

## A Quiet Counterrevolution in Land Use Regulation: The Origins and Impact of Oregon's Measure 7

Carl Abbott, Sy Adler, and Deborah Howe  
*Portland State University*

### *Abstract*

In November 2000, Oregon voters adopted Measure 7, the nation's most absolute definition of a regulatory "taking" and the compensation required for any and all loss of potential property value because of state or local regulations. Although the Oregon Supreme Court later invalidated Measure 7 on technical grounds, it is important to understand the origins and meaning of this drastic action. This article describes the proplanning consensus that has dominated Oregon since the 1970s, examines the Measure 7 campaign and its political consequences, and analyzes the emerging tensions within the Portland metropolitan area and across the state that led to this grassroots counterrevolution.

We conclude that Measure 7 does not signal the end of Oregon's land use planning system, but that it is likely to force a rebalancing of the regulatory system to address the real hardships that regulations governing land development can impose.

**Keywords:** Growth management; Land use; Urban policy

### **Introduction**

On November 7, 2000, the voters of Oregon adopted a broad property rights measure that fundamentally altered the state's regulatory system of land use planning and environmental protection. Placed on the ballot by initiative petition, Measure 7 was approved 53 percent to 47 percent. It amended the constitution of the state of Oregon to require that property owners be compensated when state regulations reduce the value of their property. In specific language,

if the state, a political subdivision of the state, or a local government passes or enforces a regulation that restricts the use of private real property, and the restriction has the effect of reducing the value of a property upon which the restriction is imposed, the property owner shall be paid just compensation equal to the reduction in the fair market value of the property.

The amendment thus requires compensation whenever state or local government regulations limiting the use of private property result in *any* reduction in the value of that property. Claims might, in theory, range from a few hundred to millions of dollars.

The amendment came 27 years after Oregon adopted a pioneering state system of land use planning that survived several statewide referendums in the 1970s and 1980s. Over the years, however, land use controls and environmental regulations have become more complex—and perhaps more burdensome—in the state and its jurisdictions. A booming economy in the 1990s also placed new pressures on the supply of developable land, and rising land prices made the economic effects of regulation very noticeable.

This constitutional amendment placed substantial fiscal constraints on land use and environmental regulation. The language of the amendment excepts “historically and commonly recognized nuisance laws,” but states that this phrase should be interpreted narrowly. It explicitly excepts regulations that might prohibit the use of private property for the sale of pornography or alcoholic beverages, for nude dancing, or for gambling. It also excepts government regulations necessary to implement federal law. The measure was thus the broadest and most far-reaching requirement for compensation for regulatory “takings” yet approved in the United States, although it has parallels to measures adopted in Texas and Florida (Douglass 1996; Powell et al. 1995). It carried implications for housing and land markets at neighborhood, municipal, metropolitan, and state levels. Local governments are squeezed between their standing obligation to enforce zoning and environmental regulations and the necessity to find funds to compensate land owners, for the measure is silent as to where funds for compensation should come from. Preliminary studies identified 90 state and local government actions that might trigger payment under the measure (ECONorthwest 2000). Potentially at issue were comprehensive land use plans, zoning ordinances, subdivision ordinances, building codes, design regulations and height restrictions, sign codes, restrictions on business operating hours, safety regulations, and a variety of environmental regulations affecting forest management, air quality, stream protection, and land use measures intended to protect water quality.

The measure was declared in violation of the Oregon Constitution on procedural rather than substantive grounds by a lower court on February 22, 2001 (*McCall et al. v. Kitzhaber*) and was invalidated by the Oregon Supreme Court on October 9, 2002 (*League of Oregon Cities v. State of Oregon*). The court found that the amendment, as written, altered two unrelated sections of the Oregon Constitution and therefore violated Oregon law.<sup>1</sup>

---

<sup>1</sup> The Oregon constitution requires that multiple amendments be voted on separately. The principle, articulated in *Armatta v. Kitzhaber* (1998), is whether a ballot proposal “would make two or more changes to the Constitution that are substantive and that are not closely related.”

The triumph of Measure 7 reflected the practical impact of two substantial policy debates that are currently shaping U.S. land use regulation. One debate lies in the realm of political philosophy and involves fundamental examination of the desirable balance between the rights of individual landowners and the requirements of the public (Foster and Robbins 2001; Jacobs 1998). The second centers on the impact of the smart growth approach to land use planning and has frequently used Oregon as evidence of both costs and benefits in relation to housing, preservation of farmland, and similar issues (Downs 2002; Nelson et al. 2002; O'Toole 2001; Staley 1999).<sup>2</sup>

The adoption of Measure 7 appeared to contradict Oregon's reputation for growth management and land use planning, and it would have complicated its role as a testing ground for the urban application of environmental laws such as the Endangered Species Act. Indeed, as the property rights movement has become less vocal and visible as an active political force in other parts of the United States (Echeverria 2001; Jacobs 2001), it suddenly claimed a major success in what would seem to be an unlikely setting.

Since the 1970s, Oregon has been an example and model for advocates of compact urbanization and smart growth (Liberty 1992; Weitz 2000). Its programs have been extensively studied and are frequently cited in debates over growth management in cities and states around the nation (Abbott, Howe, and Adler 1994; DeGrove 1984; Knaap and Nelson 1992). At the same time, Oregon has a number of characteristics that make its environmental and growth management reputation problematic. Booming economic growth has not only placed pressures on the land inventory, but also held out the possibility of speculative gains in land values. The predominance of ranching and forestry in most Oregon counties provides a basis for support for the "wise use" movement and similar defenses of property rights and gives such concerns easy entry into legislative debates.

Given the substantial policy changes that would have resulted from Measure 7 and that still may result from its political fallout, examining its sources and meanings is important. In the 1970s and 1980s, Oregonians repeatedly voted to retain and protect the state land use planning system. To what degree can we understand the shift toward much

---

<sup>2</sup> The most contested question has been whether the existence of the Portland growth boundary creates severe housing price inflation by constraining the supply of buildable land. Recent analyses suggest that the more important cause for rapid housing price increases has been a surge of demand with in-migration and economic prosperity in the 1990s. See Downs 2002; Knaap and Hopkins 2001; Nelson et al. 2002; Staley and Milner 1999.

stronger protection for property rights as a result of unique Oregon circumstances? Does the nature of public opinion and belief suggest that Measure 7 could be reversed in future votes? How have different interest groups organized and responded since the measure's passage? What role, if any, have professional planners taken in these responses? Answers to these questions may be helpful in understanding the tensions over land use regulation in states other than Oregon.

Our analysis of the origins, passage, and aftermath of Measure 7 highlights several problems or challenges for land use and environmental planning.<sup>3</sup> These challenges are not new, but Measure 7 and the political debates and discourse that surround it show how they can affect even a planning-friendly state such as Oregon. No one problem in itself has undermined the Oregon planning system, but the gradual and cumulative impact of a variety of forces has set the stage for what we might call a "quiet counterrevolution" in land use planning.

In *The Quiet Revolution in Land Use Control*, prepared for the Council on Environmental Quality, Fred Bosselman and David Callies noted that "[i]f one were to pinpoint any single predominant cause of the quiet revolution it is a subtle but significant change in our very concept of the term 'land,' a concept that underlies our whole philosophy of land use regulation" (1972, 314). They saw both conservatives and liberals increasingly thinking of land as a resource as well as a commodity in the context of a growing recognition of a host of social and environmental problems. These problems were exacerbated by the emphasis in the United States on very local control of land use through local zoning. The quiet revolution involved a growing role for state and regional entities in land use decision-making processes.

Ironically, Oregon began its revolutionary trajectory in a manner opposite to the one recommended by Bosselman and Callies (1972). They

---

<sup>3</sup> Our analysis is based on a variety of sources, including (1) campaign materials from Measure 7 proponents and opponents; (2) election returns; (3) newspaper news and editorial coverage before and after the passage of Measure 7; (4) results of pre- and post-election opinion polling; (5) focused interviews during June and July 2001 with key figures in the postelection discussions, including members of the Oregon legislature and leaders of major interest and lobbying groups on both sides of the issue; and (6) a telephone survey of directors of Oregon planning agencies and departments conducted by the Portland State University Survey Research Laboratory in January 2002, resulting in 66 responses out of 118 individuals contacted. We can characterize 65 of the respondents as follows: sex: male, 51, female, 14; date of birth: through 1950, 32, after 1950, 33; place of employment: Willamette Valley, 30, elsewhere in Oregon, 34; size of department or organization: 1 to 3 persons, 23, 4 to 15 persons, 25, 16 or more persons, 17; years in the planning profession: 1 to 10 years, 21, 11 to 22 years, 20, 23 years or more, 24. We therefore believe that these respondents are representative of the senior planning ranks in the state.

counseled beginning at the state level with regulations that concentrated on a few goals of statewide significance and then gradually adding comprehensive planning elements, because “Americans have rarely looked kindly on the idea of planning for its own sake, and have paid attention to planning only when it immediately affects decision-making....To insist that the planning precede the regulation is probably to sacrifice feasibility on the altar of logic” (Bosselman and Callies 1972, 322). In addition, they wanted to avoid diffusing state regulatory power too broadly. Oregon would begin in 1973, however, by developing a substantial number of statewide goals and follow the adoption of them with mandates to create local plans and regulations that would have to be acknowledged as consistent by a state agency.

Bosselman and Callies (1972) worried about the articulation between state initiatives and local participation in decision making and about a state bureaucracy-driven increase in regulatory modes of intervention. They foresaw the need to address in creative ways the takings issues that would likely result, regardless of whether or not regulators fell into the bureaucratic trap they feared. The proponents of Measure 7 would argue that regulators at state, regional, and local levels had indeed fallen into the trap.

In this context, Oregon faces the basic problem of maintaining and nurturing a public understanding and appreciation of the common purposes and shared benefits of good planning (Benner 2002). The problem, of course, is that the effects of planning regulations fall incrementally on individual property owners, or sets of owners, while the benefits accrue to the common interest. This is especially apparent when new, specialized regulations are added to general land use zoning. For example, a “Portland Healthy Streams Project” proposes additional restrictions on the development of land that includes substantial natural drainage. The benefits are to water quality in general, and salmon runs in particular, but the restrictions fall on owners of undeveloped or underdeveloped parcels rather than all property holders in the city.

In these circumstances, the proponents of Measure 7 were able to offer the simple argument that the measure required compensation for unfairness to individuals. By contrast, opponents have had a harder time crafting a clear message about why voters should eschew individual compensation, offering arguments that are too technical and complex for electoral campaigns. This difference appeared in the fall 2000 campaign. It appeared again in efforts to respond to the measure in 2001 and 2002. For example, legislative efforts to craft implementing procedures failed, in part, because of the inability to agree on a source of revenue for compensation—the state general fund or a new tax or fee tied specifically to real estate transfers.

A second challenge is the weakness of professional planners as a political interest group and constituency. Planners are relatively few in number (there are less than 1,000 members of the Oregon chapter of the American Planning Association [OAPA]). Most work for the public sector, with limitations on the perceived freedom to take political stands; the fact that many planners work in small communities and rural counties with very few colleagues compounds that problem. In addition, some planners view themselves as technical experts whose job is to implement political decisions rather than shape them. It is telling that the strongest response to Measure 7 has come from an environmental lobbying organization, 1000 Friends of Oregon, and that the planners most active in trying to develop a profession-wide response have been very senior private consultants.

A third factor is the growing influence of what might be called “conservative populism” as a political stance or assumption. Conservative populism consists of grassroots-based preferences for limited government intervention in daily life and for market solutions to problems, combined with a distrust of experts and expertise. In Oregon, especially in the coastal and eastern counties, it resonates with nostalgia for a presumed heritage of pioneer individualism. It has found expression in a movement to require citywide votes before any annexations and in efforts to allow localities to override state planning goals, as well as in Measure 7 itself.

