

SENATE COMMITTEE ON ENVIRONMENT & LAND USE

January 17, 2005 Hearing Room 50
3:00 P.M. Tapes 1 – 3

Revised 03/04/2005

MEMBERS PRESENT: Sen. Charlie Ringo, Chair
Sen. Jason Atkinson, Vice-Chair
Sen. Roger Beyer
Sen. Ginny Burdick

MEMBER EXCUSED: Sen. Frank Shields

STAFF PRESENT: Matt Shields, Committee Administrator
Katie Lowry, Committee Assistant

MEMBERS PRESENT: Rep. Bill Garrard, Chair
Rep. Gordon Anderson, Vice-Chair
Rep. Mitch Greenlick, Vice-Chair
Rep. Robert Ackerman
Rep. Mary Nolan
Rep. Mac Sumner

MEMBER EXCUSED: Rep. Patti Smith

STAFF PRESENT: Sam Litke, Committee Administrator
Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD:
Adoption of Committee Rules – Organizational Meeting
Introduction of Committee Measures – Work Session
Measure 37 – Informational Meeting

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 1, A		
005	Chair Ringo	Calls the committee to order at 3:07 p.m. Opens an organizational meeting to adopt committee rules.
<u>ADOPTION OF COMMITTEE RULES – ORGANIZATIONAL MEETING</u>		
013	Matt Shields	Committee Administrator. Submits and discusses proposed committee rules (EXHIBIT A).
018	Sen. Atkinson	MOTION: Moves to ADOPT the proposed Committee Rules dated 01/17/05.
		VOTE: 4-0- 1
		EXCUSED: 1 - Shields
	Chair Ringo	Hearing no objection, declares the motion CARRIED.
021	Chair Ringo	Closes organizational meeting and opens work session on introduction of committee measures.
<u>INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION</u>		
025	Matt Shields	Committee Administrator. Refers to Legislative Counsel (LC) Drafts. Lists bills: LC 191 (EXHIBIT B), 1026 (EXHIBIT C),

1231 (**EXHIBIT D**), 1287 (**EXHIBIT E**), 1673 (**EXHIBIT F**), 1674 (**EXHIBIT G**), 1781 (**EXHIBIT H**), 1781-1 (**EXHIBIT I**), 1815 (**EXHIBIT J**), 1816 (**EXHIBIT K**).

030 Sen. Atkinson **MOTION: Moves LC's: 191, 1026, 1231, 1287, 1673, 1674, 1781, 1781-1, 1815, 1816 BE INTRODUCED as committee bills.**

VOTE: 4-0- 1

EXCUSED: 1 - Shields

Chair Ringo Hearing no objection, declares the motion CARRIED.

NOTE:

LC 191 printed as SB 344

LC 1026 printed as SB 345

LC 1231 printed as SB 346

LC 1287 printed as SB 347

LC 1673 printed as SB 348

LC 1674 printed as SB 353

LC 1781 printed as SB 351

LC 1781-1 printed as SB 352

LC 1815 printed as SB 350

LC 1816 printed as SB 349

036 Chair Ringo Closes work session and opens joint informational meeting on Measure 37 with the House Committee on Land Use.

MEASURE 37 – INFORMATIONAL MEETING

038 Chair Ringo Makes opening statements regarding Measure 37.

051 Lane Shetterly Director, Department of Land Conservation and Development (DLCD). Submits informational packet including letters and a sample Measure 37 claim form (**EXHIBIT L**). Makes opening statements regarding Measure 37. Explains that his organization found it necessary to have a claims procedure in place for when Measure 37 went into effect. Explains that Department of Administrative Services (DAS) has been designated as the central receiver of claims based on state regulations.

065 Shetterly Reviews procedures for claims based on state regulations.

110 Shetterly Points out that the state process does not require a filing fee or an appraisal to be filed, as opposed to the requirements of some local jurisdictions. Discusses how neighbors may be notified if their property value is potentially affected by a land use regulation that is being waived.

130 Shetterly Describes that DLCDC is using the claims that have been filed to review the rules to ensure that there are no barriers to filing claims.

