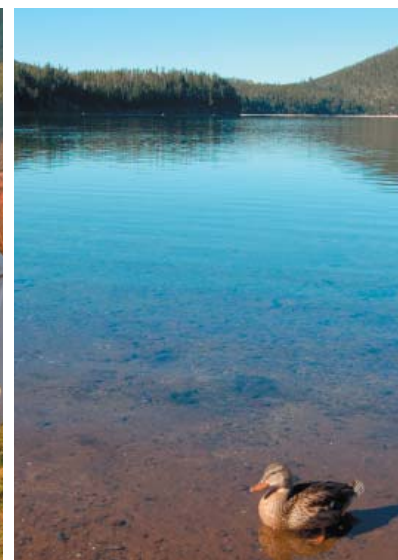


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TWO YEARS OF MEASURE 37: Oregon's Property Wrongs



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What could the guy next door do if you had to pay him not to be a bad neighbor? Maybe he would decide to open up a gravel mine within earshot of your house. Or maybe he would decide that your favorite fishing spot, nestled inside a national monument, should be opened up for mining. Or perhaps he would build hundreds of new houses nearby, putting your water supply at risk. How much could you afford to pay to convince him not to?

These examples of bad neighborliness may sound far fetched. But they're actually happening in Oregon. Measure 37, approved by Oregon voters in 2004, is leading to proposals for a barrage of damaging developments throughout the state. This report tells the story of Oregon communities wrestling with the consequences of the measure.

Under Measure 37, a law or rule that hurts a property's dollar value may be swept aside unless the owner is compensated for the economic loss—a system sometimes referred to as “pay-or-waive” because a community that doesn't pay the owner's claim must waive the law. The measure was sold to voters as a way to provide greater fairness for individual property owners in the land use planning process.

One Montana writer recently described pay-or-waive laws this way:

If you could fit 20 houses on your land, plus a junkyard, a gravel mine, and a lemonade stand, and the government limits you to six houses and lemonade, then the government would have to pay you whatever profit you would have made on the unbuilt 14 houses, junkyard, and mine. Generally, if the government can't or won't pay you, it would have to drop the regulations.

While at first blush pay-or-waive may sound like an attempt at fairness, Oregonians are finding it can weaken the many protections property owners count on. Paying compensation is seldom feasible for cash-strapped communities. So communities are forced to waive rules, even though they were democratically enacted. Farmers faced with Measure 37 claims nearby are concerned that new residential development may make it harder for them to farm their own land. Property owners are finding that their land is worth much less when an undesirable use, such as a gravel mine, is planned for next door. Homeowners are concerned that irresponsible new development will harm their property values. There's no compensation for these unlucky neighbors' losses.

In practice, pay-or-waive can actually be described simply as “waive.” Taxpayers seldom have the resources to pay claims, so the laws simply get waived instead. Of the thousands of Measure 37 claimants in Oregon, only one has been offered compensation. And in that odd case, the landowner is actually trying to reject the payment because what he really wants is an exemption from the law. His strategy is to return to the community with an even more expensive proposal, one that the

community cannot reasonably pay, so that that his neighbors will be forced to grant him a waiver.¹

Two years after Measure 37 became law, numerous property owners in Oregon are crying foul, arguing that the measure has unleashed a whole new type of unfairness by allowing their neighbors exemptions from important laws. As it turns out, the debate over Measure 37 is less about property rights than it is about democracy. To understand why, a little context is useful.

Oregon is a land of firsts. In the 1970s, with broad bipartisan support, Oregon became the first state in the nation to begin comprehensive planning for growth. In the ensuing decades, Oregon’s cities flourished while they sprawled less rapidly and consumed fewer farms and forests than similarly-sized cities in neighboring states. Extensive research and mapping by Sightline Institute shows that under growth management laws, Oregon cities have been national and regional leaders at preserving green places near cities.²

Numerous states, including Washington, looked to Oregon’s successes with envy and set about creating their own laws for growth planning. But following the passage of Measure 37, Oregon earned another first. It forfeited its leadership in planning and instead became the only state in the nation with a pay-or-waive system that could be applied retroactively—one that could be applied even for reductions in property values that happened decades ago. As a consequence, many of Oregon’s property owners can make claims to develop land that was reserved for farming 30 years ago.

