latest attempt to alter it.

At a hearing March 6, citizens provided the Joint Land Use Fairness Committee a steady stream of opposition testimony to Senate Bill 833.

The bill would add a year to the existing six-month deadline for state and local governments to process claims filed between Oct. 15 and Dec. 5.

Approximately half of the 6,000-plus claims filed to date were filed in that window as claimants rushed to beat a regulatory deadline.

SB833 also creates an express lane for claims for a single dwelling. Under the bill, claimants who enter the express lane forfeit future Measure 37 development rights.

SB833 was introduced at the request of the Association of Oregon Counties. It comes on the heels of a sim-

ilar bill, Senate Bill 505, that failed to gain support from lawmakers and was never brought to a committee vote.

Walter Mendenhall of Willamina, called SB833 "another attempt by the government to thwart the will of the people."

More than 60 percent of voters supported Measure 37 in the 2004 General Election. The measure requires state and local governments to compensate eligible landowners for the loss of property value caused by a land-use regulation or waive the regulation.

Gerald Curry of Estacada said the bill would unfairly reduce the limited time he has available to "take care of our property."

"I'm 72 years old," he said in a phone interview the next morning. "When you get to be that age, you start thinking about things like that."

Molalla nurseryman Jim Gilbert, meanwhile, said SB833 doesn't go far enough

to limit development in farm zones. Under the bill, he said, governments will continue to process claims, putting his farming practices and those of his neighbors at risk.

And Peter Kenagy, an Albany farmer, said the bill has some merit but doesn't solve the problems that have arisen since voters passed Measure 37.

He called on the committee to "gut this bill, stuff it with a temporary hold on Measure 37" and send the issue back to voters.

Cory Koos of Lebanon, meanwhile, said Oregon's land-use laws "have made us bitter farmers." She asked the committee to abandon all attempts to alter the measure.

The committee took no action on the bill. No hearing or work session was scheduled on the bill as of press deadline.

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In issuing the news release March 8, Richmond's organization called on the state and counties to base the value of Measure 37 compensation claims on actual reductions in market values, to take into account farm and forest tax reductions, and to highlight in an annual report the dramatic tax savings passed on to farmers and foresters through the farm and forest tax deferral programs.

Richmond, a Portland lawyer who owns farmland in Polk County, also called on lawmakers to send to voters whatever changes they make to the measure.

"However they change Measure 37, it should be put back on the ballot," he said.

Richmond said Measure 37 does not pose a threat to farming in Eastern Oregon, where only a smattering of claims have been filed. And in cases where a single dwelling is proposed, the measure's impacts will be minor.

But, he said, the impacts of

Measure 37 on farming in the Willamette Valley, where the vast majority of the 6,000-plus claims have been filed — the majority of which include land divisions — will be extensive and span well beyond the actual acreage under claims.

"It will affect two or three times the amount of that acreage," Richmond said.

"Farmers will not invest in their farms if they have subdivisions next door," he said. "And when farmers stop investing in their farms, it's all over. It's going to devastate farming (in the Willamette Valley)."

Under Measure 37, which was supported by more than 60 percent of voters in 2004, governments must compensate eligible landowners for the loss in property value caused by a land-use regulation or waive the regulation.

Richmond and fellow author Timothy Houchen called the lost values advanced in most Measure 37 claims "monopoly value." They used the term to show landowners have a monopoly on development under a scenario that includes today's

land-use restrictions.

A landowner didn't have "monopoly value" in 1974, when most Oregon land-use laws were implemented, Richmond said, so under Measure 37, a landowner should not have "monopoly value" today.

One of the problems with Measure 37, he said, is the state did not act decisively after the measure passed — an indecision that has cost the state tens of thousands of dollars in lawsuits. To date, approximately 135 Measure 37 lawsuits are in progress, he said.

By adopting the institute's suggestions and providing tax breaks to landowners with vested interest in Measure 37 pre-development expenditures, Richmond said, the state can preserve farming in the fertile Willamette Valley and provide fairness to landowners.

"The horse is not out of the barn," he said, "but you're looking at a barn with the door open."

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