Georgetown Environmental Law & Policy Institute

Analysis of Oregon House Bill 3540/Measure 49

In early June 2007, the Oregon legislature passed House Bill 3540 to amend Measure 37, Oregon's controversial property rights measure. In November 2007, the state's voters will have the opportunity to approve or disapprove this "fix" to Measure 37 by voting on Measure 49. This memorandum describes HB 3540 (aka Measure 49) and discusses the likely consequences and implications of this proposal.

Summary of Major Points.

♦ HB 3540 would be an improvement on Measure 37 in terms of both environmental protection and good government. But it would be worse than the legal regime that existed prior to the adoption of Measure 37.

♦ HB 3540 would essentially rescind Measure 37's pay-or-waive mandate as to existing laws and regulations and replace it with a relatively modest, qualified roll back of pre-Measure 37 zoning restrictions on residential development in rural areas. As a result, most of the restrictions on development of Oregon's rural lands would become effective again, especially on high-value farmland and forestland and in ground water restricted areas outside of urban growth boundaries. At the same time, HB 3540 would retain a modified version of Measure 37 for future regulations; the state and local governments would have to pay "compensation," or waive restrictions, if regulations adopted in the future limited residential development or restricted farm or forest practices and reduced private property values. Thus, if HB 3540 were approved, Oregon would end up with a prospective takings measure (applicable to future laws and regulations) comparable to that adopted in Arizona in 2004 (Proposition 207).

♦ HB 3540 would change the formula used to determine whether a regulation has reduced property value. The new formula for calculating compensation would be more defensible from an economics perspective and would be less likely to confer substantial windfalls on land owners than the formula in Measure 37. However, the new formula would be problematic insofar as it appears to rest on the premise that no individual regulation should ever reduce private property values, and it probably would generate exaggerated estimates of the effects of regulations.

♦ HB 3540 would allow land owners who previously filed Measure 37 claims and who could lawfully construct dwelling units when they purchased their properties to

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seek permission to construct either (1) up to three dwelling units on land outside of urban growth boundaries, or (2) up to ten units on (a) land inside urban growth boundaries or (b) land outside urban growth boundaries that is not high-value farmland or high-value forestland and that is not in a ground water restricted area. An eligible owner could almost automatically take advantage of the first "express" path. To take advantage of the second "conditional" path, the owner would have to show, using the new formula in HB 3540, that adoption of the regulation reduced the value of the property. Because adoption of Oregon's farmland and forestland zoning in the early 1970s did not have a systematic adverse effect on property values, and given the difficulty of collecting reliable historical evidence of land values, pursuing the second option would probably prove difficult for many land owners.

♦ HB 3540 would narrow the scope of Measure 37 by barring any future claims based on restrictions on commercial or industrial uses (such as billboards, shopping malls, and gravel pits). Measure 37 would apply only to regulations restricting residential development or agricultural or forestry practices. If a claimant presented a valid Measure 37 claim based on a new regulation, the state or local government would have the options of (1) "compensating" the claimant for the reduction in the fair market value of the property, or (2) authorizing the claimant "to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property." This modified version of Measure 37 would likely have the practical effect, especially at the local level, of discouraging adoption of new regulations needed to protect the public welfare. However, the actual consequences of HB 3540 are difficult to predict.

♦ HB 3540 appears to largely achieve the stated objectives of the two primary interest groups involved in the debate over Measure 37 reform, 1000 Friends of Oregon (by reestablishing most of the prior restrictions on development in rural areas) and the timber industry (by relieving the industry of the threat of any significant new restrictions on timber practices, such as regulations designed to protect endangered species).

<u>Background on Oregon Measure 37.</u>

Measure 37, adopted by Oregon voters in November 2004, eviscerated Oregon's comprehensive land use regulatory system. The measure provides that if any regulation restricts the use of real property and has the effect of reducing the property's value, the owner is entitled either to financial compensation or to a waiver of the regulation. Measure 37 includes several exceptions, excluding regulations (1) adopted before the owner (or an ancestor) purchased the property, (2) restricting common law nuisances, (3) protecting public health and safety, (4) required to comply with federal law, or (5) designed to restrict or prohibit the use of property "for the purpose of selling pornography or performing nude dancing." Because of the way that Measure 37 measures reductions in property value, discussed below, virtually all land owners subject to regulations adopted after they (or an ancestor) acquired the property are eligible to file claims.