155 Shetterly Refers to correspondence about claims procedure and coordination of state and local governments (**EXIBIT L, Page 3**).

180 Shetterly States that he is now a client with the Department of Justice (DOJ).

190 Chair Ringo Asks about an official opinion on Measure 37.

193 Shetterly Responds that the DOJ is not anticipating a compendium opinion as with Ballot Measure 7. Explains the DOJ will be responding to questions with legal advice as they come in. They will be implemented by DLCDC.

197 Chair Ringo Asks about time frame.

200 Shetterly Talks about opinions already given by the DOJ, most specifically in regards to the claims process.

220	Shetterly	States that the initial determination by the DOJ is that the waiving of a regulation is a personal rights issue and therefore a waiver would not stay with the property.
258	Chair Ringo	Asks if this means that Dorothy English cannot subdivide her property.
260	Shetterly	Comments that there is a question if subdivision is included in the range of land use regulations to which Measure 37 applies. Explains if English can subdivide, it is unclear if her children will be able to build on the land after the transfer.
285	Shetterly	Gives overview of key issues with Measure 37. Asks and discusses questions: <ul style="list-style-type: none"> • “Who has authority to make a decision to remove, modify or not apply a land use regulation particularly where you have this overlay between state and local regulations?” • “In the case of state statutes, who has authority to waive?”
335	Shetterly	Points to exemptions under Measure 37 and states that some are specific while others are very broad and unclear in their meaning.
360	Shetterly	Defers to other witnesses.
370	Rep. Ackerman	Asks question regarding appraisal fees. Asks for rationale of why local jurisdictions require it but state does not, and how the state plans to protect itself from frivolous or fraudulent claims.
380	Shetterly	Responds that the DOJ determined that the state does not have the authority under state statutes to charge a filing fee for a claim. Explains that this opinion does not extend to local jurisdictions.
405	Hector Macpherson	Former Oregon State Senator. Submits and reads written testimony (EXHIBIT M) .
TAPE 2, A		
025	Macpherson	Continues reading written testimony (EXHIBIT M) .
125	Rep. Greenlick	Recognizes that Macpherson is one of the litigants in a suit that will test the limits of Measure 37. Asks witness to describe why he is involved.
130	Macpherson	Believes that Measure 37 is fatally flawed. Emphasizes that something needs to be done regardless of Measure 37.
140	Sen. Burdick	Asks about the requirements for those who took their land out of farm production and whether there is a requirement for those back taxes to be repaid.
150	Macpherson	Believes that with this change in land use, the entire tax bill should be looked at since that individual has owned the portion of land. Opines that there are people who want all the tax breaks and also want to be able to subdivide their land when things don't work out.
180	Harlan Levy	Senior Staff Attorney, Oregon Association of Realtors (OAR). Submits written testimony (EXHIBIT N)
200	Levy	Talks regarding Measure 37. Believes that Measure 37 was a vote for land use reform, not simply compensation.
220	Levy	Informs that prior to 1998, landowners may not have received notice of land use changes and that rights were significantly affected by this.
235	Levy	Highlights testimony (EXHIBIT N) .
270	Chair Ringo	Chair asks if Dorothy English would be able to subdivide with OAR's proposals to implement the measure.
280	Levy	Clarifies that English would be able to subdivide and also allow the lots to be transferred to a new party. Remarks that Measure

