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## MEASURE 37 IS THE LAW OF THE LAND, BUT UNCERTAINTY AND CONFLICT REMAIN

The Oregon Supreme Court recently upheld the constitutionality of Measure 37. That's the voter-approved law requiring governments to waive land use rules when they reduce the fair market value of a person's property. Governments also have the option to compensate the current owner of the property for the loss in fair market value.

With the ruling, you might expect existing land use waiver claims to suddenly speed toward resolution. While it is true that governments will work overtime to process claims, it will probably be a few years before we see much construction on land subject to these claims.

A pivotal legal question still hangs over the viability of Measure 37. The Oregon Attorney General's Office has opined that Measure 37 waivers are personal and do not run with the land. That's discomfoting news for the sons and daughters of Measure 37 claimants—the real beneficiaries of Measure 37 in the eyes many voters. Lenders, builders and buyers will also be understandably wary of Measure 37 property until this lingering uncertainty is resolved.

The immediate future will likely be a time of uncertainty for many property owners and their families. With over 2,500 claims already filed (and many more waiting in the wings), a whole new wave of property owners will now come forward to file claims, many of which will be approved. That much we know. What we don't know is what the current owner of the property can do with the property once these claims have been approved. After all, legal and factual questions abound in many Measure 37 cases. Make no mistake about it, Measure 37 claims are complex enough even when everything seems to be done just right. Here's a hypothetical example:

A woman in Ontario obtains a Measure 37 waiver on property she inherited. Unfortunately, the waiver proves useless because the government can only waive regulations that were enacted after she acquired the property. The land use regulations that restrict her property were enacted before she acquired the property. The waiver, therefore, does her no good.

Given the uncertainty surrounding Measure 37, four things are likely to happen in the next couple of years. (1) The transferability of Measure 37 waivers will likely take center stage as the courts resolve this issue. (2) As the volume of claims goes up, and as larger and more sensitive land areas become the subject of these claims, more neighbors will become involved in trying to block development. (3) We are likely to see even more land use measures on the ballot. (4) In March, a statewide task force begins to conduct a comprehensive review of our land use system in March. The so-called "Big Look" committee has the opportunity to revisit the most basic tenants of Oregon's land use rules, and then provide guidelines that could help the 2007 Oregon Legislature write more functional land use laws.

So where does all of this leave us? In the end, unless Oregon voters repeal it or replace it with something new, Measure 37 is the law of the land. The transferability question will be resolved. But in the mean time, great care must be taken by Measure 37 claimants so as to avoid costly mistakes once the legal obstacles are removed. And maybe, just maybe, the "Big Look" will find a way to create a land use system that solves more conflicts than it creates.