In practice, the state and local governments have responded to Measure 37 claims by waiving the regulatory restrictions rather than making monetary payments. To date, more than 7,000 claims have been filed under Measure 37, and thousands of development waivers have been granted. Uncertainties about the transferability of Measure 37 claims, and about whether other regulations apply to projects for which Measure 37 waivers have been granted, have slowed the process of converting claims into actual construction projects. Nevertheless, the numerous claims filed to allow major subdivisions and other types of development in rural areas have created a popular backlash against Measure 37. Public polling indicates a large majority of the state's voters are in favor of either repealing or applying major surgery to Measure 37.

Key Elements of HB 3540.

For claimants that filed a claim under Measure 37 prior to the end of the 2007 Oregon legislative session, HB 3540 would provide two alternatives. First, if the claimant has already obtained a waiver under Measure 37 and proceeded far enough with the project to acquire a so-called "vested right" to develop, the claimant could proceed with the development as if HB 3540 had not been enacted. There appear to be relatively few land owners who have proceeded far enough with development under Measure 37 to take advantage of this option.

Second, the claimant could seek authorization to construct a limited number of dwelling units on the property under either one of two alternative paths. This option would not apply to commercial or industrial land uses, or to agricultural or forestry practices, for which all pre-Measure 37 restrictions would be reestablished under HB 3540.

For land outside of urban growth boundaries, HB 3540 would create an "express path" allowing claimants who have already filed Measure 37 claims to develop up to three dwelling sites on their property. Specifically, it would authorize the claimant to develop the lesser of three units (including any preexisting units on the property), or the number of units described in a previously granted Measure 37 waiver or in a pending application for a waiver. In all cases, an otherwise eligible claimant would be entitled to develop at least one additional unit on the property. To avail themselves of this option, claimants would have to demonstrate that they were legally entitled to develop the dwelling sites when they acquired the property, and that the development is not barred by a restriction covered by one of Measure 37's exceptions (as modified by HB 3540). To resolve the controversy over transferability of Measure 37 claims, HB 3540 would allow for transfer of development rights to new owners, subject to the condition that the transferee constructs the dwellings within ten years.

For other regulated land, including land inside urban growth boundaries and land outside urban growth boundaries but not classified as high-value farmland or high-value forestland or in a ground water restricted area, HB 3540 would create a "conditional path" allowing those who have already filed Measure 37 claims to develop up to 10 dwelling units. To take advantage of this option, claimants would have to establish a

reduction in property value due to a regulation using the new formula in HB 3540. The claimant would then be entitled to the lesser of: the number of units described in either a previously granted waiver or a pending application for a waiver; ten dwelling units (including any existing dwellings already on the property); or the number of dwelling units "with a total value that represents just compensation" for the reduction in value of the claimant's property. As with express-path claims, a claimant using the conditional path would have to show that he was legally entitled to develop the units when he acquired the property and that the Measure 37 exceptions (as modified by HB 3540) do not apply, and the development rights would be made transferable, again subject to the condition that the transferee constructs the dwellings within ten years.

Regardless of how many properties a clamant owns and where the lands are located, no claimant would be eligible under HB 3540 for approval of more than 20 dwelling sites. In addition, where a new dwelling is approved for exclusive farm or forest zones, the lot accompanying a new building must not exceed five acres, and not exceed two acres if located on high-value farmland or forestland, or in a ground water restricted area. Also, the new lots would have to be clustered so as "to maximize suitability of the remnant lot or parcel for farm or forest use."

Prospectively, HB 3540 would only permit Measure 37 claims based on new regulations (adopted after January 1, 2007) affecting residential development or agricultural or forestry practices, eliminating Measure 37 claims with respect to industrial or commercial uses. In addition, it would require the claimant to show that the regulation caused a reduction in property value in accordance with the new formula in HB 3540. If a claimant presented a valid Measure 37 claim, state or local government officials would have the options of (1) "compensating" the claimant for the reduction in the fair market value of the property, or (2) authorizing the claimant "to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property."