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Oregon’s experiment with Measure 37 paved the way for others to follow. The national anti-government movement seized upon Measure 37’s victory at the ballot box and pushed copycat initiatives in six additional Western states in 2006. Two of the initiatives, in Montana and Nevada, were invalidated by the states’ supreme courts for fraudulence and constitutional violations. Meanwhile, stories of Oregon residents dealing with Measure 37 received extensive pre-election media coverage and helped convince voters in California, Idaho, and Washington to reject local pay-or-waive ballot schemes.

Only Arizona approved its measure, Proposition 207, a less-vigorous version of Measure 37. Even with Arizona’s recent induction into the pay-or-waive club, no state in the nation has a law as hostile to democratic planning as Oregon’s Measure 37.

There is a growing backlash to Measure 37 from all quarters of Oregon and from many walks of life. Two years into life under Measure 37, Oregon residents are finding that:

- **Measure 37 provides less choice than it appears to.** Cash-strapped communities don’t have the resources to contest the Measure 37 claims that have been filed—numbering more than 6,400 and totaling many billions of dollars—and certainly not the cash to pay the claims. So communities have no choice but to waive laws instead.

- **Measure 37 may be undermining the very rights it claimed to protect.** Many Oregonians are worried about their ability to protect their property from bad neighbors; and people are asking a new set of questions. Is it fair that communities be forced to pay property owners to abide by common-sense rules? What about compensation for neighbors whose property values are affected by obnoxious land uses next door when rules are waived? And how do we balance the rights of individual property owners with the rights of community members to chart a future together?

To help inform the discussion about the future of Measure 37 and Oregon’s growth management policies, Sightline collected stories from seven communities in Oregon that are affected by the measure. In their own words, Oregon’s ordinary residents—farmers and anglers, foresters and next-door neighbors—explain how they feel about living under the law of pay-or-waive.

A GRAVEL MINE MOVES IN NEXT DOOR

“Heeere boys! Heeere boys!” calls Susie Kunzman to a group of her male alpacas, grazing on a pine-covered hillside near her home in rural Clackamas County, Oregon, about 30 miles east of Portland. She moves them to a safer area, then



Susie Kunzman points out her boundary line.

directs a group of day-laborers felling dead trees and clearing brush on the 22-acre property.

The calendar reads Saturday, but it’s a workday for Kunzman; such is farm life. But she wouldn’t have it any other way.

Susie Kunzman and her husband Wayne love their quiet rural life. They bought the property two years ago to grow their alpaca farm, now with 35 animals which by themselves have an estimated worth of \$350,000. But all that could change if a proposed 80-acre gravel mine goes in just over the Kunzman’s fence line. Her neighbors, Charles and Wanda Daugherty, now hold an approved Measure 37 claim that allows the quarry and makes it easier to obtain permits. The county could not pay the Daughertys for loss of use, so under Measure 37 it was forced to approve their claim.

Susie Kunzman and her husband Wayne love their quiet rural life. They bought

“We’ve never figured out how anybody bases their claim,” Kunzman says. “I think Measure 37 is a feel-good measure with no substance.”

Kunzman thinks the law was couched as a way to help the rural landowner, but had too-few details about how government would pay compensation in exchange for denying claims. Now she and about 40 of her neighbors are worried about the constant noise of rock crushing, truck traffic, and blasting. They’re also concerned

about potential harm done to the underground aquifers that feed Teasel Creek, the water source for Kunzman's animals and her neighbor's well. Kunzman and several neighbors protested at the county hearing that ultimately approved the claim. Several commissioners understood their fears, but without the funds to pay the Daughertys compensation, officials had little choice but to approve the quarry.

"It's perfect for alpacas," she says of the high ground of her farm.