### **The planning regime in Oregon, 1969 to 2000**

The Oregon system of land use planning emerged from a decade of political consensus building that stretched from initial efforts in the 1960s to the crafting of administrative rules in 1974. The center of concern was the hundred-mile-long Willamette Valley, which contains the state’s richest farmland, its three largest cities (Portland, Salem, and Eugene), and 70 percent of its population. The movement for state-mandated planning originated in efforts by Willamette Valley farmers to protect their livelihoods and communities from urban engulfment and scattershot subdivisions, with their disruptive effects on agricultural practices. As the effort moved through several legislative versions between 1970 and 1973, fear of California-style sprawl and the possibility of a mini-megalopolis in the Eugene-Seattle corridor attracted Willamette Valley urbanites to the legislative coalition.

The first steps toward the idea of zoning for “exclusive farm use” in the early 1960s involved legislative action to set the tax rate on farm land by land rental values—in effect, by its productive capacity as farm

land—rather than by comparative sales data that might reflect the demand for suburban development. A conference on “The Willamette Valley—What Is Our Future in Land Use?” held early in 1967 spread awareness of urban pressures on Oregon’s agricultural base. With key members drawn from the ranks of Oregon farmers, the Legislative Interim Committee on Agriculture responded by developing the proposal that became Senate Bill 10, Oregon’s first mandatory planning legislation.

Adopted in 1969, Senate Bill 10 took the major step of requiring cities and counties to prepare comprehensive land use plans and zoning ordinances that met 10 broad goals. The deadline was December 31, 1971. However, the legislation failed to establish mechanisms or criteria for evaluating or coordinating local plans, allowing some counties to opt for pro forma compliance expressed as large-lot zoning. Governor Tom McCall’s successful reelection campaign in 1970 called for strengthening Senate Bill 10 (Walth 1994). At the same time, 55 percent of the state’s voters supported the law in a referendum.

The Oregon legislature acted in 1973 to correct flaws in the 1969 law. McCall raised the curtain with a rousing moral appeal to save the state from “grasping wastrels of the land.” Greatest credit for passage of Senate Bill 100 went to Senator Hector Macpherson, a Linn County dairy farmer who articulated the importance of a statewide planning program in protecting and enhancing agricultural investment (Abbott and Howe 1993; Little 1974). This served to dampen the demands of farmers to preserve property rights that would enable them to sell out to developers. When the legislative skirmishing dust cleared, 49 out of 60 legislators from Willamette Valley districts voted in favor of Senate Bill 100. Only 9 of their 30 colleagues from coastal and eastern counties agreed (a point of ongoing significance for the next three decades).

Passage of the bill in May 1973 created a seven-member Land Conservation and Development Commission (LCDC) and a supporting Department of Land Conservation and Development (DLCD). As its first task, the new LCDC recrafted 14 state planning goals that were adopted in December 1974 (Leonard 1983; Rohse 1988). All cities and counties are required to develop and periodically update comprehensive plans that include provisions for meeting or accommodating the goals. The system allows some flexibility in local choices, but LCDC must “acknowledge” or sign off on the comprehensive plans. Over the years of interpretation, local options have slowly been circumscribed by LCDC interpretations and implementing rules (e.g., Bianco and Adler 2001) and by legal rulings. However, the basic idea behind the program remains the same. Development is to be concentrated within urban growth boundaries (UGBs) that are established around incorporated cities. Outside of the

UGBs are resource lands where land use policies are aimed at supporting the vitality of the agricultural and forest industries and where non-resource-related development is strictly limited.

The statewide goals have not been seriously disputed, in part because public participation in 1974 built a wide constituency of voters with a personal stake in the success of the program. Referendum challenges in 1976, 1978, and 1982 focused on questions of control and enforcement rather than content, although the regional difference seen in the legislative debates persisted (Knaap 1987; Medler and Mushkatel 1979). The closest call involved a 1982 ballot measure to return final decision making on land use plans to localities and retain statewide goals only as guidelines, in effect a return to the weak approach of 1969. Even the opponents of the LCDC system, in other words, argued about *how* to plan, not whether to plan, leaving the goals themselves above the political battle. In the context of the early 1980s, when the “Sagebrush Rebellion” was mobilizing nearby states like Nevada and Utah around a radical individualist agenda, Oregon politics remained firmly centrist (Governor’s Task Force on Land Use 1982).

From 1982 to 2000, there were no direct attacks on the Oregon planning system. Instead, dissatisfaction centered on the effects or implementation of planning, while debate was constrained by Oregon’s rational, moralistic political culture. Daniel Elazar (1972) categorized American states according to the dominance of traditional, individualistic, or moralistic political cultures and placed Oregon firmly in the latter (also see Chapman and Starker 1987; Klingman and Lammers 1984; Sharkansky 1969; Walker 1969). Moralistic communities “conceive of politics as a public activity centered on some notion of the public good and properly devoted to the advancement of the public interest. Good government, then, is measured by the degree to which it promotes the public good” (Elazar 1972, 96–97). Such a political culture places issues ahead of individuals and accepts that government can legitimately regulate private activities such as land development for the good of the commonwealth.

Opponents of land use planning have learned to state their arguments in the terms of this ethos. As we develop more fully in the next section, the essence of Measure 7 advocacy can be reduced to a simple proposition: “We don’t oppose planning itself; we just want it to be fair and just.”

Particularly during the 1990s, three streams of discontent emerged to feed into the Measure 7 vote. The first was dissatisfaction with the restrictive effects of land use controls in the Portland metropolitan area. The second was rural and small community frustration with a

system that seemed designed for the needs of the state's metropolitan corridor (Portland-Salem-Corvallis-Eugene). The third was discontent with efforts to use land use regulation to achieve environmental protection goals.

Led by rapid growth in high-technology manufacturing and research, software, and information businesses, the Portland metropolitan area boomed in the 1990s. Data from the U.S. Bureau of Labor Statistics show that employment in the six-county primary metropolitan statistical area (PMSA) grew by 272,000 jobs from January 1991 to December 2000, for a total of 982,000. Population in the same six counties grew by 26.6 percent to 1,918,009 at the 2000 census, while the eight-county consolidated metropolitan statistical area, including Salem, grew by 26.3 percent to 2,265,223.<sup>4</sup> Within either set of boundaries, the Portland metropolitan area ranked 14th in growth rate among large 500,000+ metropolitan areas.

Under the Oregon planning system, development is expected to occur within UGBs that are drawn around existing municipalities. In the Portland case, the state gave responsibility for defining a single regional growth boundary to Metro, the nation's only elected regional government, which functions as the regional land use planning agency. As a result, a single UGB surrounds Portland and 24 suburban municipalities. Outlying metropolitan communities that are not part of the contiguous urbanized area have their own UGBs. Metro adopted the UGB for the Portland area in 1979. It embraced approximately 230,000 acres (360 square miles), supposedly a 20-year supply of developable land. Economic recession in the 1980s meant that there was little pressure on the relatively generous urban land supply.

Rapid Portland growth in 1990, by contrast, made the UGB and its effects on land and housing prices into a major public issue (Abbott 2001). As Metro mounted an elaborate process for reviewing expansion options, some environmental organizations called for freezing the UGB while home builders argued for substantial additions of new land. In the course of the debate, the region saw gradual grassroots disaffection from the powerful coalition in favor of growth management that had been developed among local business and political leaders in Portland and the larger suburbs (Abbott 1997). In effect, the

---

<sup>4</sup> The PMSA comprises Multnomah, Washington, Clackamas, Yamhill, and Columbia Counties in Oregon and Clark County in Washington. Multnomah County contains the core city of Portland and the largest Oregon suburb. Washington and Clackamas counties are adjacent to Portland and are rapidly suburbanizing. The same is true of Clark County. Yamhill and Columbia Counties are rural fringe counties experiencing metropolitan overspill.

repetition of free-market arguments incrementally eroded belief in regulatory solutions to problems of metropolitan growth (Abbott 2000, 2002).

Within the city, planners and the public wrestled with concerns about housing costs and design. For example, by the early 2000s, working-class neighborhoods were worried that increased public and private investment for densification, as along a new north Portland light-rail line, would bring gentrification. At the same time, vocal neighborhood groups raised complaints about the need for new infill construction to be compatible with the existing neighborhood fabric—not a set of row houses perched above formidable two-car garages. In response, the city council unanimously adopted in 2000 a prohibition on new garage-front “snout houses.” Their action came over the vociferous opposition of home builders, who argued that the regulation burdened small builders and added unnecessary costs (Egan 2000). The council was unimpressed, but its action helped push the Metropolitan Homebuilders Association away from the growth management coalition.

At the same time, landowners outside the UGB faced a clear policy choice. Maintaining a tight UGB would protect rural landscapes and a prosperous agricultural sector. Indeed, the Oregon Farm Bureau Federation, as it had from the 1970s, remained a consistent supporter of the Oregon planning system as a way to preserve Willamette Valley farming. However, UGBs also create dual land markets with substantially lower prices outside the line (Knaap 1985; Nelson 1986, 1988, 1992). As land values rose rapidly inside the line, landowners on the outside saw larger and larger forgone gains.

Outside the Willamette Valley, dissatisfaction centers on the “one-size-fits-all” approach of Oregon land use planning and on the problems of adapting an urban tool—land use zoning—to rural settings (Einsweiler and Howe 1994). Particularly in the drier lands east of the Cascade Mountains, the base value of nonirrigated rural land is usually much lower than in the fertile, well-watered valley. In areas where dry hills choked with invasive sagebrush and juniper may have more potential for view lots than for grazing, many residents do not see the need for a sharp either/or division between buildable land and resource land. Officials in some eastern Oregon counties have been willing to approve substantial amounts of low-density and scattered development outside local UGBs (ECONorthwest 1991). To the frustration of many rural residents, legislative efforts to clearly differentiate treatment of high-value (primary) and lower-value (secondary) lands snagged for many years on technical and political issues (Pease 1990). In 1993, House Bill 3661 provided a partial fix by establishing regionally differing standards for forest dwellings, nonfarm dwellings on farmland, and “lot-of-record”

dwellings on lots that had been buildable before the adoption of state-acknowledged comprehensive plans (1000 Friends n.d. 5). These regional adaptations, however, have not increased the level of local discretion, and the public retains a strong impression that the state system ignores the circumstances in eastern Oregon.

A specific manifestation of this sort of concern has been an LCDC rule, adopted in 1994, requiring that new rural residences on high-value farmland be approved only if they are associated with gross farm receipts of \$80,000 per year. The intent is to block circumvention of UGBs by hobby farmers, a problem that was apparent by the 1980s (Daniels and Nelson 1986). Indeed, the foothills that rise on both sides of the Willamette Valley have more than a few “Christmas tree farmers” who are unlikely to worry about harvesting their crop. However, the dollar level also makes more sense in western Oregon, with the many high-value specialty crops such as wine grapes, grass seed, nursery stock, fruit, and nuts grown there, than it does for eastern Oregon. The rule impedes the rural survival strategy of cashing out portions of real estate to generate capital for remaining farm activities or providing for multi-generational management of a small farm and limits the flexibility of rural counties in bending rules to accommodate nonurban expectations and values (Shurts 1988). It also makes it much more difficult to build vacation homes and retirement homes on parcels that may have been purchased before the rule or even before the LCDC system.

Layered on the specific discontent with land use regulations is a more inclusive rural unhappiness with the erosion of small town and country life and with perceived big-city attacks on that livelihood and lifestyle. Hanging over every such discussion is the impact of city-based environmental groups and activists on the state's logging industry. The Oregon timber industry was hit hard by the recession of the early 1980s and never recovered earlier employment levels, although production rebounded substantially by 1990. In the 1990s, the industry took repeated hits from competition (from Canada, from the southeastern United States, from substitutes for plywood) and from environmental regulations to protect the spotted owl under the Endangered Species Act. In addition, environmental activists who adhere to what might be called the “old growth religion” have further limited timber cutting. Annual statewide timber harvest in the 1996–2000 period was less than half the levels of the mid-1970s and late 1980s.<sup>5</sup>

Adding to the sense of siege have been other environmentally oriented initiatives that appeared on the Oregon ballot during the 1990s. In

<sup>5</sup> The 1996–2000 average was 3,929 million board feet (unpublished data from the Oregon Department of Forestry for harvest from private, state, Indian, and federal lands).