Both with respect to claimants who have previously filed Measure 37 claims and those filing claims based on new regulations, HB 3540 would slightly alter the scope of Measure 37. It would limit the universe of owners eligible to file future Measure 37 claims to those who directly acquired property before a regulation was enacted; this would eliminate a claimant's ability to rely on an ancestor's acquisition date to establish entitlement to relief. It also would narrow several of the exceptions to Measure 37. For example, it would more narrowly define what types of regulations qualify as regulations designed to protect public health and safety. The exception for health and safety would not apply to any new regulation of agricultural or forestry practices unless "the primary purpose of the regulation is the protection of human health and safety." Likewise, the exception for regulations designed to comply with federal law would not apply to any new regulation of agricultural or forestry practices unless the state or local government has "no discretion" to decline to enact the regulation.

<u>A New Approach to Measuring Reduction in Value.</u>

As noted, HB 3540 includes a change in the way the effect of a regulatory restriction on property value would be measured, both for resolving certain pending Measure 37 claims and prospectively.

The current version of Measure 37 provides that the government must either pay compensation, or waive the restriction, if it "enacts or enforces a new land use regulation or enforces a [previously enacted] land use regulation . . . that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein." It further provides that "[j]ust compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act." While this language is susceptible to various interpretations, both the Oregon Attorney General's Office and Oregon trial courts have interpreted it to mandate either payment or waiver if, as of the date a Measure 37 claim is filed, a comparison of the value of the property subject to the restriction and the value of the property without the restriction reveals a "reduction" in value.

This approach to assessing the effect of a regulation on property value is comparable to the approach courts use in constitutional takings cases – with one major difference. In a constitutional takings case, courts typically measure the economic burden imposed by a regulation using appraisal evidence of the value of the property "with and without" the regulatory restriction. While the Measure 37 process is more informal, Measure 37 claimants basically use the same approach. The critical difference between a constitutional takings case and a Measure 37 claim is that constitutional liability is only triggered if the calculation reveals a very substantial (90%-plus) apparent reduction in property value using the with-and-without calculation. By contrast, the Measure 37 pay-or-waive mandate applies if the calculation reveals <u>any</u> reduction in property value.

The approach used in constitutional takings cases produces much fairer outcomes than the Measure 37 approach. Regulations have a complex mix of negative and positive influences on market values. For example, while zoning limits what an owner can do with her property and thus tends to reduce the property's value, application of the same regulations to neighbors enhances the owner's property value. In addition, a regulation may create a scarcity of development opportunities, increasing the value of existing development and of individual development opportunities that remain. Using the with-and-without methodology, it will almost always appear that a property would have a greater value without the restriction or, stated differently, that enforcement of the regulation has reduced the value of the property. But this calculation measures the value of an exemption from the rules that apply to everyone else in the community, not the actual <u>net</u> adverse effect (if any) of the adoption of a new regulation. To accurately measure the net effect of adopting a regulation on property value, one would have to calculate what the property would be worth if the law had never been enacted and did not apply to anyone in the community and compare that value to the value of the property subject to the regulation. That calculation is so complex that it is virtually impossible to

perform. In practice, courts utilize the with-and-without approach because the calculation can be performed relatively easily, but discount the result to account for the fact that it generates an exaggerated estimate of negative economic effect. Specifically, courts will uphold a regulatory taking claim only if the claimant's apparent loss, measured using the with-and-without method, is so severe that the property has lost substantially all of its speculative development value. Only in that situation can the courts be confident that a claimant is likely to have suffered a burdensome reduction in value.

By contrast, Measure 37 produces consistently unfair results because it includes no threshold of economic impact. In effect, it allows a claimant to demand compensation for the negative effects of a regulation while permitting her to continue to reap the economic benefits of others' compliance with the same regulation. The upshot is that Measure 37 consistently confers windfalls on property owners (either in the form of money or regulatory relief) that may have suffered no actual loss in property value based on the value of an exemption from the rules that apply to the rest of the community.