		37 was not clear on the issue of transferring waivers. Urges legislature to clarify this uncertainty by establishing that the waiver will follow with the land.
285	Rep. Greenlick	Points out that the uncertainty could also be cleared up by clarifying that the waiver did not follow the land.
290	Levy	Comments that the measure is silent on this issue and believes that the courts could go either way on this decision. Asks legislature to specify that waiver stays with the land before litigation begins.
295	Rep. Greenlick	Reiterates that specifying that the waiver did not follow the land would clear up uncertainty also.
300	Levy	Responds that this would clear up uncertainty but would “undermine the entire measure.”
306	Levy	Continues highlighting testimony (EXHIBIT N) .
320	Levy	Brings conclusion to testimony. <ul style="list-style-type: none"> • Reminds committees that this is the second time dealing with this measure • Measure passed with 61% of the vote • Action must be taken to reform land use planning program
350	Rep. Greenlick	Asks witness if annexation action by city could produce action under Measure 37.
360	Levy	Suggests annexing property probably increases the value. Believes it would be hard to find a claim under this scenario.
370	Rep. Greenlick	Stresses that it is the witness’ assertion that being in the city increases the value of property. Asks whether the 40,000 citizens of Bethany could each file a claim under Measure 37 if they were forcibly annexed.
380	Levy	Responds that anyone is free to file a claim, but it must be a claim that shows depreciation of property by governmental action in order to file under Measure 37. Predicts that it would be difficult to show that these citizens lost value by their property being annexed.
TAPE 1, B		
005	Tim Martinez	Oregon Bankers Association. Thanks committee members and makes opening remarks.
014	Ken Sherman, Jr.	Counsel, Oregon Bankers Association. Introduces himself. Submits and reads written testimony (EXHIBIT O) .
060	Chair Ringo	Asks whether it is important for the legislature to address this issue this session.
063	Sherman	Comments that it will take a long time for the courts to address these issues in a thorough manner, and hopes that the legislature can provide the answers during this session.
068	Rep. Garrard	Asks witness what his position is on the transfer of the claim.
070	Sherman	Reports that from his own reading of the measure he doubts that transfer is provided for in the text, and thinks that is something that needs to be clarified by the legislature.
075	Sen. Burdick	Asks whether farmers who choose not to avail themselves of Measure 37, or are not affected by Measure 37, could actually see their financing for their farm operation put in jeopardy because of uncertainty about how neighboring decisions will affect their farms.
080	Sherman	Comments that he worries about the impact of urban activity

105	John Chandler	right next to farms. States that it would be difficult to manage and would also create some financing problems. Oregon Home Builders Association. Makes opening comments. Remarks that both committees should relax with Measure 37. Cautions that more discussion is necessary before any action should be taken.
115	Chandler	Stresses that 61 percent of the voters passed this initiative, and that statement needs to be respected. Refers to Former Sen. Macpherson and discusses the regulations and rules within the land use system in Oregon.
135	Chandler	Says that most Oregonians support the land use planning system however only to the point where it doesn't affect them.
140	Chandler	Sees Measure 37 as an opportunity. Urges committees to not schedule hearings on these subjects right away.
150	Chandler	Urges committees to look at the land use restrictions that have led to this point. Discusses land use regulations and approaches to looking at the land use planning system. Discusses questions that need to be clarified in the measure: <ul style="list-style-type: none"> • Are waivers transferable? • Is the right to subdivide a use under Oregon Laws? • Should special districts be included? • Who gets to waive what? • Suggests there is a lack of understanding of jurisdiction with state and local governments.
175	Chandler	Asks committees to please not confuse Measure 37 with the big picture bill to look at the land use system and decide what works and what doesn't.
190	Chandler	Makes closing remarks. Urges committees to relax and reiterates that this will work itself out.
205	Dan Cooper	Metro. Introduces himself. Makes opening statements regarding Metro.
215	Cooper	States that Metro is affected by Measure 37 but so far have received no claims. Discusses land use and zoning, specifically adopting some requirements inside boundary to increase efficiency of land use. There may be a few areas under their authority that will be affected by Measure 37, but some of those places may be included in the exceptions under the measure.
230	Cooper	Discusses the use and regulations of industrial land and how Measure 37 will affect this.
245	Cooper	Discusses protection of streams with regards to protections in different districts. States that Measure 37 has a great impact on ability to adopt future regulations and discusses land development. Summarizes that the biggest effect on Metro from Measure 37 is that it may make land development confusing because it creates uncertainty in development patterns for the future and their job is to calculate long term planning needs for the region. Makes closing statements.
310	Art Schlack	Policy manager, Association of Oregon Counties (AOC). Introduces himself. Makes opening remarks. Submits written testimony (EXHIBIT P).
320	Schlack	Discusses the regulations that counties have adopted. Explains