1994, voters banned the use of dogs in hunting cougars and bears, blocking a long-established practice and raising fears of unchecked predators, and upheld the measure in 1996. Another initiative, which failed in 1996, would have required that ranchers fence off streams from cattle. That free-grazing cattle can damage stream banks and fish habitat is clear, but the effort to impose a new cost on their operations seemed grossly unfair to eastern Oregon cattlemen and their communities.

In the meanwhile, environmental regulations within the metropolitan area raised parallel concerns about the fair allocation of costs. In 1989, the city of Portland, for example, added a set of environmental overlay regulations covering 19,000 acres to its zoning code. The goal is to prevent further construction on steep slopes and to protect the many tiny watercourses that drain the hilly landscape of the city's less developed outer southeast and western neighborhoods. The effect, not surprisingly, has been to anger many property owners who find that limits on building footprints block plans for new construction or additions.<sup>6</sup> At the least, the regulations add an inconvenience that residents of older, built-up sections of the city do not face.

The Endangered Species Act has also had metropolitan impacts. On March 11, 1998, the National Marine Fisheries Service invoked the Endangered Species Act to list Lower Columbia River winter steelhead trout as a threatened species. An anadromous fish like salmon, steelhead are born in flowing fresh water, migrate to the ocean, and return to spawn in fresh water. The listing covers the Columbia as far inland as Hood River, its major tributaries within the metropolitan area (the Sandy River and the Willamette River), and smaller urban streams. On March 16, 1999, this federal agency listed four more threatened populations of metropolitan fish: steelhead and chinook salmon on the upper Willamette River above Oregon City and lower Columbia chum and chinook salmon. Both runs use streams that flow through heavily developed parts of the city and suburbs. The listing alters the ways in which Portland can grow. Metro has issued new guidelines for protecting streams from development. Depending on land slope and the character of the waterway, new construction must be set back 50 to 200 feet from streams (rather than the previous 25 feet); the rules remove several thousand acres from the stock of developable land. Coming after land owners had presumably adjusted to and discounted previous land use restrictions, stream buffers look like another taking.

---

<sup>6</sup> With the increase in Portland housing and land values caused by supply constraints and high demand, lots that were previously unbuilt because of steep slopes, inaccessibility, and other physical constraints have begun to look increasingly attractive for development.

Opponents of regulation (or advocates of compensation) can use the case of *Dolan v. City of Tigard* (1994) as a well-publicized example of regulatory bureaucrats who apply land use regulations inappropriately. The dispute that eventually reached the U.S. Supreme Court began in the Portland suburb of Tigard, when the city required a downtown business owner to dedicate a portion of a lot for a streamside greenway and for a pedestrian/bike path as a condition for expansion. To the city, it seemed like a routine exaction of the sort subdivision developers are accustomed to building into their pro formas. To the Dolan family, it was an egregious stretch of authority, linking a simple building expansion to an unrelated public goal, given that their business was likely to generate very few new bike riders. The U.S. Supreme Court agreed, finding that exactions need to be linked directly to the character or impact of the development (Freis and Reyniak 1996). *Dolan* is important because it has become a rallying point for property rights activists. It has been an opportunity to merge city and suburban concerns about regulatory overkill and rigid bureaucrats with the dissatisfactions of rural people over urban interference with their lives and livelihoods.

## Passing Measure 7

Measure 7 originated with a Portland household that was affected by the city's creation of an environmental overlay zone in 1991–92. The property owners, Stuart and Becky Miller, had bought a half-acre lot with the intent of subdividing it, but found that the new regulation prevented development in order to protect a small stream that was tributary to a creek that supported salmon (City Club of Portland 2002). The Millers worked for Oregon Taxpayers United (OTU), a libertarian group led by political activist Bill Sizemore. OTU has been in the forefront of using the initiative process to set tax limitations, limit terms for elected officials, and cut property taxes, as well as helping to defeat two light-rail funding efforts. Over the course of the 1990s, membership grew from 164 to nearly 21,000 (OTU n.d.).<sup>7</sup> OTU and the Millers worked to draft the basic language for Measure 7.

Measure 7 is based on the premise that a decrease in property value resulting from a change in regulations is in effect an unfair tax in which a few people pay a high price for the benefit of everyone. Although the U.S. Constitution allows takings with compensation, OTU

---

<sup>7</sup> After the Measure 7 campaign, OTU evolved into Oregon Taxpayers Union. In 2002–03, Oregon labor unions successfully pursued civil suits against OTU and Sizemore for fraud in signature gathering; they won monetary judgments that will presumably cripple the organization.

claims that the government has been cheating with the help of the courts. Environmental restrictions can render a property unbuildable, but since an owner is still in possession of the property, no compensation is provided. In line with the national property rights movement, OTU considers this to be grossly unfair (Sizemore 2001).

Under the Oregon Constitution, an initiative and application are filed with the secretary of state, who conveys a copy to the attorney general, who in turn has five days to prepare a proposed ballot title and summary. The secretary of state distributes copies of the full text and the proposed ballot title and summary to the legislature and other interested parties for a 15-day comment period. The proponent then prepares the petition with the approved ballot title and begins collecting signatures. The net number of signatures required for constitutional amendments is 8 percent of the votes cast for governor in the last election (Oregon Secretary of State n.d. 2).

On March 10, 1999, Stuart Miller filed initiative application number 46 with the title "Just Compensation for Regulatory Takings." The attorney general prepared the title: "Amends Constitution: Requires Payment to Landowner if Government Regulation Reduces Property Value." The comment period generated only one letter from an individual with concerns that the summary understated the impact of the initiative; the summary was subsequently amended. The initiative was certified for gathering signatures, and the required minimum of 89,048 signatures was specified (Oregon Secretary of State n.d. 2).

Since OTU had six other measures on the ballot, it ultimately decided not to pursue the takings initiative. Oregonians in Action (OIA) took up the baton and collected 45,000 signatures in the two weeks before the deadline (Marta 2000). The OIA, established in the early 1980s, presents itself as a grassroots representative of small and middle-sized property owners. One of its early victories was passage of a ballot measure establishing a deadline for voter registration 20 days before an election. Other efforts focusing on setting constitutional limitations on government spending, reducing pay for legislators, and prohibiting teachers from serving in the state legislature were unsuccessful. In 1989, Bill Moshofsky, a Portland lawyer and former vice president of Georgia Pacific, convinced OIA to focus exclusively on land use issues as a counterpoint to the strong influence of the environmentally oriented group, 1000 Friends of Oregon. OIA plays a key role in the Oregon legislature, especially since 1995 when Republicans took control of both chambers. In 1999, the organization authored 13 bills that were signed into law (Hogan 2000). The OIA also played a leading role in assisting John and Florence Dolan in their successful case against the city of Tigard.

On July 7, 2000, petitions with 114,732 signatures were submitted. Signature verification was completed on July 26, and Measure 7 headed for the November election (Oregon Secretary of State n.d. 2).

Measure 7 was part of a crowded ballot that contained 18 initiatives, eight other measures requiring voter approval, a closely contested presidential election, and congressional, state, and local elections. Other measures included antigay and antiunion efforts, a measure to require voter approval of most taxes and fees, a measure to tie teachers' pay to performance, a gun control measure, a measure dealing with the formation of a new county, and a measure to limit growth in state spending to the rate of growth in personal income. Those concerned with the state's land use planning program were alarmed not only by Measure 7 but also by Measure 2. Sponsored by OTU, Measure 2 would have given petitioners the power to overturn administrative rules unless they were formally approved by the legislature (Oregon Secretary of State n.d. 1). Because the 2000 ballot thus included many measures that reflected polarizing issues and resulted in intense mobilization of competing interests, individuals and organizations had to make strategic choices to focus their efforts on specific campaigns.

Oregon voters are assisted in their deliberations by the Oregon Voters' Pamphlet (the online version is referred to as the Online Voters Guide), which has been prepared by secretaries of state since the beginning of the 20th century (Oregon Secretary of State n.d. 1). The pamphlet includes the title and summary of each measure, along with an explanatory statement derived by a committee of two of the petitioners, two opponents, and a fifth member chosen by the first four or by the secretary of state if the first four cannot agree. A statement of projected financial impact is also developed by a committee consisting of the secretary of state, the state treasurer, the director of the Department of Administrative Services, and the director of the Department of Revenue. Any individual or organization has the right to publish an uncensored one-page statement in the Voters' Pamphlet at a cost of \$500, or at no charge if a petition with the names of 1,000 registered voters is submitted. There is no limit on the number of statements per measure or person/organization. The more controversial measures elicit many statements. The 2000 election required a two-volume pamphlet with 607 arguments in support or opposition to various measures. This included 10 statements in favor of Measure 7, half submitted by employees of OIA; 20 opposition statements were endorsed by a wide range of organizations and individuals, including many local, state, and national politicians, environmentalists, and business leaders.

Proponents of Measure 7 had a simple message to convey—fairness. They publicized anecdotes of people who lost equity in their property

when the value declined dramatically because of a change in governmental regulations. Particularly compelling was a TV spot focusing on an elderly woman who had lost her retirement savings when she could not use her property as she had planned. The campaign in support of Measure 7 cost an estimated \$350,000 to \$500,000, a small amount for a statewide campaign. A single southern Oregon timber company provided a substantial portion of the total.

While proponents appealed to fundamental values of fairness, opponents relied on a much more complex and technical message that included estimates of actual costs, discussions of difficult implementation logistics, warnings about a decline in Oregon's quality of life due to relaxation of land use controls and environmental protections, and seemingly more mundane concerns such as a lowering of the state's credit rating. The state Department of Administrative Services estimated the annual costs of Measure 7 to be as much as \$5.4 billion: \$3.8 billion for local governments and \$1.6 billion for state government. The estimated cost to local government was based on an estimate for a similar measure that was ultimately turned down by Washington voters. The cost to state government was derived as an annualized value from an estimate of \$200 billion for farmland and forest land differentials created by UGBs; this estimate was generated by the DLCD (Ledniser 2000; Nokes 2000a). Both estimates were done in haste, for Measure 7 was certified for the ballot on July 26 and the figures had to be available within two weeks for inclusion in the Voters' Pamphlet.

Environmental groups led the charge by forming the Oregon Community Protection (OCP) Political Action Committee. They developed the "No on 2 and 7 Campaign," ultimately spending \$1.8 million. The campaign emphasized public education through speaking engagements, mass mailings, and television spots. The campaign slogan was "It goes too far." Television advertisements decried the financial windfalls that would go to large corporations as being "unfair." Polls taken in August 2000 revealed nearly two-to-one support for Measure 7 (Liberty 2001). This was a source of serious concern for opponents, but comparable levels of support had been overcome to defeat takings measures in Washington and Arizona.

Despite OCP's efforts, Measure 7 received relatively little public attention.<sup>8</sup> Television time was difficult to secure because of the number of political campaigns and well-financed campaigns related to other measures. Some key supporters of the Oregon land use system were unusually silent. For example, the Farm Bureau favors compensation for

---

<sup>8</sup> See Winnett, Lawrence, and Sussman (2001) for a discussion of the campaign and media coverage before and after the election.

regulatory taking. At the same time, the bureau is opposed to policies that undermine the state land use system and was concerned that the absence of a funding mechanism would result in waivers of land use regulations. Despite a recommendation of opposition from its land use advisory committee, the state board of directors took a neutral position (Schellenberg 2001). The campaign had little involvement by environmental groups other than those directly associated with OCP. Some groups did not understand that the measure could affect environmental regulations or simply did not believe that it would be approved (Wright 2001). There was little financial support from national environmental organizations.<sup>9</sup>

As election day drew near, opponents took satisfaction in the fact that every major newspaper ran editorials denouncing Measure 7. Nevertheless, the week before election day, Portland's KATU-TV and the *Oregonian* conducted a poll that revealed that 49 percent of likely voters were in favor of Measure 7 (Mayer and Mayes 2000). This precipitated a flurry of stances against the measure by politicians and volunteers who pitched in to canvass door to door against it. To counter this effort, proponents sent a mailing to every household in Oregon urging support for Measure 7. The mailing had an official-looking appearance and did not indicate that it was associated with OIA.