HB 3540 seeks to address this patent unfairness by introducing a different, novel method for measuring the effect of a regulation on property values. Like existing Measure 37, HB 3540 would impose an obligation on government to pay or waive if a regulation imposed a restriction that reduced the fair market value of the property. But HB 3540 redefines a reduction in fair market value. In lieu of the with-and-without approach of Measure 37, HB 3540 defines a reduction in fair market value (subject to several adjustments) as being "equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest." This methodology applies both to claims based on new regulations, and to existing Measure 37 claims where the owner seeks to use the conditional path to obtain permission to develop up to ten dwelling units.

Apart from applying this new methodology to measure the effect of regulations on fair market value, HB 3540 calls for several other calculations. Existing Measure 37 does not provide any particular guidance regarding the market value of a waiver; the measure simply states that, in lieu of paying "compensation," the government "may modify, remove, or not to [sic] apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property." By contrast, HB 3540 provides that the government could issue a waiver under Measure 37 authorizing development only "to the extent necessary to offset the reduction in the fair market value of the property" caused by the regulation. For previously filed Measure 37 claims, where the claimant is using the conditional path, she also must establish that the "reduction in the fair market value of the property" caused by the regulation "is equal to or greater than the value of the home site approvals" that she would be entitled to receive. In addition, she must calculate "[t]he number of home site approvals with a total value that represents just compensation for the reduction in value caused" by the regulation that gave rise to the Measure 37 claim. If the number of dwelling units is less than ten, the ceiling used under the conditional path, that figure may define the number of dwelling units for which the claimant can receive authorization.

Finally, the calculations must be "adjusted" by any taxes avoided as a result of special forestry or agricultural assessments and offset by any severance taxes or tax recapture caused by development of the property.

This new method for measuring reductions in property value, despite its bewildering complexity, would be an improvement on the method used in current Measure 37 in the sense that it would prevent an owner from demanding "compensation" based on the value of an exemption from a generally applicable regulation that simultaneously burdens and benefits all land owners. By comparing the value of the property prior to the adoption of a regulation with the value of the property after the adoption of the regulation, the calculation should capture, at least to some degree, both the positive and negative effects of a change in regulatory policy.

As discussed, land owners who previously filed Measure 37 claims could invoke this formula to try to show that adoption of a regulation years or decades earlier reduced the value of their property and that they are entitled to develop up to ten dwelling units. For several reasons, it is uncertain how many land owners could take advantage of this option. First, some property owners would likely encounter difficulties assembling reliable evidence of the historical market values of their properties in order to make a case for ten units. Second, adoption of Oregon's rural land use program in the 1970s does not appear to have had systematic adverse effects on private property values. See, e.g., Georgetown Environmental Law & Policy Institute, Property Values and Oregon Measure 37: Exposing the False Premise of Regulation's Harm to Landowners (2007) (available at http://www.law.georgetown.edu/gelpi/GELPIMeasure37Report.pdf). Accordingly, even if the data were available, they might well not support proposals for development of up to10 dwelling units under HB 3540 based on adoption of Oregon's landmark land use law.

On the other hand, the use of this new formula in potential new Measure 37 claims might well have a significant effect on future regulatory programs. To explain HB 3540's potential impacts, it is necessary to discuss in some detail the complicated calculations called for under HB 3540. While the formula in HB 3540 is certainly an improvement on the formula in Measure 37, it has several problematic features.

First, and most importantly, the new formula in HB 3540 is based on the flawed premise that (outside of the exceptions outlined in Measure 37, as they would be refined by Measure HB 3540) government should be put to the choice of either withdrawing a regulation that causes any reduction in property value or paying to enforce the regulation. One foundation of our democratic system of government is that the public, through its elected representatives, can legitimately restrict certain uses of private property judged to be harmful to the public welfare. As Justice John Paul Stevens wrote in Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 480 (1987), "[l]ong ago it was recognized that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community." Id. at 491-92 (internal citations omitted). In addition, the social compact in this country is based in part on a recognition that, even though some regulations may impose burdens on particular

owners, all citizens, including property owners, benefit from regulatory protections generally. "While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others. These restrictions are properly treated as part of the burden of common citizenship." Id. 492. Thus, even assuming HB 3540 provides a more accurate way of measuring the effect of a specific regulation on property value, it is still arguably misguided and destructive because it is based on the mistaken premise that no regulation can legitimately have an adverse effect on value, no matter how modest.

