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Measure 37 washes over coastal areas

Tuesday, February 22, 2005

ALEX PULASKI

SEAL ROCK -- For more than a decade, Lowell Patton searched for a way to develop his 31 acres overlooking the Pacific Ocean.

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After battling neighbors over his plans to replace the pines and beach grass with an RV park, Patton has turned to Oregon's new property-rights law, Measure 37. In December, the semiretired Portland-area lumberman issued Lincoln County a \$12.6 million ultimatum: Allow him to place four times as many dwellings as zoning currently allows or pay up.

Patton's claim north of Waldport is one of 44 filed in Oregon's seven coastal counties since December, but the only one right up against the ocean. A potential 400-acre claim near Gold Beach is in the works but has not been filed, and it appears many coastal landowners are waiting to see what the courts and Legislature do before filing.

In the meantime, most coastal counties and cities -- Coos County is the notable exception -- are doing background research on claims but have taken no action.

In Coos County, commissioners have decided to bypass land-use planners in handling claims. They've unanimously approved all eight claims they have considered in the past month, mostly involving inland forested properties.

Commissioner Nikki Whitty said Coos County is attempting to reflect the will of the people in moving ahead with Measure 37 claims. The measure won 72 percent of the vote in Coos County, similar to the lopsided support it received in Klamath and Douglas counties.

"This has given the state a wake-up call," she said. "There has been a push to change things a little for years, but nothing ever happened. That's why we ended up with Measure 37."

In other counties, an imposing army of challenges stands between a claim and actual development, said Grant Young, Curry County's director of public services. The hurdles range from meeting wetlands and geological standards to paying for appraisals to fighting lawsuits.

"You've got all these issues in the air," Young said. "Measure 37 may exempt you from certain things, but it doesn't exempt you from health and safety.

"Anybody with a big project stands a real good chance of being a poster boy

for one of those tests, and that's not where you want to be."

Measure 37 passed in November and took effect the following month, sending a fissure through the Oregon land-use system established in 1973. Then-Gov. Tom McCall had staked public claim to the state's beaches in 1967, but many consider his enduring work the land-use laws designed to keep farmland unfettered by homes and strip malls.

On Oregon's coast, some see Measure 37 undoing what McCall fought to protect.

"Measure 37 would never have flown if people thought it was for speculators to get rich on," said Fran Recht, conservation director of the Oregon Shores Conservation Coalition. "We know counties don't have any money, so the question now is whether they are just going to waive all the rules."

Digging through archives

Most jurisdictions are asking planning staffs to sort through the validity of claims before sending them to county commissioners. Of the coastal counties, only Coos has seen a claim reach a hearing.

"What we're trying to do is get our data in order," said Kathy Sellman, Clatsop County's community development director.

Eight Measure 37 claims have been filed in Clatsop County, including two separate ones this month that would add 70 homes along U.S. 101 near Seaside.

Preparing for claims has meant digging through archives to determine when zoning rules changed, because the measure allows landowners to receive compensation or be governed by land-use laws in place when they or their immediate family bought the property.

Patton has one claim in Clatsop County for \$2.5 million, involving 55 acres near Tongue Point on the Columbia River.

His larger claim, in Lincoln County, encompasses acreage that Patton says he took ownership of in 1973. In a letter to the county, Patton's lawyer says zoning then would have allowed 62 lots, each a half-acre.

Today, no more than 15 two-acre lots would be allowed.

Patton has lost \$6.4 million to \$12.6 million under the zoning changes, lawyer William C. Cox wrote the county.

"All he wants to do is use his property," Cox said. "He doesn't want people mad at him or anything."

But neighboring landowners are mad. They fought a protracted legal battle with him in the 1990s over his plan to funnel traffic from his proposed RV park through their streets, and they vividly remember heavy equipment working in darkness on Patton's property to cut through sand dunes and drain a lake into the ocean.

Neighbors expect change

In a 1995 legal agreement with the state, Patton was required to undo grading performed without a permit and restore the lake to avoid paying \$7,593 in fines.

"Once you move these sand dunes," neighbor Marcia Michael said, "it's kind of hard to put them back as they were."

She and other neighbors said they don't oppose Patton developing the land, but they worry that through Measure 37 he can circumvent hearing processes.

"We don't expect that land to stay like it is forever," said George Holroyd of Bend, who owns an oceanfront home neighboring Patton's property. "God only made so much coastline.

"What we don't want, though, is a bunch of fifth-wheelers going by our front door day and night."

Patton said though it's unclear how the Legislature or courts might modify the measure, he didn't want to waste time before filing.

"That's the greatest beachfront you'd ever want to see," Patton said. "I've been trying to do this for so long that I didn't want to prolong it any longer."


Other coastal landowners don't want to spend money on appraisals and consultants until they get a clearer idea of the measure's ins and outs.

Jim and Carol Silke want to build more densely than current zoning allows on 14 acres they own near Dune City in Lane County. Having spent more than \$27,000 in legal fees in failed land-use actions, they are waiting to see how the state, and particularly their county, will respond to initial claims.

"The only avenue we have left to develop as we intended is Measure 37," Jim Silke said. "If that doesn't work, then maybe by the time our children reach retirement some sanity will have returned to the system and they can build."

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