But as she nears the fence line, Kunzman's mood turns sour. She stops, looks over the fence. Blasting and noise from crushing, she says, could stress the alpacas, animals that are easily spooked. She explains that stress to an alpaca is reflected in the strength and quality of their hair, which for her equates to lost revenue. She wonders who will pay *her* for lost value from the effects of the mine, especially when it comes time to sell her property.

"What is government but your own self?" she says. "Who do you think was going to compensate for this—the Queen of England?"

She keeps a copy of a land appraisal that shows the Daugherty property's "highest and best use" as "a ranch estate with rental and timber income." The appraisal was commissioned by the Daughertys themselves. Kunzman also holds a copy of a document that shows the Daugherty property classified as a Century Farm, a historical designation that she feels was overlooked. The Daugherty property has been in the family since 1864, and Charles Daugherty says that generating income from the quarry ensures that future generations of the family will be able to afford to keep it so. He assured the county that all regulations would be followed.



Kunzman is worried that a neighboring claim will affect her alpaca farm.

But perhaps Kunzman's neighbor, Renee Ross, summed up the community's sentiment best when she recently told a reporter, "I hope other states don't do this."³

MINING IN A NATIONAL MONUMENT

The southern side of East Lake fizzes, as if a thousand tiny fish were blowing bubbles below the surface: *pip-pip-pip-pip-pip*. It's the sound of sulfuric gases rising from deep beneath the lake—a sign of powerful underground forces.

East Lake is tucked behind an ancient cinder cone in the Newberry Crater National Volcanic Monument, amid Central Oregon's pine forests and high desert. At 6,400 feet above sea level, it's one of the highest lakes in Oregon, and it's a quiet place, with few sounds besides the occasional splash of a trout or kokanee salmon.

Many visitors have soothed aching muscles where the volcanic hot water mixes with the colder water from the lake.

The area has other attractions as well. Wild ducks, bald eagles, osprey, elk, black bear, mule deer, and even the elusive pine marten call the area home. To maintain the area's tranquility, boats are required to stay below 10 miles per hour; on a warm autumn day, just three or four bob in more than a thousand acres of water.

Newberry Crater has always been a peaceful place, with just a few campsites, plus the small summer-only East Lake resort that's been around since 1915. True, the area is known for its great fishing, and has attracted anglers from as far away as Maine, Florida, Germany, and even Zimbabwe. And its unique geological features and rich natural beauty earned it national monument status in 1990. But until recently the place has seemed like a well-kept secret.

Until Measure 37.

East Lake is now the focal point of one of Oregon's biggest Measure 37 claims. A private landowner, James Miller, who holds 157 forested acres inside the national monument (which includes shoreline along the west side of East Lake) filed a \$203 million claim for loss of use under the



East Lake Resort owner David Jones voted for Measure 37.

measure. Because the government couldn't pay up, the landowner now has approval to build a pumice mine, a geothermal plant, and as many as 150 vacation homes on the property. Geologists hired by the landowner will soon begin looking at where to tap the geothermal energy.

Locals and fishermen fear the big developments. So does David Jones, who owns East Lake Resort. He voted for Measure 37 back in 2004 and now its ramifications are staring directly back at him. The private land slated for development is in plain view directly across the lake from his small resort.

"I *thought* it was a good measure," Jones says. "I was one of the many people who voted for Measure 37 and thought it would be a good deal for Oregon."

Like Jones, many who come to fish here don't understand how Measure 37 could have helped cause the proposed development.

Old-timer Kermit Huck is among them. The fishing is so good here, Huck and his wife, who live in Glendale, California, have been coming to the lake for 35 years. Huck keeps his boat docked just below the resort. The couple arrives at the end of June every year and stays until October. Huck wasn't aware of Measure 37 or why the private landowner wants to develop the plant, mine, or vacation homes. But he doesn't think a big development has any place in the national monument.

“This investment that we have in these wild areas can’t be replaced,” he says. “Once it’s gone, it’s gone.”