It is interesting to note that a survey of Oregon planning department and planning agency directors (conducted in January 2002) found that passage of Measure 7 was something of a surprise, expected by only half of the state's professional planning leaders. Those in their jobs for five years or less were somewhat more likely to expect passage (58 percent) than those with longer tenure (36 percent). Not surprisingly, 86 percent personally opposed the measure, 12 percent had no opinion, and 2 percent favored it. Opposition, however, did not translate into active work against Measure 7. As individuals, only 13 percent gave money to the No on 2 and 7 Campaign, 15 percent wrote letters, and 23 percent campaigned one-on-one. Reflecting the difficulty for public agencies to take stands on political issues, only 30 percent of the planning agencies and departments in the Willamette Valley took a formal position during the campaign compared with only 7 percent elsewhere in the state. The difference reflects the different political climates of the metropolitan corridor and rural counties.

---

<sup>9</sup> Public employee unions had obtained Governor Kitzhaber's assistance in fighting Sizemore's antiunion measures (92 and 98) and filmed the governor giving a statement urging opposition for use in television ads. The frequency with which these ads appeared perhaps conveyed the impression that the governor's primary concern was for the unions, which were devoting unprecedented financial resources to the defeat of these measures. One estimate was as high as \$7 million (Hogan and Mayes 2000).

Oregon's general election in 2000 was conducted entirely by mail. Some 80 percent of registered voters participated, the ninth-highest rate in the nation for that election. Measure 7 passed with 53 percent of the vote, winning in all but Benton and Lane Counties and the City of Portland (Buchanan 2001).<sup>10</sup> Measure 2, which would have undermined the process by which regulations are developed, was defeated by a substantial margin of 12.6 percentage points. Measure 93, a Sizemore initiative requiring voter approval of taxes and fees, was defeated by an even wider margin of 19.6 percentage points.

In the winner-take-all reality of the U.S. electoral process, there is a tendency to imbue a victory with special meaning. There is no doubt that a win changes the political dynamic and that property rights have a new bargaining basis in Oregon. OIA has portrayed the win as a mandate to roll back regulations, although several of our interviewees noted that a series of postelection focus group interviews conducted in Portland, Salem, and Medford refuted this idea. Voters were simply responding to the fairness issue and not condemning the land use system. There appears to be concern with the inequity of changing the rules in the middle of the game (Lamb 2001).

There is widespread agreement that the ballot title was simple, clearly stated, and compelling. The language "requires payment to landowner if government regulation reduces property value" virtually mandated a "yes" vote. This apparent clarity may have meant that some voters did not bother to further educate themselves about the measure to make a more informed choice. Measure 7 had a simple emotional appeal, while opposing arguments were complex and confusing. The length of the ballot and the size of the Voters' Pamphlet may also have discouraged further inquiry. Only one or two of the postelection focus group participants felt that Measure 7 was their first or second priority among all the measures. No one remembered an advertisement urging them to vote "no."

Nevertheless, the 20 percentage point change in the level of support for Measure 7 between the first polling in August and the actual election underscores the effectiveness of the opposition (Wright 2001). OIA's submittal of the petitions at the last possible moment shortened the time for opponents to organize. Those involved in the No on 2 and 7 Campaign concluded that they simply ran out of time. Voting by mail also poses specific challenges for campaigning. By October 31, 32 percent of the total votes had been received by the county election offices (Oregon Secretary of State n.d. 1). This means that almost a third of

---

<sup>10</sup> Lane County includes the city of Eugene and the University of Oregon. Benton County includes Corvallis and Oregon State University.

the votes had been cast more than a week before the election. Last-minute campaign efforts made no difference to the voters who had already submitted a ballot.

There was no detailed public debate about Measure 7. Opponents are critical of the media for not promoting the needed debate, for not challenging Moshofsky's claims, and for conveying the impression that the measure was primarily limited to land use (Liberty 2001; Poisner 2001). A database search of the *Oregonian*, the major Portland newspaper with statewide circulation, yields only three editorials (urging a "no" vote), six letters to the editor (all in opposition to Measure 7), four articles or pairs of articles indicating pros and cons, and one article reflecting the alarm of elected officials at the likely outcome of the vote (Nokes 2000b). The postelection focus group interviews suggest that voters had no intention of overturning the land use system, but simply wanted a means of addressing fairness issues. In other words, it was a vote to affirm property rights rather than a vote to attack planning. The failures of Measures 2 and 93 certainly underscore the fact that the majority were not antigovernment.

Donald Schellenberg, lobbyist for the Farm Bureau, was concerned that people did not understand the ramifications of Measure 7. In other words, they did not understand that in the absence of a funding source, the government would not enforce land use laws (Schellenberg 2001). OIA is clear that its goal is such a rollback, as is evident in its sponsoring an initiative in the May 2002 election to eliminate Metro's powers to impose density requirements on local governments (see the next section). Measure 7 is viewed by its critics as a Trojan horse, one that is designed to do something politically that could never be done in an above-board fight (Lamb 2001; Wright 2001). This measure and others like it do not present the voter with the trade-offs, leaving responsibility for implementation to politicians and bureaucrats. When they resist or raise logical concerns about the implications, they are attacked for not fulfilling the will of the people (Sizemore 2001).

The fairness issue framed the campaign, with proponents having the upper hand. The heart-wrenching anecdotes put forth by proponents were countered by what was seen as an intellectual, factual, and overly dry response. While data and values are critical to the formation of public policy, using data to argue against values is not likely to be successful (Winnett, Lawrence, and Sussman 2001). The opponents' use of the word "unfair" came across as whiny because it failed to acknowledge the very real examples that were featured in the media of people being hurt by regulations. Furthermore, the justification for the hardships inflicted on individual landowners had always been presented as being in the interest of the larger community.

We also note a related contradiction in the opposition campaign. Oregon is a fiscally conservative state. Voters have been very selective in choosing which capital spending measures to support, have adamantly resisted a sales tax, have kept vehicle registration fees very low, and enacted substantial property tax limitations in the early 1990s. Opponents of Measure 7 therefore relied heavily on the high cost estimates to move voters into the “no” column. Because the estimates were so extremely high, however, reliance on this strategy may have backfired, with voters considering them simply too large to be credible. Related claims that the main effect of the measure would be corporate windfalls either were not heard or were dismissed as irrelevant.

While political leaders ultimately expressed opinions against Measure 7 in the Voters’ Pamphlet and in the media close to election day, they did not play a strong role. Robert Liberty, at that time the executive director of 1000 Friends, notes that local officials’ taking individual positions is not necessarily helpful, since this would have been viewed as seeking to preserve their power. They could, however, have helped make Measure 7 an issue that the public and media needed to care about. Liberty further notes that while many elected officials say they support the land use system, they do not work to defend it (2001).

When Oregonians were asked to overturn prior votes on physician-assisted suicide and prohibition of cougar traps, they opted to reaffirm their original vote. Supporters of land use and environmental regulations suspect that any efforts to revisit the Measure 7 vote would meet the same fate. Furthermore, it is likely that the proponents will have considerably more resources at their disposal, given the national interest in OIA’s success with Measure 7.

## **Responding to Measure 7: Lawyers, lobbyists, and legislators**

The passage of Measure 7 galvanized action on many fronts. Legal firms hosted workshops to discuss the ramifications of the measure for local and state governments; a remark often heard at these gatherings was that the only certainty was that business was going to boom for attorneys and appraisers. Cities and counties across the state began working on implementation ordinances, since the measure would take effect in 30 days. The League of Oregon Cities (LOC) facilitated electronic as well as face-to-face discussions of implementation issues among local government attorneys, planners, and elected officials. Governor John Kitzhaber asked state Attorney General Hardy Myers to prepare an analysis of the measure. The Oregon DLCD undertook its

own study while it waited for the attorney general to interpret for state agencies what the voters had wrought.

Outside of government, 1000 Friends and its allies immediately began to consider how best to counter the measure legally and politically, while stressing in public its likely destructive impact. 1000 Friends spearheaded the creation of the Oregon Community Protection Coalition (successor to the OCP Political Action Committee), composed of more than two dozen environmental and land use advocacy organizations, to undertake this effort. Measure 7 sponsor OIA downplayed its likely impact, arguing that opponents grossly exaggerated the number of claims that would be filed, the dollar cost of paying compensation, and the impact on land use policies and programs; OIA pledged to defend it. The vote heightened the salience of ongoing discussions within the community of professional planners on whether there was a crisis of the regulatory mode of intervention and a need for new approaches or not.

Word of Measure 7 claims started filtering through the networks of actors, lending urgency to their efforts. The claims were diverse, giving people a taste of what was in store. In the city of Jacksonville, a partner in the Jackson Creek Sand Company filed a \$50 million lawsuit in U.S. District Court naming the city, the city administrator, the mayor, the members of the city council, and Jackson County. The county planning staff had approved a conditional use permit to mine 18 million tons of aggregate, but the city appealed the county's decision because it was concerned about the impact that gravel trucks exiting the mine and traveling through the middle of town would have on its historic character (Martin 2000). Several potential claimants, including a property owner denied permission to place a manufactured home for his mother on his land and someone who had been prevented from developing a recreational vehicle park, contacted Linn County ("Linn Gets Asked" 2000). The city of Hood River received a compensation claim from the Indian Creek Development Company for \$691,000 for street improvements required by the city in order to develop a subdivision; the city's entire annual general operating budget was \$2 million (Gill 2001). In Keizer, an intent to file a claim was submitted by a property owner concerned about a city plan to widen a road that would take a portion of his front yard (Knowlton 2001). A claim was being filed in Hillsboro based on the city's action to limit the olfactory impact of a shelter for feral cats. The owner of a Baker City truck stop, who believed that business had suffered since the adoption of an antismoking ordinance, was considering a claim as well (1000 Friends n.d. 3).

Faced with these actual and potential claims, city and county governments began drafting and adopting ordinances to set up procedures to

process them. Many of these authorized a waiver of state land use mandates if the local government did not want to pay compensation. 1000 Friends and DLCD vehemently opposed ordinances that incorporated a waiver provision. They were also worried about the nature and extent of notice provisions included in local laws. For example, 1000 Friends was upset by the rules Linn County adopted, which did not include a requirement that public notice be given or a public hearing be held before a claim-related decision was made by the appointed county administrator (“Linn Gets Asked” 2000). OIA was generally troubled that procedures for claims processing were being developed by individual cities and counties. The Measure 7 proponent was concerned that some jurisdictions were making it costly, both in terms of filing fees and the information required, to file a claim; the supporters had anticipated that the legislature would adopt a uniform statewide approach to claims processing (Nokes 2000c).

1000 Friends (2000) put cities and counties on notice: “Our Board has authorized our Staff Attorneys to appeal any ordinances that purport to waive, or could be construed as waiving, state land use laws, goals, or rules, directly or indirectly.” 1000 Friends nevertheless empathized with their plight:

As we are all painfully aware, the passage of Measure 7 poses significant challenges for all local government bodies within the state. You...are faced with the difficult task of implementing the measure in a manner that limits damage to...environment and quality of life while at the same time limiting severe damage to your financial status and capability to fund essential services. We do not envy your position. (2000)

However, 1000 Friends went on to argue that

to presume that the voters intended to repeal, fully or selectively, state and local land use regulations is unwarranted. Those laws and rules were not on the ballot....[Local] governments do not have the authority under Measure 7 or any other law or Constitutional provision to waive, repeal or override state laws and state rules. (2000)

1000 Friends attached to its letter a December 1 memorandum from Richard Benner, director of DLCD, to the LCDC, which agreed that Measure 7 had not repealed any laws, rules, local plans, or land use regulations, all of which had to be enforced.