		that he believes most of them come from either statute or administrative rules.
350	Schlack	Comments on Measure 37. Discusses the question of jurisdiction and what happens if a government waives a regulation in their zoning ordinance that is derived at the state level. Informs that the AOC is encouraging applicants to file at both county and state levels.
375	Schlack	Reports that the AOC is in the process of trying to get a list of all procedures by counties to deal with Measure 37 claims; not all counties have formally adopted procedures. Remarks that there are many more questions than there are answers.
410	Rep. Anderson	Asks witness to estimate how many of the claims will become homes.
415	Schlack	Informs that about half of the claims are for one house on a lot. Discusses the other claims.
420	Rep. Anderson	Asks for clarification on number of buildings.
421	Schlack	Clarifies number.
430	Linda Ludwig	League of Oregon Cities. Submits Measure 37 Advisor newsletter (EXHIBITS Q) and a list of Measure 37 issues (EXHIBIT R). Makes opening statements regarding the League of Oregon Cities and Measure 37.
465	Ludwig	Explains the necessity for clarity on implementation either judicially or legislatively.
TAPE 2, B		
035	Ludwig	Refers to handout (EXHIBIT R). Discusses cooperation efforts with DLCD for clarification on implementation.
055	Ludwig	Suggests that some decisions made by some state agencies might bring additional governmental liability and state liability.
070	Bob Stacey	Executive Director, 1000 Friends of Oregon. Introduces himself. Submits and highlights written testimony (EXHIBIT S). Discusses different interpretations that people have about what Measure 37 means.
090	Stacey	Expresses the position of 1000 Friends of Oregon on Measure 37.
100	Stacey	Urges committees to look at the issue of compensation. Specifies that this is not a request to look at general fund or taxpayers but to think about the cases heard from Macpherson and Sherman.
110	Stacey	Expresses concern that the waiver process is unfair to neighboring property owners who are affected by the waiving of land use regulations. Poses questions and discusses ideas regarding fairness of land use regulations and compensation. Expresses concern about continuing under Measure 37 the way it was originally drafted instead of new legislation.
130	Stacey	Stresses that communities need the ability to use zoning to plan and address community problems.
140	Stacey	Urges committees to look at the statutes that were first put in place in the 1973 Legislative session. Believes that most Oregonians have lost touch with the reason for the initial program.
160	Don Shellenberg	Oregon Farm Bureau (OFB). Makes opening comments and states that the OFB did not take a position on Measure 37.
165	Shellenberg	Expresses that there is some concern in the farming community due to Measure 37, while others see it as a new opportunity. Poses questions regarding implementation of Measure 37. Brings up and discusses the issue of farm use assessment.

195	Shellenberg	Points out the issue of financial compensation, specifying that there is no place to get the money from.
205	Scott Ashcom	Oregon Agricultural Alliance (OAA). Introduces himself. Submits written testimony which includes a conceptual bill draft (EXHIBIT T) . Makes opening remarks regarding Measure 37.
210	Ashcom	Refers to conceptual bill draft (EXHIBIT T) . Asks committees to make this into a Legislative Counsel (LC) Draft to be introduced as a committee measure
220	Ashcom	Explains the conceptual bill draft (EXHIBIT T) and explains how this legislation would affect Measure 37.
250	Ashcom	Believes that a state agency should notify county or city when it is about to adopt an administrative rule change when it might result in a land use change. Discusses the importance of doing a market value impact analysis on the tax lots in the area.
275	Tom Gallagher	Portland Business Alliance, Urban Developers Coalition. Introduces himself. Submits written testimony (EXHIBIT U) .
280	Gallagher	Urges committees to deal with Measure 37 in a number of ways, specifically process issues. Discusses reasons why it is important that these issues are dealt with. Expresses concern that going through the judicial system could take a number of years, which affects job growth and job development.
295	Gallagher	Comments about the difference between state and local waivers. Believes that there needs to be a process to bring those together. Discusses concerns about this issue. Makes closing remarks.
330	Ray Wilkeson	Oregon Forest Industries Council. Introduces himself. Submits and highlights written testimony (EXHIBIT V) . Makes opening remarks regarding Measure 37. Explains position on land use planning system.
370	Wilkeson	Confirms that some members were supporters of Measure 37 because they were concerned with individual property rights and values not because they wanted to subdivide their land.
390	Wilkeson	Speaks regarding retroactive claims.
410	Wilkeson	Talks regarding claims that would affect forests. Refers to (EXHIBIT V) . Explains that Measure 37 will have no significant impact on forests as of right now, but indicates that nobody knows for sure. Explains that most forest land is not able to be developed.