Fisherman Barry Wood just learned to fly fish four years ago on East Lake. Every year since then, he’s come back to spend the summer. One year, he brought his grandchildren to the lake to fish, and his youngest granddaughter caught a brown trout nearly three feet long. The fish was so heavy it broke the line and got away underneath the boat.



Ducks flock to the clean water of East Lake.

“That’s the biggest fish I’ve seen in here—and the 3-year-old got it. We call it the East Lake Monster.”

A California resident, Wood knows nothing about Measure 37, but does know a lot about natural resource prospecting. Before he retired, he worked in the Middle East as an oil and gas engineer.

“I’m all for developing our own resources to get our own energy,” he says. “We’ve got to do something. However, I’d hate to see a big electric generating plant over there across the lake. It seems a shame to ruin a beautiful spot.”

Indeed, it was the setting that drew Bend residents Kathy and David Jones here. For years, the couple had dreamed of owning a lakeside resort in Central Oregon. In April 2006, the opportunity presented itself, and they purchased East Lake Resort—a collection of 16 rental cabins, RV park, tackle shop, and café—from its previous owners. They employ about a dozen people and enjoyed such good business this summer that they’re thinking of putting in some yurts next year to handle more overnight guests. But both believe that a pumice mine and a geothermal plant would be bad for business.

“My bottom line is that I don’t want anything that’s going to interfere with the wildlife and the pristine look up here,” says Kathy Jones. “I would hate the vacation homes.”

David first came to the lake when he was eight years old and he connects with the natural features of the place. He especially dislikes the idea of the pumice mine since it could disrupt water runoff and change the ecology of the lake. The area along the privately owned shoreline is prime kokanee spawning area. Jones is also concerned that the prevailing winds could blow impact from the mines right into East Lake Resort.

“This is a unique piece of property,” he says. “It’s un-replaceable.”

SUBURBS IN A WORKING FOREST

As third- and fourth-generation Oregonians, Jim and Sandy LeTourneux love forests and wildlife. But don't call them tree-huggers. They're loggers.

The couple loves what some might see as a tough business: running a 460-acre timber farm in the forested Coast Range of rural Yamhill County.

In 1964, Jim's father began planting trees; and in 1976, he passed the business down to Jim and Sandy. With their two sons grown and moved away, Jim is the entire labor force these days. He plants and fells the fir, alder, and maple and Sandy keeps the books. The two don't take traditional vacations. Health insurance is on their dime. Retirement? Not an option, at least not anytime soon.

But after 30 years in the business, the couple still cherishes the independence of being their own bosses. And for the LeTourneuxs, that means helping to protect wildlife and fish-bearing streams on their property. They keep pockets of the forest wild for the bears, bobcats, wild turkey, elk, deer, raccoons, woodpeckers, salmon, and other creatures. And they make sure the steelhead stream running through their property isn't damaged. That ethic helped their tree farm win state awards in 1993 and 1998 for conservation and wildlife stewardship.



The Letourneuxs' timberland in Oregon's Coast Range.

"We value wildlife and wildlife habitat," says Jim LeTourneux.

But their livelihood, along with their stewardship, could slip away with a Measure 37 claim bordering their property on three sides. The LeTourneux tree farm is nearly surrounded by some 850 acres of forest owned by a Measure 37 claimant. The owner, a developer named Bob Hemstreet, filed a claim for \$35 million for loss of use, and if the county doesn't pay, he may be able to subdivide the property and build as many as 848 homes on 1-acre home sites.

The LeTourneuxs' number-one concern is the possibility of fire from the development. They believe that big housing developments and forestry are incompatible land uses—for good reason, that separation has long been enshrined in Oregon's land use laws. Jim wonders how the county will extend fire protection to a housing development so far away from a populated area. It's the unforeseen issues of mixing widely different land uses that frustrate him about Measure 37.

"I've put a lifetime of work into putting in a timber resource," says Jim. "Sandy and I could lose everything from a fire."

Jim LeTourneux believes that economic development in forests is essential to protecting them. That's why he's been involved in the Yamhill County Soil and Water Conservation District for 15 years, and believes strongly in sustainable forestry. But he doesn't believe that suburban-style housing is the right kind of development.