DLCD itself was limited in its ability to clearly voice its opposition to Measure 7 (Oregon DLCD 2000). The agency could evaluate the measure’s potential impact, but not lobby for change. As a result, more planning agency directors answering our survey question saw DLCD as

relatively ineffectual in responding to the measure's passage than found it effective (37 percent versus 25 percent). Local governments also decided to adopt a cautious approach to planning and implementation efforts until there was greater clarity about the legal situation. Some 28 percent of jurisdictions represented in our survey took a public position on the merits of Measure 7 after its passage, with a significant tilt toward larger agencies going public (3 or fewer staff—17 percent; 4 to 15 staff—25 percent; and 16 or more staff—47 percent). One-third of the jurisdictions held informational meetings for citizens, and 19 percent suspended the development of new land use and environmental regulations or the amendment of existing ones.

Two lawsuits were filed to block implementation of Measure 7. One high-profile suit included Audrey McCall, widow of the late Governor Tom McCall, and Hector Macpherson, the father of the Oregon planning system. The LOC filed the second suit. Both claimed that the measure violated several constitutional requirements on initiatives. On December 6, one day before Measure 7 was supposed to take effect, Judge Paul Lipscomb of the Marion County Circuit Court issued a temporary injunction. He argued that enjoining implementation was justified because there was enough evidence to believe that the measure might eventually be declared unconstitutional. Following this ruling, LOC advised all city officials to consider (a) not enacting a claims processing ordinance at all if one had not yet been adopted; (b) enacting one without a waiver provision; or (c) if one that contained a waiver provision was already in place, either repealing the ordinance, amending it to delete any waiver authority, or amending it to make any waiver authority effective in the event Measure 7 was implemented. LOC noted the intentions of 1000 Friends and DLCD to appeal any ordinance containing waiver authority. It was also aware, though, that local officials might find it difficult to oppose a measure that was supported by a majority of those who voted. While some cities took the league's advice, 1000 Friends ended up appealing ordinances adopted by 58 local governments around the state (Learn 2000; Tucker 2001).

Judge Lipscomb's opinion stimulated discussion of legislative action to address what were perceived as unfair aspects of state land use laws, regardless of whether or not Measure 7 was declared unconstitutional. The chair of the House Judiciary Committee, Max Williams, a Republican from the Portland suburb of Tigard, began meeting with a wide range of individuals and organizations, including Governor Kitzhaber, 1000 Friends, OIA, the Home Builders' and Realtors' Associations, the Oregon Farm Bureau, the Association of Oregon Counties, and the LOC. The legislature had several choices: (1) do nothing until the measure was clarified in the courts, (2) develop legislation to implement the measure if it did survive constitutional challenge, or (3) prepare a

revised version of the measure for voter approval in November. Williams hoped to reach agreement with the various stakeholders on the third of these options. He anticipated that doing so would be a serious challenge, especially if Judge Lipscomb ruled that the measure was unconstitutional. Many legislators would hesitate to do the hard work necessary to reach agreement on the far-reaching philosophical and technical issues raised by the measure while Lipscomb's ruling was being appealed (Hogan 2001a).

Attorney General Hardy Myers issued his interpretation of Measure 7 on February 13, 2001. Twenty attorneys had worked on the document for three months. Myers said that the 110-page opinion was the most challenging one he had prepared during his tenure. Even after all the work that he and his staff had done, "Because of the ambiguities in Measure 7, some of the conclusions are not free from doubt..." (Wong 2001, 1A).

Myers argued that Measure 7 would, indeed, apply to a fairly broad range of state and local laws and regulations that restrict the use of privately owned real property, including zoning laws, building codes, the Forest Practices Act, and food safety laws. Myers understood the measure to require that compensation be paid only when a regulation is adopted after the measure takes effect or when a regulation adopted before the measure takes effect is enforced after the effective date. He did not think that the measure was, in general, retroactive and said that a state agency could decide not to enforce a regulation to avoid paying compensation if the law did not mandate enforcement. If enforcement was mandated, then a state agency had to comply. However, if paying compensation pursuant to enforcing a regulation would cause an agency to exceed its budgetary allotment, its legislative appropriation, or the state's debt limit, then the agency could not enforce. Regarding exclusive farm use zoning, Myers believed that people who had acquired property before 1975, when local governments were first required to impose that restriction in certain circumstances, would likely have a right to compensation. He thought that beach property owners would have legitimate claims when Beach Bill regulations were not necessary to protect the public's recreational use. Finally, he held that dealers and distributors of carbonated beverages would likely have a good claim based on the Bottle Bill requirement that they set aside a portion of their real property to create space for empty returned containers (Wong 2001).

In light of the attorney general's opinion, DLCDC Director Benner believed that "[Measure 7] is going to grievously undermine Oregon's efforts at farm and forest protection" (Wong 2001, 3A). It was noted that nearly half of privately owned land in the state was currently

zoned either exclusive farm or forest use. 1000 Friends' legislative affairs director responded that "[t]his measure is so broad that it is going to cost all of us one way or another" (Wong 2001, 1A). An OIA leader disputed Myers' opinion on the limits to retroactivity, arguing that the measure "was meant to compensate property owners who lost value in the past 28 years because of the land use planning program. His interpretation was never the intent of the measure, and the voters did not intend it when they approved it" (Wong 2001, 1A). This opinion raised as many questions as it answered for both opponents and proponents, and the attorney general had not even addressed such thorny issues as methods of calculating reductions in property values and standards for processing claims.

Just nine days after the release of the attorney general's opinion, Judge Lipscomb followed his preliminary injunction by finding that Measure 7 had not been presented to the voters in a manner consistent with constitutional provisions for initiatives. He ruled that the measure ran afoul of the full text and single-amendment requirements. Not only would the measure add new provisions to the constitution, it would also change the substance and meaning of several existing provisions. Voters had to be given notice about those changes as well. In addition, he argued that the measure would make several substantive changes to the constitution and that each of these changes should have been voted on separately (1000 Friends n.d. 4).<sup>11</sup> Judge Lipscomb's decision was appealed directly to the Oregon Supreme Court, which found in October 2002 that the measure indeed combined multiple amendments to parts of the Oregon Constitution that were not closely related.

During the 19 months Measure 7 was being considered by the Supreme Court, the scene shifted to the political arena. The speaker of the Oregon House announced on February 27, 2001, that he had created a new committee to chart a course toward implementing Measure 7. The House Land Use and Regulatory Fairness Committee would be headed by Representative Max Williams, a Republican from the west side of the Portland metropolitan area, and would work with the various interest groups, the local governments, the governor's office, and others interested in the issue. The speaker felt that it was incumbent on the legislature to respond to the electorate's intent. Testimony at committee hearings demonstrated clearly how difficult it would be to reach agreements among the various stakeholders. Williams likened the task to peace negotiations in the Middle East (Hogan 2001b).

<sup>11</sup> Other challenges to the measure were set aside: that it violated the single-subject requirement; that its language did not fully reveal the effect of its changes on all parts of the constitution, thereby failing the state's "full-text" requirement; and that it was a constitutional revision, which required that it be proposed by the legislature, rather than appearing as a simple amendment proposed by citizen initiative.

The Oregon Community Protection Coalition articulated a set of principles to guide its participation in legislative discussions. The first was no rollback of existing laws or regulations in order to avoid paying claims. The coalition cited a recent poll that showed Oregonians rejecting the idea of rolling back regulations to avoid compensation claims by a 9-to-1 margin. If lifting restrictions were permitted, however, the coalition insisted that neighbors whose property values would decline as a result of a lifted restriction be eligible for compensation. Other principles were (1) no payment for protection of health and safety; (2) new resources for new obligations, with a dedicated funding source to pay claims and a tax on “givings” that resulted either from value increases associated with a change in regulations or from taxpayer-financed infrastructure investments; and (3) full disclosure regarding the costs and benefits of a right to payment (Tucker 2001).

LOC issued its own set of principles: (1) There should be a reasonable scope of compensable actions; (2) no retroactivity in the replacement legislation would be allowed; (3) the regulator ought to be the payor, meaning that cities implementing state and regional mandates should be able to forward claims arising from those mandates to state and regional governments; (4) new dedicated revenues should be created to meet new demands; (5) a statutory, rather than a constitutional, approach should be taken; and (6) a locally controlled claims administration process should be implemented (2001b). Unlike Williams, who was leaning toward a constitutional amendment or perhaps a constitutional revision that would enable the legislature to bundle together a compensation law, a revenue source, and a repeal of Measure 7, LOC wanted to preserve the flexibility of a statutory approach. The Association of Oregon Counties agreed with a prospective-only approach (Hogan 2001b). LOC decided to offer a draft legislative proposal addressing urban area issues to the House Committee in late March. The board of directors concluded that it made more sense to attempt to shape a legislative response to Measure 7 than to wait for the uncertain outcome of pending legal actions, which might take years, or to run “...the almost-certain risk of facing a better-funded and more constitutionally-sound version of Measure 7 on the 2002 ballot” (LOC 2001b).

In contrast to the organizations representing local governments, OIA wanted the measure to be retroactive (Hogan 2001b). It was deeply concerned throughout the legislative process with rural lands issues and with securing for rural landowners either the ability to build houses on lots-of-record and to subdivide those lots or to receive compensation when exclusive farm and forest zoning prevented subdividing or building.

In May, Williams released a draft bill that incorporated much of what LOC had proposed, but also addressed OIA’s major issue. House Bill

3998 created two categories of property owners eligible for compensation. One, responding to OIA, consisted of owners of farm and forest land who had lost the right to build a house on a lot-of-record or to subdivide such a lot, due to the implementation of statewide planning laws and regulations. A deadline was set for filing such a claim. The second category consisted of property owners who would be affected by land use regulations adopted after the proposed legislation took effect. Thresholds were set (the property owner must claim at least a 25 percent reduction in fair market value resulting from the application of a single land use restriction), and compensation limits were specified. The notion of compensation in either category included cash; "cash-equivalent" forms such as income tax credits, property tax abatements, and system development charge credits; and land development benefits such as the modification of certain land use standards, land exchanges, and transfer of development rights. A new Compensation and Conservation Board would have five members appointed by the governor, with staff support housed in the state Department of Administrative Services. This board would be charged with designating a set of regional receiving districts, state-owned lands appropriate for development, to which private owners who had been prevented from developing their properties could transfer development rights. The board would also administer a system of banked development credits and a fund to pay state claims.

The draft did not, however, specify any sources of revenue to pay claims against state and local governments, although many options were under discussion, including a temporary statewide property tax, a real estate transfer tax, a surcharge on income taxes, a statewide bond issue backed by property taxes, surcharges on increased property values produced by zoning and other regulatory changes, and a reduction of the discount for early property tax payment. Each of these faced at least some opposition, however, which is why Williams saved the revenue source issue for last (Hogan 2001c; LOC 2001a).

Many amendments were proposed to House Bill 3998 as it was debated in committee. Issues that remained controversial included the threshold amount to trigger a claim, the amount of compensation after the threshold is met, ways to treat a case of multiple restrictions applied to a property, and authorization to waive a restriction instead of paying compensation. Local governments and the state supported making owners eligible for compensation if a single regulation reduced a property's market value by at least 25 percent or if two or more regulations combined to reduce the value of a property by 50 percent or more. In such cases, the liable government(s) would pay 50 percent of the reduction. OIA and the Oregon Association of Realtors protested that these thresholds were too high and that they invited strategic behavior by

the public sector to avoid payment (Hogan 2001d). The director of legal affairs at OIA foresaw the following scenario:

The government lobbyists wanted to be able to adopt a single regulation which took 24 percent of your land without compensation, then six months later adopt another regulation which took another 24 percent of your land. After a couple of years of this, they would have taken everything, and the landowner would get no compensation. This was simply unacceptable. (Hunnicuttt n.d.)

Governor Kitzhaber wanted to see the legislature produce a Measure 7 replacement bill and took an active interest in the work of the Williams committee. In the governor's view, "The 'fork in the road' for the Legislature is whether to limit compensation to the cash variety, or to give property owners the chance to develop their land instead" (Steves 2001, 8A). The governor signaled his willingness to consider a compromise on the waiver issue. He said that while generally speaking he did not support waiving a law or rule, he would be willing to think about a statewide hearings officer process for landowners who had qualified for compensation. An officer could have the authority to permit such an owner to build a house or subdivide property so long as doing so "would not adversely affect our ability to preserve our farm and forest economy" (Steves 2001, 8A). The governor was clearly interested in responding to OIA's major concern. 1000 Friends continued to resist all proposals that would allow homes or subdivisions where they were currently excluded. Its lobbyist argued, "They said cash. There's no indication the remedy voters are seeking is to allow more development on farmland" (Steves 2001, 8A).