Second, the methodology in HB 3540 could frequently fail to accurately measure whether a regulation has actually reduced property value. HB 3540 defines a reduction in fair market value in mechanical terms as being "equal to" the change in a property's value from one year prior the regulation's enactment to one year after its adoption. During any two-year period numerous factors will influence property values as much as, if not more than, a new regulatory measure. For example, the closing of an industrial plant or the opening of some new facility can have a significant short-term effect on local property values. Real estate prices also fluctuate in response to regional and national economic trends. In the late 1980s, farmland values in Oregon (and across the country) declined significantly. If HB 3540's formula were applied during that kind of economic down turn, virtually any regulatory enactment would trigger the pay-or-waive mandate, even if it had no adverse effect on property values. Conversely, in periods of very rapid inflation in land prices, the potential adverse effects of regulation on land value might be swamped by the positive effect of inflation.

Third, the methodology in HB 3540 can be expected to lead to unreliable results because, according to the language of the bill, the claimant is required to establish the reduction in value of the property caused by the regulation's enactment rather than its application to the particular property in question. Generally speaking, the courts will dismiss as not "ripe" a regulatory taking claim if the governmental authority has not yet made a "final and authoritative" decision about how the regulation actually applies to the property. Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 735 (1997). This procedural rule follows from the common sense observation that "[a] court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340, 348 (1986). Land use and environmental laws commonly leave administrative agencies some discretion about how they should be applied. Therefore, it is often difficult bordering on the impossible to know how a particular law may affect the value of a specific property unless one knows how the relevant decision maker will apply the law to the property. By calling for assessment of a regulation's impact as of the date of enactment, rather than based on the law's actual application, HB 3540 invites speculative and unreliable estimates of the effects of regulations on property value.

Fourth, the uncertainties inherent in appraisals of market value would further undermine the reliability of the HB 3540 formula. A market value appraisal is typically based on a narrow set of data that do not generate a mathematically precise estimate. In addition, professional appraisal standards allow for the use of different appraisal

techniques that sometimes yield different results for the same property. Finally, appraisals are notoriously subject to manipulation by parties seeking a valuation that will serve their private purposes. In fact, the Internal Revenue Service has launched a nationwide audit of some 600 charitable donations of conservation easements, based in part on concerns that some appraisals used to support deductions reflect inflated estimates of the adverse effect of legal restrictions on property value. All of these factors create ground for concern that appraisal evidence might be used to successfully challenge regulations under HB 3540 even if the regulations had little or no adverse effect on property values. This concern is compounded by the numerous complex calculations called for under HR 3540. So far as we know, no other state legislation has gone as far as HB 3540 in incorporating hazy and manipulable appraisal techniques into a land use regulatory program.

All of these considerations combine to make it difficult to predict how HB 3540 would affect potential future regulatory programs. A great deal depends on whether enactment of a regulatory program would be likely to generate numerous claims for compensation or waiver, which would be very hard to predict in advance. It is possible that government entities would pay some claims under the revised version of Measure 37, even though this has not occurred under current Measure 37; the claims for compensation under HB 3540 would presumably be smaller than those filed under Measure 37. On the other hand, if state or local officials were unable or unwilling to make even reduced monetary payments, they would issue waivers on a routine basis, as they have under Measure 37. Finally, confronted with the uncertainties surrounding HB 3540, public officials might simply decide to not adopt new regulations at all.

Analysis and Assessment.

HB 3540 represents a complex (22 dense pages) legislative proposal, the consequences of which are difficult to predict.

On the plus side, HB 3540 would go a long way toward restoring the restrictions on development of Oregon's farm and forest lands that were in place for 30-plus years prior to the adoption of Measure 37. Unless those who have previously filed Measure 37 claims have acquired "vested" development rights, they would be barred from pursuing proposals for commercial or industrial facilities, or large-scale residential subdivisions, in Oregon's rural areas.

On the negative side, the bill would allow more low-density residential development in rural areas as compared to the pre-Measure 37 regime. However, the effect of this aspect of HB 3540 on Oregon's landscape and the productivity of its resource lands would likely to be relatively modest, especially if the clustering requirement were effectively enforced. If HB 3540 became law, Oregon would still have the most significant protection for rural lands of any state in the nation. More significantly, HB 3540 would retain Measure 37, in a modified form, for future regulations restricting residential development or agricultural or forestry practices.