"Measure 37 here in Oregon is pretty much water under the bridge," says Jim. "Some Measure 37 claims have been warranted and fair. Some have been so egregious that voters didn't know what they were voting in."

LOSING FARMLAND IN WASHINGTON COUNTY

Crystal Vanderzanden drives her car up to the edge of a flat field that borders her rye grass farm. She wants to take a closer look where the proposed 48-home subdivision might sit. But she's careful not to let her tires touch the neighbor's field, even



Washington County farmland on its way to becoming a subdivision.

though she's angry that the landowner filed a Measure 37 claim. Unable to pay the \$9.5 million claim that landowner Louise Bernards wanted for lost value, Washington County, which encompasses Portland's western suburbs along with prime farmland, must now allow a subdivision in the middle of an area zoned exclusively for farming.

"I don't want to drive on their field," Crystal explains. "We drive on our own, but not someone else's."

Yet in a sense, Crystal Vanderzanden and her husband Bob feel their way of life is being driven over by Measure 37.

Crystal Vanderzanden is on the road again, driving away from the contentious 54-acre parcel of land. She expertly navigates a labyrinth of country roads, passing nurseries, strawberry, and corn fields. Mt. Hood looms large to the East.

"Isn't it peaceful out here?" Crystal asks. "I just can't imagine 48 houses. I just think it's wrong."

The Vanderzandens fear complaints from subdivision residents about normal agricultural operations that involve spraying, lights, dust, and noise. They've had a taste of the urban-rural divide over the years, from city folks who rent houses next to their grass farms and then complain about routine farming activities. The couple anticipates that the number of such complaints could skyrocket with a big housing development.

Bob and Crystal Vanderzanden live near Hillsboro, just beyond the western edge of the Portland metro area. The couple met in high school. They were country kids then and in many ways they still are; both grew up near Hillsboro and don't like the city much. With the help of a grown son, they farm 1,700 acres within an 8-mile radius of their home. The couple owns less than 15 percent of the acreage they farm; they lease the rest from other family farms in the area.

The Vanderzandens figure their willingness to farm allows older landowners to stay on rural properties longer. Their involvement with the US Farm Service Agency has helped them appreciate and fight for a rural way of life. That's the main reason that they dislike Measure 37—it jeopardizes their way of life.

Crystal Vanderzanden sums it up: “You come out here and just try to earn a living and you have all these . . . hassles.”

NEIGHBORS WORRY ABOUT THEIR WATER SUPPLY AND LOCAL FARMLAND

Neighbors at Spring Lake Estates, five miles outside the city limits of Salem, have new reason to be concerned about their community's future. The 85 families in the neighborhood jointly own a small lake that adds value, as well as scenic beauty, to their neighborhood. And each home draws its water from a common aquifer.



Spring Lake, jointly owned by neighbors in Marion County.

The community depends on its water supply. If the water level drops in the aquifer, they may face big expenses for new wells, or a new water system; and if the springs and streams that feed the lake dry up, their property values could take a hit.

Enter Measure 37. Adjacent to the neighborhood is a new Measure 37 claim for 82 new homes on 215 acres. The land slated for development is currently zoned for farming; the landowner wanted \$18 million from Marion County for potential loss in value if his development couldn't proceed. Because the local government cannot pay, plans for the homes are moving forward.

Each new house would have its own water well, and homeowners at Spring Lake Estates worry that 82 new wells so nearby could severely draw down the streams, Spring Lake, and even their own wells.

Don Dean, who sits on the Spring Lake Estates Neighborhood Association board, explains, “We're not initiating any kind of a no-build policy or trying to stop the development. What we'd like to do is just have them be sensitive to our source of the water that feeds our lake.”

Once Spring Lake neighbors knew the development was on its way, the homeowners association authorized spending \$5,000 on a hydrogeology report of the area. It's due any day now, and they intend to give it immediately to Marion County planning officials. They hope the report's findings will help the county justify requiring more sensitive development that will minimize impacts on the area's water supply.