TAPE 3, A

020	Chair Ringo	Comments about Measure 37 and the election held in November, 2004.
025	Chair Ringo	Asks Ross Day to give opinion about what the committees should do regarding Measure 37. Asks for opinion on the clarification issues brought up by other witnesses.
030	Ross Day	Director of Legal Affairs, Oregonians in Action (OIA), co-author of Measure 37. Declares that the measure was passed overwhelmingly by voters. Expresses that he thinks that people who want to do something are trying to get around Measure 37. Discusses transferability issue. Expresses that they need to let Measure 37 work itself out. The voters wanted to make land use planning a fair process; believes Measure 37 does that. Believes that the voters' intent was clear.
055	Day	Expresses that he would like to see the committees address the issues that gave rise to Measure 37 claims instead of dealing with Measure 37. Urges committees and public to address Oregon

		land use planning system. Discusses the land use planning system and how Oregonians feel about it based on polls they have taken.
080	Day	States that there is currently a lawsuit as of Friday, and states that he will be limited in what he can discuss because he will likely represent a party in that lawsuit.
088	Rep. Ackerman	Asks witness if his group plans to participate in the legislative process since this issue is before this body.
090	Day	Reiterates that the issue was before the voters and not before this body. Explains that they have an open door policy. Points out that the question that was before him was what does he think should be done about Measure 37. Reiterates that he believes nothing should be done.
095	Chair Ringo	Comments that there are a lot of smart people who were not opposed to Measure 37. Articulates that the words of the ballot measure are what became law. States that there are a lot of people who believe that these words do not permit Dorothy English to subdivide. Submits that the committees need to look at Measure 37 in order to carry out the will of the voters.
108	Day	Agrees with Chair Ringo. Remarks that OIA will support the committees to advance the will of the voters. Conveys that he believes that the voters intended for waivers to be transferable.
120	Chair Ringo	Closes the Informational Meeting. Adjourns at 5:03 p.m.

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EXHIBIT SUMMARY

- A. Rules, Proposed Committee Rules, Staff, 3 pp**
- B. Introductions, LC 191, Staff, 1 p**
- C. Introductions, LC 1026, Staff, 4 pp**
- D. Introductions, LC 1231, Staff, 44 pp**
- E. Introductions, LC 1287, Staff, 2 pp**
- F. Introductions, LC 1673, Staff, 2 pp**
- G. Introductions, LC 1674, Staff, 2 pp**
- H. Introductions, LC 1781, Staff, 3 pp**
- I. Introductions, LC 1781-1, Staff, 2 pp**
- J. Introductions, LC 1815, Staff, 2 pp**
- K. Introductions, LC 1816, Staff, 2 pp**
- L. Measure 37, informational packet, Lane Shetterly, 11 pp**
- M. Measure 37, written testimony, Hector Macpherson, 6 pp**
- N. Measure 37, written testimony, Harlan Levy, 4 pp**
- O. Measure 37, written testimony, Kenneth Sherman Jr., 1 p**
- P. Measure 37, written testimony, Art Schlack, 6 pp**
- Q. Measure 37, newsletter, Linda Ludwig, 16 pp**
- R. Measure 37, list, Linda Ludwig, 3 pp**
- S. Measure 37, written testimony, Bob Stacey, 6 pp**
- T. Measure 37, written testimony, Scott Ashcom, 2 pp**
- U. Measure 37, written testimony, Tom Gallagher, 2 pp**
- V. Measure 37, written testimony, Ray Wilkeson, 2 pp**