Along with OIA, the Oregon Association of Realtors strongly supported granting waivers and variances, rather than limiting compensation to cash. An association lobbyist argued that a "big part of what Measure 7 was about is revisiting some of these onerous regulations" (Steves 2001, 8A). The executive director of OIA said, "We're fine with just compensation, but it's not good public policy if a statewide regulation doesn't make sense as applied to a particular piece of property and there can't be any variance process" (Steves 2001, 8A).

As the end of the legislative session neared, Williams believed that the stakeholders had resolved 90 percent of the controversies, and LOC thought that most of the pieces of the prospective, urban component were largely in place. However, conflicts regarding a source of money to pay claims could not be resolved, nor could the contrasting positions on waivers be reconciled. Williams and the governor attempted to produce a much more limited bill that would address only the rural, retroactive issues. However, a lengthy meeting involving the governor's office and

OIA failed to produce an agreement. The session ended without any legislation (Hogan 2001e; LOC 2001a).

In the wake of legislative failure, Measure 7 proponents and opponents geared up to present arguments to the Oregon Supreme Court. They also began preparing their return to the electoral arena and the possibilities of further land use planning at the ballot box. By the middle of 2001, 40 initiatives relating to land use planning had been filed and awaited approval by the secretary of state for gathering signatures. OIA and allies submitted several initiatives to reaffirm Measure 7 and other aspects of their program. Meanwhile, 1000 Friends and the Oregon Community Protection Coalition developed and submitted 23 measures. Noted the organization,

Here at 1000 Friends, we have grown weary of playing defense. Even before Measure 7 appeared on the ballot, it had become clear to us that unless we got involved ourselves, we would be on the receiving end of an endless series of destructive initiatives intended to weaken Oregon's land use laws. (1000 Friends n.d. 1, 2)

In the end, none of the proposed measures appeared on the November 2001 ballot, but the intensity of the politics of land use planning had clearly been stepped up (Hogan 2001f).

A measure sponsored by the OIA—Measure 26–11 or “The Neighborhood Preservation Act”—did come before Portland metropolitan-area voters in May 2002. This initiative proposed to eliminate existing policies adopted by Metro to require city and county governments to meet minimum density standards and prevent the regional government from passing new density-related ordinances. Metro would also be required to notify property owners within 500 feet of proposed zoning changes and their density implications, even though Metro itself does not zone land. The Home Builders Association of Metropolitan Portland supported the measure. As quoted in the *Oregonian*, the OIA legal affairs director argued that “Metro’s concept is that the masses are stupid....If they don’t direct planning, the masses will screw it up, and the region won’t be livable” (Oppenheimer 2001, D1). OIA characterized Measure 26–11 as a full-disclosure proposal dealing with the effects of increased density and a means to permit local citizens to exercise a voice regarding the density of development they desire. In opposition, an attorney with 1000 Friends worried that if cities and counties are left to their own devices to adopt density requirements, “There are governments that would not do their fair share to provide housing,” necessitating growth boundary expansions to accommodate population growth (Oppenheimer 2001, D1). The results gave comfort to both sides. The measure failed by 57 to 43 percent, but passed by narrow margins in Washington and Clackamas Counties (Walker 2003).

On the same ballot was Measure 26–29, a counter-proposal referred to the voters by Metro, in which it promised not to mandate increased density in single-family neighborhoods, something that it had not done and which was not part of any of its plans. Measure 26–29 received endorsements by the major media and by all 20 mayors in the metropolitan area and passed 66 percent to 34 percent.

Accompanying the vote on the two regional measures was a contest for the position of Metro chair. Metro councilors David Bragdon and Rod Monroe ran as advocates of regional planning and transit investments, while political newcomer Kate Schiele argued for limiting Metro’s influence on local planning decisions. She had managed the campaign for Measure 7 and received most of her campaign funds for the May primary election from OIA. Schiele’s presence forced a November runoff with Bragdon, keeping the issues of increased housing density and regional planning before the voters. Bragdon won with 58 percent of the vote overall—a wide edge in Multnomah County and narrow margins in suburban Washington and Clackamas Counties. The nearly identical margins *for* Bragdon and *against* Measure 26–11 are a good indication of solid, although not overwhelming, support for planning in the Portland region. However, the very close margins in the suburban counties suggest that support diminishes with distance from the center of Portland and that the planning system remains vulnerable at the state level.

## Planners, politics, and Measure 7

The community of land use planners, their professional organizations, and the agencies that employed them were deeply implicated in all the issues raised by Measure 7. The statewide City Planning Directors’ Association wrote a Measure 7 position paper that declared support for efforts to overturn the initiative and pledged to help in any way to ensure the future of quality land use planning in cities all over Oregon. The association feared that “[t]he statewide planning system will no longer be effective, in spite of more than 25 years of use, and a history of support by Oregon’s voters,” and that as a result of the measure “[n]eighbors will be pitted against neighbors as those seeking financial gains will expect to be compensated by those who are more concerned about the quality of life in their neighborhood” (Oregon City Planning Directors’ Association 2000). The continued existence of local authority to make planning decisions was seen as being at stake (Oregon City Planning Directors’ Association 2000). An OAPA representative testified before the Williams committee, stressing that the organization did not want to encourage the committee to prepare a compensation bill, but that if it did, OAPA had a set of 20 provisions that it believed ought to

be incorporated. One of those was that the bill should “[p]rovide for alternatives to compensation. Enable agencies and landowners to negotiate transfer of development rights, density bonuses, purchase of development rights, easements, etc., in lieu [of] compensation” (OAPA 2001). A set of alternatives was, indeed, incorporated into House Bill 3998.

LOC and OAPA were the preferred avenues for planning agency directors and their jurisdictions attempting to influence legislative changes to Measure 7. Seventy percent of the directors said that they and their cities worked through them, compared with 23 percent that tried to influence the legislature directly, and 27 percent that participated in legal challenges to the measure. The Oregon Community Protection Coalition had a low profile among planning directors. Just one director said that the city had joined the coalition, and only 16 percent of directors were familiar with the organization a year after it was established. Overall, 70 percent of the agency directors thought that planners have a professional responsibility to influence public policy (30 percent thought it should be left up to political officials). But less than 10 percent in the post-Measure 7 era have written directly to a legislator as an individual, and only one has written a letter to the editor. Only 23 percent have worked personally to shape OAPA’s response, and just 6 percent have worked actively with an advocacy organization. Not surprisingly, those with longer tenure in their job (six years or more) are more likely to be politically involved as individuals or through their agency positions (presumably reflecting greater job security and a greater likelihood of being a political insider). Some 50 percent of the directors think that OAPA has been effective in responding to the measure (versus 10 percent who do not), while 48 percent think that 1000 Friends has been effective (although 27 percent think not).

Overall, 78 percent of the planning directors see the Oregon planning system as basically sound, but in need of fine-tuning. By contrast, 19 percent think that it is seriously flawed and one director thought that it is fatally flawed. This distribution of opinion is consistent with the sense that Measure 7 is a disaster for Oregon planning, a position held by 68 percent of the respondents. It is interesting to note that 30 percent of the directors who have worked only in Oregon see serious flaws, compared with 13 percent who have worked in other states (suggesting that the Oregon system continues to look good in contrast to those elsewhere). Similarly, directors with a planning degree from an Oregon university are more likely to see problems with the Oregon system (32 percent versus 14 percent).

Concerns had been raised for some time by members of the profession on the extent to which the planning system had relied on a regulatory approach to implementation. According to current OAPA President

Sumner Sharpe, “Perhaps an over-reliance on regulation has been a factor in the public’s reaction to planning as exhibited in the Ballot Measure 7 vote” (2000b). Shortly before Measure 7 was placed on the ballot, Sharpe conducted a set of interviews with the first DLCD executive director, Arnold Cogan, and with Richard Benner, the current director, on the future of land use planning in Oregon. Cogan, who had led the statewide goal development process in 1974, observed that

there is a concern by a lot of local planners, particularly at the city level but also at the county, that there is too much bureaucracy in the process; that there is not enough flexibility in the system to be able to allow individual differences...that there is not enough room to breathe within the system and to permit creativity...Planners all over the state say it is increasingly prescriptive inside the Urban Growth Boundary...because DLCD is making us do it this way. (Sharpe 2000a, 21, 30)

Benner responded that outside the boundary

the program has always been fairly prescriptive...[T]he exclusive farm use statute and the changes to the statute dealing with forest lands, together with LCDC rules, [mean that] things are closely circumscribed out there—a state minimum lot size, a list of uses you can have, a set of criteria that are reflected in zoning ordinances, it’s almost as though the state has done the zoning. (Sharpe 2000a, 21–22)

He thought that inside the boundaries, though, the state had taken much more of a performance standards approach, which left a great deal of discretion on how to meet the standards up to local governments. Benner did acknowledge that the local complaints were there and that there was a perception among the locals of an overreliance on regulation. He noted, “Because we have had this regulatory system in place, maybe we have not thought about other things that we could have done to get to the same place” (Sharpe 2000a, 35). Cogan concluded that “[w]e need to build a toolbox with non-regulatory tools, that put less emphasis on agencies and agency rules and regulations, and more reliance on non-regulatory approaches. We need to encourage that to happen—stimulate that kind of an environment” (Sharpe 2000a, 35).

Cogan articulated another concern that the political consensus in support of the statewide program was eroding. He noted that the business community, especially home builders, was a very important supporter of Senate Bill 100 in the 1973 legislative session, as were the Farm Bureau and the environmental community. One of the most critical reasons he felt the consensus was in jeopardy is that “many people, most of the people who live here, weren’t around when this

program was born, and they weren't part of that process, or even part of creating the goals or going to the meetings and really living through that creation process. So many of them don't have any connection with it, they don't have any attachment" (Sharpe 2000a, 33). Cogan recalled that he and his staff visited 35 cities around the state three different times in a 15-month period to launch the statewide planning program, doing outreach, conducting workshops, gathering input:

We went to Bend...and asked, what do you think about the Oregon coast? Are there some parts of the coast that concern you? We also went to the coast and asked people about central Oregon...[W]e were trying to get a flavor of what everybody in the state felt about the entire state, not just back yards. (Sharpe 2000a, 34)

Cogan thought that a similar effort was necessary now and hoped that the passage of Measure 7 had created "a teaching moment for the planners of Oregon" (Cogan 2000, 9). 1000 Friends and the Oregon Community Protection Coalition are gearing up for a major educational campaign on land use and related issues.

In September 2001, LCDC decided to launch the most far-reaching strategic planning and visioning process it had undertaken since Senate Bill 100 was passed in 1973. Taking up the challenge set out by Cogan, the commissioner leading the effort said,

This monumental planning program needs a monumental effort by the public and stakeholders to send it into the next quarter century. We're looking for great ideas from local government...legislators, professional planners, farmers, urban and suburban dwellers, ranchers, builders, motorists, fishermen, members of the media, industry groups, planning program advocates, and the man on the street. (Oregon DLCD 2001)

A question posed by Benner before Measure 7 was passed would likely frame the process. He said that he

would want to know if they still subscribe to the fundamental vision that underlies the Oregon planning program—the one we set out at the beginning. We protect farm and forest land and other things outside of urban growth boundaries, and we try to contain and focus urban growth and development where we have already made a commitment to public facilities and services.

Benner thought that in the abstract the public would still answer this question in the affirmative. However, he wasn't sure whether the public would still say yes in the face of continuing restrictions outside the line and increasing density inside it (Sharpe 2000a, 32).

At the least, Measure 7 has triggered an ongoing discussion about the need for flexibility or compensation in the Oregon planning system. For example, the libertarian Cascade Policy Institute has argued that the way around the takings issue is to eliminate land use zoning in favor of private covenants and performance standards (Charles 2001). The City Club of Portland, a centrist organization of business and professional people, has called for legislative enactment of a circumscribed compensation program (2002). Under pressure from business interests, the city of Portland is reviewing its thick web of regulations and trying to eliminate those that are most onerous or contradictory.