Don Dean is particularly concerned about the new project because his property abuts the land slated for development. "Unfortunately, I believe I voted for Measure 37," Dean admits. "I was probably like a lot of other people that either didn't take as much time as I should have to review the measure or didn't possibly understand it as much."

Laurel Hines is another resident concerned about the new development's effects on her property. She says she moved to Oregon in 1979 from the Midwest partially because she respected the state's land use laws. Laurel says that in contrast to the



Don Dean looking out from his home toward Spring Lake.

shared sense of community at Spring Lake Estates, the adjacent landowner so far appears unconcerned about the impact of the proposed development on the community.

"We expected things to be the way they were and that the land use laws would protect us, and now we can't depend on them," Hines says.

"There really isn't any land use planning in the state right now with Measure 37. There isn't a local jurisdiction that's got an extra \$500, let alone \$500 million," Dean explains. "I'm not an activist. I don't campaign on issues...but there needs to be some kind of regulation to help control growth in certain areas."

WINERIES THREATENED IN APPLIGATE VALLEY

Protection. Farmer Ted Warrick knows that his wine grapes need protection to be good enough to craft the pinot noir, chardonnay, zinfandel, syrah, and eight other varieties he makes at Wooldridge Creek Winery and Vineyards. Proud of southern Oregon's fertile Applegate Valley, Warrick insists that this area rivals California for wine-grape growing: the rich soil and fair weather conditions that produce near-perfect pH levels, sugar, and acidity make for world-class wines. Even so, keeping his grapes out of harm's way is paramount.

So, since the mid-1970s, Warrick has been protecting his southern Oregon grapes as best he can. His methods are both creative and diligent. At night, playing talk radio keeps hungry bears away. During the day, he sprays organic sulfur to give

the grapes a coating that protects them from fungus. He sometimes fires air cannons to deter hungry birds. And over the years, he's protected the crop's viability with a solid marketing plan: Ninety-eight percent of the wine is nearly guaranteed to sell, thanks to his thousand-member wine club and an accessible tasting room at the farm.

But he can't protect the grapes from Measure 37.

Three Measure 37 claims nearly surround Warrick's 56-acre vineyard. The first, a 160-acre housing development, is adjacent to his property; the second, for another housing development on less than 50 acres, is directly across the road. The third claim, about three miles away, proposes a 20-acre mine for aggregate rock on the banks of the Applegate River.

Warrick foresees clashes with neighbors over tractor noise, spraying, air cannons, and even the late-night talk radio. Homeowner complaints could potentially shut down the winery, Warrick says. And the mine, he fears, could create traffic issues on the small, winding two-lane road that accesses the Wooldridge Winery.



Ted Warrick can't protect his wine grapes from Measure 37.

Since the winery depends on customers coming to the farm, Warrick fears that people will pass him by, opting not to deal with gravel trucks and increased car traffic from the new neighborhoods.

"We came here with the expectation to farm," says Warrick, "and we ourselves could file a Measure 37 claim . . . but our ambition is to farm and make premium quality wines. Unfortunately these Measure 37 claims are really a threat to our business and livelihood."

Warrick is also worried about the implications for the rest of the Applegate Valley's burgeoning wine industry. Back in the 1970s, Wooldridge was one of the few wineries in the area, but today there are about a dozen wineries, plus several other vineyards that sell grapes to winemakers.

"Subdivisions and farming operations by nature don't mix," says Warrick. "But subdivisions and vineyards *really* don't mix."

It comes back to protection for Warrick.

"It's obvious that vineyards and wineries benefit the economic development of this area," he says, "and I do think they need to be protected."

He hopes that the Oregon legislature will step in and protect what he calls "value-added agriculture." As the law stands now, there is little Oregon farmers can do to protect their businesses from Measure 37 claims.

"Where do *we* go for compensation?" he asks.