In political terms, the calculus underlying HB 3540 is not difficult to understand. The bill would achieve the primary objective of the leading land use advocate in the state, 1000 Friends of Oregon, by restoring most (but not all) of the restrictions on development of Oregon's large agricultural and forest land base. In exchange, the leading financial backer of Measure 37, the timber industry, hopes to achieve its publicly stated objective of gaining immunity from future regulation of forestry practices.

As discussed, the available evidence suggests that the adoption of the Oregon land system in the early 1970s did not have a systematic adverse effect on Oregon property values. Thus, the regulatory relief provisions of HB 3540 cannot be justified or explained as a remedy for diminished property values. On the other hand, these provisions respond to land owners' frequently expressed complaints about their inability to provide house sites on their property for additional family members. Because the limited additional building rights authorized by HB 3540 can be expected to be valuable, especially on lands in proximity to urban centers, the bill would confer a financial benefit on some of Oregon's rural land owners.

The impact of HB 3540 on potential future regulatory programs is both more unpredictable and more troubling. Measure 37, as revised by HB 3540, would apply to virtually any new restrictions on residential development or agricultural or forestry practices. Thus, it could restrict the state or local governments from adopting new, more restrictive zoning regulations, although it is questionable whether there is a foreseeable public demand for this type of new regulation, given the strong zoning regulations already in place. Examples of other types of new regulations that might be affected include coastal setback rules to deal with the threat of rising sea level, land use regulations designed to safeguard endangered species, or historic preservation regulations.

If HB 3540 were adopted, and state or local officials subsequently adopted new regulations, it appears likely they would respond to claims under revised Measure 37 by waiving the regulations rather than paying compensation. As discussed, every valid Measure 37 claim to date has resulted in a regulatory waiver rather than a monetary payment. It could be argued that this consistent outcome reflects government officials' concerns about making windfall payments under existing Measure 37. But experience under Measure 37 suggests that state and local officials are reluctant to make any financial payment at all because they routinely decide to waive regulations without closely scrutinizing the amount of compensation demanded. State and especially local officials apparently lack the budgetary flexibility to deal with demands for payment that are unpredictable in number and amount in the context of administering a comprehensive regulatory program. They currently perceive no alternative to waiving the regulations, and this probably would not change with the adoption of HB 3540.

Under HB 3540, waivers would be based on the magnitude of the adverse effect of the regulation, and therefore might be less damaging than the waivers issued under Measure 37. But the practical difference on the ground might also turn out to be one of imperceptible degree.

Finally, the most important effect of revised Measure 37 is probably that it would discourage state and local officials from adopting new land use regulations affecting residential development or farm or agricultural practices. Even if they were persuaded that a regulation would have little or no net adverse impact on property values, the uncertainties in the calculations prescribed by HB 3540 would generate understandable concern about the potential number of claims that might be filed. Furthermore, even if officials anticipated waiving the regulations rather than paying claims, they would still probably be deterred from adopting new regulations. In simple terms, government officials would see no advantage in investing resources and political capital in developing and adopting new regulations if they would then be forced to issue numerous waivers. This is likely to be especially true for administrative boards and local governments. At least in theory, the state legislature could adopt new legislation stating that it should be implemented without regard to Measure 37, though state legislators would presumably be reluctant to take that step if the voters approve HB 3540. Given the timber industry's stated goal in negotiating HB 3540 of avoiding future regulation, it should come as no surprise that HB 3540 would likely be effective in undermining the public's ability to advocate for new land use regulations.

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If I were an Oregonian, how would I deal with HB 3540? I would probably vote in favor of it. But I would do so holding my nose, and ruing the fact that I and my fellow Oregonians had, by adopting Measure 37, placed ourselves in the situation where a vote in favor of HB 3540 represents a vote in the right direction. And I would hold out hope that, sometime in the future, the most destructive features of HB 3540 could be corrected. Finally, I would advise my relatives and friends in other states to avoid following Oregon's bad example.

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