Attention in the 2003 session of the Oregon legislature focused on the state's severe budget problems, but several compensation bills received attention and a "lot-of-record" bill passed the House.<sup>12</sup> As of May 2003, OIA and 1000 Friends had also filed several land use initiatives as they positioned themselves for possible signature-gathering and November campaigns.<sup>13</sup> Also in the works was a bill to mark the 30th anniversary of Senate Bill 100 by establishing a task force to review Oregon planning and land use issues and to report to the 2005 and 2007 sessions of the legislature; however, the proposal died in committee.

## Conclusion

For nearly 30 years, Oregon has operated within a consensus-based system of politics. Particularly in the realm of growth management and land use planning, this consensus has spanned the two major political parties, creating a very strong pull toward a moderately progressive center. The operation of the consensus can be seen in the bipartisan establishment of state land use planning in the 1970s; in the bipartisan, centrist defense of the state system in the 1980s and its support by major business interests as well as environmentalists; in the success of a downtown-neighborhood development coalition in Portland; and in the substantial progress of a smart growth agenda among state bureaucracies as well as planning advocacy groups. The strength of the consensus is shown by the fact that there was no serious statewide challenge to the planning system from 1982 to 2000.

---

<sup>12</sup> The bill stipulated that if a lot was buildable in 1993, it would remain so despite later zoning or regulations.

<sup>13</sup> In 2002, Oregonians adopted a union-backed initiative to prohibit the practice of paying persons who gather signatures for initiatives by the number of names they get. Proponents argue that the change will reduce fraud, return the initiative process to grassroots citizen groups, and reduce the total number of initiatives on the ballot. Opponents argue that it limits political speech.

Yet there is evidence that the consensus may have unraveled at the start of the new century. In the Portland metropolitan area, the goal of compact growth still commands majority support, but it is an increasingly tenuous and fragile majority that has lost support in both city neighborhoods and suburbs. Statewide, the passage of Measure 7 signaled that the proplanning majority of the 1970s and 1980s may no longer be in place. Although it is possible to explain the passage of Measure 7 in terms of specific tactical choices, it may express a larger disaffection with comprehensive interventions in the land market.

Measure 7 raises a practical political issue: Is it possible to keep people committed to a particular set of values over more than a few decades? Although a number of politically active Oregonians still remember the passion of the 1970s, most residents have come of political age, or arrived from elsewhere, during the more recent decades when the system has been an exfoliating bureaucracy rather than a cause. Examples from other cities suggest that the civic moment in which coalitions develop around comprehensive planning and public service improvements seldom lasts more than 30 years: Birmingham, England, from 1860 to 1890, for example, or Chicago from 1890 to 1920. Oregon may be no different.

However, one common explanation for Measure 7—that Californians did it to Oregon—is not supported by the evidence. Oregon has enjoyed a net in-migration every year since 1988, with roughly one-third of all newcomers arriving from California. By Oregon mythology, these folks are gas-hogging SUV drivers who bring with them a brand-name fixation and individualistic, antienvironmental values. Unfortunately for the myth, surveys conducted by the state's leading opinion polling firm show almost no difference in attitudes toward environmental protection and planning between long-term residents and newcomers at either the metropolitan or state level. Polls do show a growing discontent with the complexity of land use and environmental regulations, but the desire to modify or improve the system is shared by newcomers and old-timers alike (Adam Davis, personal communication, May 13, 2003). In this light, Measure 7 was the first chance for many people to express this concern, even though it was designed as a sledgehammer rather than a scalpel.

Despite its failure in the courts and the inability to craft an alternative in the 2001 legislature, Measure 7 will force a rethinking and rebalancing of the regulatory system. If Florida's experience is any indication, even a milder revision of Measure 7 is likely to have a chilling effect on the development of new regulations (Benner 2002). It is likely that environmental absolutists will need to deal with the real hardships that land development regulations can impose. The substantive problem is

whether the Oregon approach to growth management makes too many promises. As a variety of different pressures have built inside and outside UGBs, it may be necessary to craft new compromises between the needs of the poor and the preferences of the rich, the claims of people and the requirements of natural systems, the attractions of urban life and the appeals of a “Little House in the Big Woods.”

Any successor to Measure 7 will still require a state-level response. Measure 7 put three options on the table: eliminate regulations, cut public services to finance compensation, or raise taxes to finance compensation. Local governments have little leeway to cut services and no politically practical revenue sources that generate adequate compensation funds. Moreover, state law currently requires a variety of land use and zoning restrictions. Efforts by some cities or counties to ignore or bypass state requirements would quickly put pressure on the others to do likewise or lose the ability to compete for new development. Only the state has the capacity to find a new revenue source that is both large enough and comprehensive enough to be fair, such as a real estate transfer tax or a land increment value tax (actually proposed by Governor Tom McCall in 1974).

Finally, Measure 7 presents a challenge of political philosophy: how and whether to keep people committed to a social compact (Benner 2002). From one point of view, Measure 7 is a direct blow at the idea of Oregon as a community with collective interests. Couched as a fairness measure, it was a Trojan horse that did something—it negated 30 years of land use planning—that could not have been sold explicitly to the voters (Lamb 2001). Phrased in terms of individual fairness, Measure 7 ignored the reciprocal individual benefits and the comprehensive community benefits that can flow from public regulations. Oregonians were clearly voting to reaffirm private property (no surprise) and not offering a judgment about planning. Indeed, Measure 7 plays out one of the major tensions in U.S. society between a conservatism that emphasizes individualism and open markets and a conservatism that values community needs and interests.<sup>14</sup> Oregon is not likely to craft a successful response to the concerns behind Measure 7 until its residents again share a common vision of a preferred future.

---

<sup>14</sup> Advocates of the Oregon planning system tend to be most comfortable pitching their arguments in terms of environmental values and broad community interests. They de-emphasize the arguments of individual and neighborhood self-interest—that comprehensive planning maintains the market value of improved urban real estate—even though this is probably one of the sources of support in developed areas such as Portland. It is possible to be a “homevoter” as defined by William Fischel and also to be a firm ally of systematic land use planning (Fischel 2001).

## Authors

Carl Abbott is a Professor in the School of Urban Studies and Planning at Portland State University. Sy Adler is a Professor in the School of Urban Studies and Planning at Portland State University. Deborah A. Howe is a Professor in the School of Urban Studies and Planning at Portland State University.

The authors acknowledge the assistance of Svetlana Karasyova, who conducted a number of the interviews with key informants, and Scott Walker, who analyzed the ballot measures and contested Metro races in the May 2002 election.

## References

- Abbott, Carl. 1997. The Portland Region: Where City and Suburbs Talk to Each Other—and Often Agree. *Housing Policy Debate* 8(4):11–51.
- Abbott, Carl. 2000. The Capital of Good Planning: Metropolitan Portland since 1970. In *The American Planning Tradition: Culture and Policy*, ed. Robert Fishman, 241–62. Washington, DC, and Baltimore: Woodrow Wilson Center Press and Johns Hopkins University Press.
- Abbott, Carl. 2001. *Greater Portland: Urban Life and Landscape in the Pacific Northwest*. Philadelphia: University of Pennsylvania Press.
- Abbott, Carl. 2002. Planning a Sustainable City: The Promise and Performance of Portland's Urban Growth Boundary. In *Urban Sprawl: Causes, Consequences, and Policy Responses*, ed. Gregory Squires, 207–36. Washington, DC: Urban Institute Press.
- Abbott, Carl, and Deborah Howe. 1993. The Politics of Land Use Law in Oregon: Senate Bill 100, Twenty Years After. *Oregon Historical Quarterly* 94(1):5–36.
- Abbott, Carl, Deborah Howe, and Sy Adler, eds. 1994. *Planning the Oregon Way: A Twenty-Year Evaluation*. Corvallis, OR: Oregon State University Press.
- Benner, Richard. 2002. Measure 7 and the Social Contract. *Open Spaces Quarterly* 4(1). World Wide Web page <<http://www.open-spaces.com/article-v4n1-benner.php>> (accessed May 24, 2003).
- Bianco, Martha, and Sy Adler. 2001. The Politics of Implementation: The Corporatist Paradigm Applied to the Implementation of Oregon's Statewide Transportation Planning Rule. *Journal of Planning Education and Research* 21(1):5–16.
- Bosselman, Fred, and David Callies. 1972. *The Quiet Revolution in Land Use Control*. Washington, DC: U.S. Government Printing Office.
- Buchanan, Yvonne. 2001. Exhuming Measure 7. *Metroscope*, Summer 2001, pp. 21–25.
- Chapman, Nancy, and Joan Starker. 1987. Portland: The Most Livable City? In *Portland's Changing Landscape*, ed. Larry Price, 191–207. Portland, OR: Portland State University and Association of American Geographers.
- Charles, John. 2001. *Windfalls, Wipeouts, and Measure 7*. Portland, OR: Cascade Policy Institute.

City Club of Portland. 2002. *Measure 7 and Compensation for the Impacts of Government Regulation*. Portland, OR.

Cogan, Arnold. 2000. Measure 7 and the Future of Planning in Oregon. *Oregon Planners' Journal* 17(5):1, 9.

Daniels, Thomas L., and Arthur C. Nelson. 1986. Is Oregon's Farmland Preservation Program Working? *Journal of the American Planning Association* 52(1):22-32.

DeGrove, John. 1984. *Land, Growth, and Politics*. Chicago: American Planning Association.

Douglass, Thomas G. Jr. 1996. Have They Gone "Too Far"? An Evaluation and Comparison of 1995 State Takings Legislation. *Georgia Law Review* 30:1061-116.

Downs, Anthony. 2002. Have Housing Prices Risen Faster in Portland Than Elsewhere? *Housing Policy Debate* 13(1):3-32.

Echeverria, John D. 2001. *Reflections on Measure 7*. Environmental Policy Project. Georgetown University Law School. World Wide Web page <<http://www.envpoly.org/papers/measure7.htm>> (accessed May 24, 2003).

ECONorthwest. 1991. *Urban Growth Management Study: Case Study Reports*. Salem, OR: Department of Land Conservation and Development.

ECONorthwest. 2000. *Fiscal Impacts of Ballot Measure 7 on State and Local Governments: An Analysis of Selected Regulations*. Portland, OR.

Egan, Timothy. 2000. In Portland, Houses Are Friendly. Or Else. *New York Times*, April 20, pp. F1, F9.

Einsweiler, Robert, and Deborah Howe. 1994. Managing "the Land Between": A Rural Development Paradigm. In *Planning the Oregon Way: A Twenty-Year Evaluation*, ed. Carl Abbott, Deborah Howe, and Sy Adler, 245-74. Corvallis, OR: Oregon State University Press.

Elazar, Daniel. 1972. *American Federalism: A View from the States*. New York: Crowell.

Fischel, William A. 2001. *The Homevoter Hypothesis: How Home Values Influence Local Government, Taxation, School Finance, and Land Use Policies*. Cambridge, MA: Harvard University Press.

Foster, James, and William Robbins, eds. 2001. *Land in the American West*. Seattle: University of Washington Press.

Freis, James H. Jr., and Stefan V. Reyniak. 1996. Putting Takings Back into the Fifth Amendment: Land Use Planning after *Dolan v. City of Tigard*. *Columbia Journal of Environmental Law* 21.

Gill, Raelynn. 2001. Measure 7 Watchdog Group Sues City of HR. *Hood River News* (Hood River, OR), January 6, p. 1.

Governor's Task Force on Land Use. 1982. *Governor's Task Force on Land Use in Oregon: Report to Governor Vic Atiyeh*. Salem, OR: State of Oregon.