HOUSING DEVELOPMENTS NEXT TO PEAR FARMS

Gorham Blaine is not your typical fourth-generation Oregon pear farmer. As a young man he left the Hood River Valley for an education in Europe and on the East Coast, and for a career as a New York City banker. But he was lured back by the prospects of farming.

Blaine, who farms 220 acres of pears, is constantly considering the big picture about farming—a picture that, at least in this Oregon valley, could change dramatically because of Measure 37.

“I have the problem of looking at my valley and the entire industry and wondering where it’s heading,” Blaine says. “With Measure 37 claims spreading everywhere, I can see quite possibly the entire valley changing out of agriculture and into housing.”

Housing developments are an attractive option for rural landowners near Hood River. With wide-open views of the north face of Mount Hood, quick access to skiing and world-class windsurfing, plus the hip microbreweries and shops of Hood River, the housing market is hot. And it doesn’t hurt that the valley is less than two hours by interstate from Portland.



Gorham Blaine farms 220 acres of pears in Hood River Valley.

In fact, three Measure 37 claims, totaling 260 acres, surround Blaine’s orchards in rural Pine Grove and Parkdale. All three claimants propose chopping up the valley’s sweeping farmland with big housing developments, some with lots as small as one acre.

“I’m not angry with what they’re doing, but it is sad because it is prime farmland,” he says.

Pine Grove, where Blaine farms 140 acres, has the highest concentration of Measure 37 claims in the Hood River Valley. He suspects that the Measure 37 claimants are looking for short-term money rather than at a long-term plan for the economic future of the area. Orchards, he says, are by nature long-term investments. If the fruit-growing industry is erased, other related jobs will go too, like storage and packing facilities.

Oregon’s long-term vision to maintain agriculture and open space was the point of the land use laws in the first place, Blaine says. He believes in that vision.

“It is essential that we keep this kind of land for the future, because it is a resource for us,” he explains.

But his farmland is a resource that needs constant tending. Pear orchards

generate noise during the growing and harvest seasons. From the giant helicopter-like fans that power on at 3 A.M. to protect the fruit from frost, to spraying, to the 100 or so farm workers that show up during the day to pick fruit, the pear orchard business is not likely to be compatible with a residential neighborhood. Blaine owns more than 100 acres that are adjacent to housing, and he already fields phone calls about the loud fans.

So the prospect of dealing with complaints that could be generated by hundreds of new houses does not make Blaine eager to reinvest in his farm.

He says that he *does* want to stay in the pear business. He wants to make his farm efficient and profitable. The Hood River Valley, which Blaine describes as having “fantastic volcanic soils” that drain well, is one of the premier pear-growing areas in the world. He hopes that Oregonians will see it as one of the state’s rich natural assets to preserve for future generations.

Blaine wants property owners to be treated fairly and he understands the need for landowners to have some flexibility on properties that are zoned for farm use.

“We should go back and figure out solutions that do make sense for people who owned their land prior to land use laws, to provide incentive to keep it in farming,” he said.

He says that in certain cases, the law should allow zoning changes for farmers, but only on a small portion of their properties. Still, Blaine believes that Oregon voters grossly misunderstood Measure 37 two years ago. And he thinks that if the law were up for a vote today, it would fail.

Restoring sensible land use laws would limit dramatic change in the traditional way of life in the Hood River Valley, Blaine thinks. And that would be a good thing for a place so full of long-term assets.

LESSONS FROM MEASURE 37

As the preceding stories show, property values are affected by what neighbors are allowed to do. And in Oregon, the property values of farmers, foresters, small business owners, and ordinary residents are being damaged by Measure 37’s pay-or-waive scheme. As Susie Kunzman will tell you, your neighbor may make a bundle on gravel mining, but you may lose your shirt—and no one will compensate you for your losses.

In each case profiled here, Measure 37 has allowed one property owner to harm the interests, and sometimes the property value, of their neighbors. Susie Kunzman, for example, faces monetary losses for her farm and reduced property value because of a gravel mine next door. Jim and Sandy LeTourneux face higher wildfire risks from new development adjacent to their family forest. David Jones could lose business at his mountain resort because of a neighbor’s pumice mine and geothermal plant. And so on.

