

# Forum

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## Oregon property rights vote: an oddity or harbinger?

### Challenge for 'Smart Growth' advocates

Neal R.  
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Could a rallying cry of property rights blow a hole in the side of the nation's surging smart growth movement?

The worry is real following a Nov. 2 vote in Oregon, a state which since 1973 has been the Valhalla of rural and scenic land protection through a system of state-mandated urban growth boundaries.

By a sweeping 61 percent to 39 percent margin, Oregonians approved an initiative, Measure 37, designed to compensate property owners for virtually any state or local government regulation

that has restricted the use of their property or reduced its fair market value.

If government declines to pay, the owner can go ahead and build on or subdivide his property — not under current land use or zoning restrictions, but what was legal when he or his parents or grandparents first acquired it.

Opponents have visions of residential subdivisions starting to sweep across the rural Willamette Valley, of Cascade Mountain vistas spoiled by an eruption of Burger Kings and Wal-Marts, of pear orchards sprouting crops

of McMansions. The new law also seems to make mincemeat of neighborhood zoning ordinances.

How did such a sweeping measure pass in a state that had voted repeatedly over recent decades to preserve the strict system of land use regulation inaugurated under the now legendary environmentalist, Gov. Tom McCall? A lot of the answer seems wrapped up in the ballot language stating quite innocently that government must pay owners when land use regulations reduce property value.

Opponents made a mistake in not challenging the seemingly innocuous language, notes Mike Burton, former executive officer of Portland's Metro Regional Government. "Even my mother-in-law voted for this thing."

Just read Measure 37, adds

Ethan Seltzer, land use expert at Portland State University, "and it sounds like common sense. Unless you know what's buried in it, you'd never bat an eye. The problem is that what it means is insidious."

The vote is, though, dramatic evidence that the Sagebrush Rebellion didn't go away with Reagan-era Interior Secretary James Watt. Efforts to pass a national property rights law fizzled during the Republican congressional rise of the 1990s, but 39 states debated and 15 passed laws with some degree of protection.

Ross Day, attorney for the conservative group Oregonians in Action that pushed Measure 37, reports he's been receiving calls from property activists across the United States wanting "to find out what our secret recipe was to get it passed."

Opponents of government regulation believe Oregon's measure can be a "franchise product," a proposition sellable anywhere, says Bob Stacey, executive director of the environmental group 1,000 Friends of Oregon.

But since no other state has planning laws as strong as Oregon's, there's no other — except, perhaps, neighboring Washington — where a Measure 37 would have as much impact, notes David Goldberg of Smart Growth America.

What's clear is that Oregon is now headed into a maelstrom of legal maneuvers, a lawyers' field day of claims against cash-short local governments obliged to either lift regulations for owners with qualifying property or be

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To Bernie  
from Col. Day

## PROPERTY | Oregon vote raises questions about the future of 'smart growth' movement

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liable for court suits. How will values be set? Where will the money to pay come from? What if a jurisdiction claims it can't pay? What can be attached — the town dump truck, or salaries of local officials?

In retrospect, it's obvious that defenders of Oregon's land-use laws, Gov. Ted Kulongoski among them, missed a bet in not adjusting some of the current law's inflexible and irritating edges while they had time. Now Kulongoski wants to pay claims rather than tear holes in the land-use system — a dubious prospect as Oregon wrestles with a \$1 billion deficit.

But there could be a silver lining: a fresh conversation that is less about rules and regulations and more about how Oregon will preserve its magnificent natural landscapes for future generations — balanced against the rights and interests of today's property owners to develop and profit from their holdings. Shared beauty versus individual rights, present against future — it is a debate every state should have.

But it won't be real unless the

conservationists ask the tough question: What about the varieties of government action, from highway interchanges to siting of colleges and laboratories and stadiums, that dramatically improve the wealth of individuals

lucky (or clever) enough to have property at the right place at the right time? If government has to pay for "takings," shouldn't it seek to collect for the value of its "givings" — and maybe use one fund to balance the other?

As Oregon led U.S. land conservation for decades, so could its new debate. How about applying technologies for expert land mapping, like geographic information systems unknown 30 years ago? Or setting incentives

for superior planning of city and town centers to achieve more density and reduce pressure on the countryside?

Sadly, Oregon's imbroglio over rights, fees, property and budgets will likely drown all that

out. But not, let's hope, for too long.

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