- Hogan, Dave. 2000. *Land-Use Wins Buoy Oregonians in Action*. World Wide Web page <<http://www.oregonlive.com/printer2.ssf?/news/oregonian/00/12/1cs21oia25.frame>> (accessed May 24, 2003).
- Hogan, Dave. 2001a. Solid Ground Sought for Land Law. *Oregonian* (Portland, OR), February 12, pp. A1, A7.
- Hogan, Dave. 2001b. Panel Begins Task of Sorting Out Measure 7. *Oregonian* (Portland, OR), March 7, pp. A1, A13.
- Hogan, Dave. 2001c. Property Tax Is One Idea to Remedy Measure 7. *Oregonian* (Portland, OR), April 18, pp. A1, A14.
- Hogan, Dave. 2001d. Property Measure in Court, House. *Oregonian* (Portland, OR), May 16, pp. C1, C5.
- Hogan, Dave. 2001e. Legislators' Rewrite Push on Land-Use Measure Dies. *Oregonian* (Portland, OR), July 5, pp. A1, A11.
- Hogan, Dave. 2001f. Land-Use Battles Warming Up. *Oregonian* (Portland, OR), November 12, pp. C1, C6.
- Hogan, Dave, and Steve Mayes. 2000. The Measures: Unions Spend Millions Fighting Sizemore Tax Proposals on Ballot. *Oregonian* (Portland, OR), November 3, pp. A1, A14.
- Hunnicuttt, Dave. n.d. *Legislature Gives Up on Measure 7 Implementation*. World Wide Web page <<http://www.oia.org/lf-mez7implementation.htm>> (accessed May 24, 2003).
- Jacobs, Harvey, ed. 1998. *Who Owns America? Social Conflict over Property Rights*. Madison, WI: University of Wisconsin Press.
- Jacobs, Harvey. 2001. Comments for the session "The Politics of Property Rights: The Origins and Implications of Oregon's Measure 7," at the meeting of the Association of Collegiate Schools of Planning, Cleveland, November.
- Klingman, David, and William W. Lammers. 1984. The "General Policy Liberalism" Factor in American State Politics. *American Journal of Political Science* 28(3):598-610.
- Knaap, Gerrit. 1985. The Price Effects of Urban Growth Boundaries in Metropolitan Portland, Oregon. *Land Economics* 61(1):26-35.
- Knaap, Gerrit. 1987. Social Organization, Profit Cycles, and Statewide Land Use Controls: Welcome to Oregon—Enjoy Your Visit. *Journal of Applied Behavioral Science* 23(3):371-85.
- Knaap, Gerrit, and Lewis Hopkins. 2001. The Inventory Approach to Urban Growth Boundaries. *Journal of the American Planning Association* 67(3):313-26.
- Knaap, Gerrit, and Arthur C. Nelson. 1992. *The Regulated Landscape: Lessons on State Land Use Planning from Oregon*. Cambridge, MA: Lincoln Institute of Land Policy.
- Knowlton, Stefanie. 2001. Land-Use Fight May Target Keizer. *Statesman Journal* (Salem, OR), January 10, pp. 1C, 8C.

Lamb, Jeff. 2001. Interview by Svetlana Karasyova with Chairman, Oregon Communities for a Voice in Annexation, Philomath, OR, July 12.

League of Oregon Cities. 2001a. *Perspective on Measure 7: A History Lesson*. Issue #4, August 22. World Wide Web page <<http://www.orcities.org/members/M7/M7page.html>> (accessed May 24, 2003).

League of Oregon Cities. 2001b. *Legislative Bulletin, Number 12*. March 30. World Wide Web page <<http://www.orcities.org/members/M7/M7page.html>> (accessed May 24, 2003).

Learn, Scott. 2000. League of Cities Going after Measure 7. *Oregonian* (Portland, OR), November 30, p. C1.

Ledniser, Lisa Grace. 2000. Billions Hang on Upcoming Vote: Voters' Pamphlet Fiscal Estimates—and Election Fodder—Are Ready. *Oregonian* (Portland, OR), August 9, pp. A1, A10.

Leonard, H. Jeffrey. 1983. *Managing Oregon's Growth*. Washington, DC: The Conservation Foundation.

Liberty, Robert L. 1992. Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States. *Environmental Law Reporter* 22(6):10367–91.

Liberty, Robert L. 2001. Interview by Svetlana Karasyova with the Executive Director, 1000 Friends of Oregon, Portland OR, July 26.

Linn Gets Asked for Measure 7 Compensation. 2000. *Albany Democrat-Herald* (Albany, OR), December 9.

Little, Charles E. 1974. *The New Oregon Trail*. Washington, DC: The Conservation Foundation.

Marta, Suzanne. 2000. Administrative Rules and Takings: Takings Law Appears Likely to Be Approved. *Statesman Journal* (Salem, OR), November 8, pp. 3, 5.

Martin, Melissa. 2000. Court May Hold Measure 7's Fate. Suit Involving Jacksonville, County May Hinge on McCall's Challenge. *Mail Tribune News* (Medford, OR), December 3.

Mayer, James, and Steve Mayes. 2000. Early Word on Measures: No. *Oregonian* (Portland, OR), November 2, p. A1.

Medler, Jerry, and Alvin Mushkatel. 1979. Urban-Rural Class Conflict in Oregon Land Use Planning. *Western Political Quarterly* 32(3):338–49.

Nelson, Arthur C. 1986. Using Land Markets to Evaluate Urban Containment Programs. *Journal of the American Planning Association* 52(2):156–71.

Nelson, Arthur C. 1988. An Empirical Note on How Regional Urban Containment Policy Influences an Interaction between Greenbelt and Exurban Land Markets. *Journal of the American Planning Association* 54(2):178–84.

Nelson, Arthur C. 1992. Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon. *Journal of the American Planning Association* 58(4):467-88.

Nelson, Arthur C., Rolf Pendall, Casey J. Dawkins, and Gerrit J. Knaap. 2002. *The Link between Growth Management and Housing Affordability: The Academic Evidence*. Washington, DC: Brookings Institution.

Nokes, R. Gregory. 2000a. Sides Dispute Size of Financial Ground Land-Use Amendment Would Cover. *Oregonian* (Portland, OR), September 24, p. D2.

Nokes, R. Gregory. 2000b. Opponents Call Measure 7 Threat to Land. *Oregonian* (Portland, OR). November 2, p. A11.

Nokes, R. Gregory. 2000c. Judge Blocks Property Measure. *Oregonian* (Portland, OR), December 7, pp. A1, A13.

1000 Friends of Oregon. 2000. *City Measure 7 Letter*. December 1. World Wide Web page <<http://www.friends.org/issues/citym7ltr.html>> (accessed May 24, 2003).

1000 Friends of Oregon. n.d. 1. *Land Use-Related Initiatives Filed for the 2002 Ballot*. World Wide Web page <<http://www.friends.org/ballot/landuse.html>> (accessed May 24, 2003).

1000 Friends of Oregon. n.d. 2. *Land Use-Related Initiatives and the 2002 Ballot*. World Wide Web page <<http://www.friends.org/ballot/overview.html>> (accessed May 24, 2003).

1000 Friends of Oregon. n.d. 3. *Understanding Measure 7*. World Wide Web page <<http://www.friends.org/issues/undm7.html>> (accessed May 24, 2003).

1000 Friends of Oregon. n.d. 4. *Understanding the Court Ruling on Measure 7*. World Wide Web page <<http://www.friends.org/issues/m7.html>> (accessed May 24, 2003).

1000 Friends of Oregon. n.d. 5. *Questions and Answers about Oregon's Land Use Program*. World Wide Web page <<http://www.friends.org/resources/ques.html>> (accessed May 24, 2003).

Oppenheimer, Laura. 2001. Measure Heading for May Ballot Aims to Curb Metro's Density Rules. *Oregonian* (Portland, OR), December 27, p. D1.

Oregon Chapter, American Planning Association. 2001. Legislative testimony. June 19.

Oregon City Planning Directors' Association. 2000. *Measure 7 Position Paper*. December 6. World Wide Web page <<http://www.orcities.org/members/M7/M7page.html>> (accessed May 24, 2003).

Oregon Department of Land Conservation and Development. 2000. *Oregon's Land Conservation and Development Commission Takes Cautious Approach to Rulemaking in the Wake of Measure Seven's Approval by the Voters*. World Wide Web page <<http://www.lcd.state.or.us/newshtml/novnr14.html>> (accessed May 24, 2003).

Oregon Department of Land Conservation and Development. 2001. *Oregon Land Conservation and Development Commission Launches Major Strategic Planning and Visioning Effort*. World Wide Web page <<http://www.lcd.state.or.us>> (accessed May 24, 2003).

Oregon Secretary of State. n.d. 1. *General Election November 7, 2000*. World Wide Web page <<http://www.sos.state.or.us/elections/nov72000/nov72000.htm>> (accessed May 24, 2003).

Oregon Secretary of State. n.d. 2. *Initiative, Referendum, and Referral*. World Wide Web page <<http://www.sos.state.or.us/elections/other.info./irr.htm>> (accessed May 24, 2003).

Oregon Taxpayers United. n.d. *The History of O.T.U.* World Wide Web page <<http://www.otu.org/welcome/history.htm>> (accessed May 24, 2003).

O'Toole, Randall. 2001. *The Vanishing Automobile and Other Urban Myths: How Smart Growth Will Harm American Cities*. Bandon, OR: Thoreau Institute.

Pease, James. 1990. Land Use Designation in Rural Areas: An Oregon Case Study. *Journal of Soil and Water Conservation* 45(5):524–28.

Poisner, Jonathon. 2001. Interview by Svetlana Karasyova with the Executive Director, Oregon League of Conservation Voters, Portland, OR, July 10.

Powell, David L., et al. 1995. Florida's New Law to Protect Private Property Rights. *Environmental and Urban Issues* 23(Fall):10–19.

Rohse, Mitchell. 1988. *Land-Use Planning in Oregon*. Corvallis, OR: Oregon State University Press.

Schellenberg, Donald. 2001. Interview by Svetlana Karasyova with a Lobbyist for the Farm Bureau, Salem, OR, July 17.

Sharkansky, Ira. 1969. The Utility of Elazar's Political Culture. *Polity* 2(1):66–83.

Sharpe, Sumner. 2000a. Transition to the Future: A Prospective. *Oregon's Future* 2(2):14–17, 21–22, 30–35.

Sharpe, Sumner. 2000b. Ballot Measure 7 and the Public Interest. *Oregon Planners' Journal* 17(5):5, 12–13.

Shurts, John. 1988. Goal Four and Nonforest Uses on Forest Lands. *Environmental Law* 19(1):59–91.

Sizemore, Bill. 2001. Interview by Svetlana Karasyova with the Executive Director, Oregon Taxpayers United, Clackamas, OR, August 2.

Staley, Samuel. 1999. *Line in the Land: Urban Growth Boundaries, Smart Growth, and Housing Affordability*. Los Angeles: Reason Public Policy Institute.

Staley, Samuel, and Gerald Mildner. 1999. *Urban Growth Boundaries and Housing Affordability: Lessons from Portland*. Los Angeles: Reason Public Policy Institute.

Steves, David. 2001. Interests Hash Out "Takings" Land Law. *Register-Guard* (Eugene, OR), June 14, pp. 1A, 8A.

Tucker, Randy. 2001. Interesting Times: Oregon after Measure 7. *Oregon's Future* 2(4):12–15.

- Walker, Jack. 1969. Diffusion of Innovation among the American States. *American Political Science Review* 63(3):880–89.
- Walker, Scott. 2003. Metro under Attack: An Analysis of the May 2002 Primary Election. Field area paper for a master's degree in urban and regional planning. Portland State University.
- Walth, Brent. 1994. *Fire at Eden's Gate: Tom McCall and the Oregon Story*. Portland, OR: Oregon Historical Society.
- Weitz, Jerry. 2000. *Sprawl Busters: State Programs to Guide Growth*. Chicago: Planners Press.
- Winnett, Liana, Regina Lawrence, and Gerald Sussman. 2001. Reading between the Lines on Measure 7. *Oregon's Future* 2(4):24–26.
- Wong, Peter. 2001. Measure 7 Would Not Help All Landowners. *Statesman Journal* (Salem, OR), February 14, pp. 1A, 3A.
- Wright, Jeremy. 2001. Interview by Svetlana Karasyova with the Director, Oregon Community Protection Coalition, Portland, OR, July 8.