In addition to the stories included in this report, there are many more anecdotes from across Oregon—stories of rural landowners claiming they “got suckered” by Measure 37, and of city neighborhoods watching months of painstaking planning unravel.³ In fact, so pronounced is the growing backlash that one poll conducted in October 2006 found that Oregon residents oppose Measure 37 by nearly two to one.⁴ (The poll’s findings are especially eye-catching in contrast to the measure’s original success at the ballot box: it was approved by a margin of 61 to 39 in 2004.) Given the practical consequences of Measure 37, it is somewhat unlikely that the measure would be voted in today.

Oregon’s challenge is to strike a balance, one that honors the rights of property owners, addresses legitimate claims of unfair treatment, and still enshrines democracy—and democratic rule-making—as a right and responsibility inherent in community. The first step is for Oregonians to acknowledge that land-use planning is inherently tough and contentious and that good laws must represent many diverse interests. Planning and zoning are legal, constitutional, extremely popular, and also imperfect. Community planning is a balancing act.

Unfairness, and the perception of unfairness, deserves careful attention. Communities should listen carefully to property owners’ concerns about how plans and rules will affect their property interests—and respond when the concerns are justified.

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But Oregonians have realized that Measure 37 does not make land use fairer. The measure is a blunt instrument where a delicate one is needed, and many now believe that it does more harm than good. It has severely limited communities’ ability to respond to emerging threats to their quality of life. As a result—and in the name of a few landowners who feel they have been harmed by overzealous rules—Measure 37 is creating new varieties of unfairness that pit neighbor against neighbor and that are even tougher to solve because the stark rule of pay-or-waive has severely constrained local decision-making. And the problem may be getting worse.

The latest chapter of Measure 37

In November 2006, just 17 days before an administrative deadline for filing retroactive Measure 37 claims, the state had received 3,182 claims requesting more than \$6 billion. But in the final weeks before the deadline a flood of new claims arrived. In roughly two weeks 3,309 additional claims appeared, more than had been filed in all of the previous two years.⁵

At first, it wasn’t clear what was causing the deluge. But then the story began to emerge. Developers, real estate agents, and lawyers had been contacting eligible property owners, offering to pursue a Measure 37 claim for properties in exchange for an option to buy or develop the land. Some property owners complained of high-pressure sales tactics. In at least one case, a brokerage firm misrepresented the deadline as a final chance to file a claim, when in fact filing a claim is still possible after the deadline, it simply requires additional paperwork.⁶ Hundreds, if not

thousands, of landowners likely forfeited some of their property rights in exchange for promises of money.

The barrage of last-minute Measure 37 claims also included Oregon's biggest. An out-of-state logging corporation, Plum Creek Timber, filed more than 100 applications to allow development on 32,000 acres of coastal forest.⁷ Plum Creek is demanding a \$94.8 million in compensation from taxpayers unless it is allowed to build on the land, most of which is zoned for forestry.

Other timber companies followed suit. Another out-of-state company, RY Timber, demanded \$8 million unless it is allowed to develop its holdings above Wallowa Lake. And Stimson Lumber Company filed 135 separate claims to allow development on its forestlands.⁸

The claims for payment from logging companies raised hackles among some residents, who noted that \$1.2 million—which was the lion's share of the money spent to pass Measure 37—was donated by timber companies in the first place. In a sharply worded editorial published on December 4, 2006, the day of the deadline, *The Oregonian* weighed in, arguing that Measure 37, "...wasn't so much about righting wrongs as it was about razing farms and forests and enriching developers."

The editorial board probably captured public sentiment better than anyone: "Two years after the voters approved it, Measure 37 appears to be not so much rectifying injustice as inflicting it...we've been had."⁹

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COVER PHOTOS

1. Oregon orchards, with Mt. Hood in the background. iStockphoto.
2. Ted Warrick of Wooldridge Creek Winery and Vineyards. Greg Holmes.
3. Duck at Newberry Crater's East Lake resort. Colleen Kaleda.