

**Farm Zoning and Fairness in Oregon
1964 - 2014**

American Land Institute
Portland, Oregon

by

Henry R. Richmond
Timothy G. Houchen

February 19, 2015

Dedication

This report is dedicated to the memory of three respected Willamette Valley farmers whose decades of active support helped ensure Senate Bill 100's political survival and present day operational success.

David R. Lett
1939 - 2008
Eyrie Vineyards
Dundee, Oregon

Clifford R. Kenagy
1922 - 2011
Kenagy Family Farm
Albany, Oregon

Peter G. McDonald
1940 - 2013
Inchinnan Farm
Wilsonville, Oregon

Appendix B (p. 45) contains two eulogies and an award presentation by Henry R. Richmond describing the leadership these three farmers provided.

*“The tax incentives we have received from the State of Oregon have helped us protect
the land we own while we have grown our business.”*

October 23, 2013

Pat and Joe Campbell
Founders, 1974, and Owners
ELK COVE VINEYARDS
Gaston, Oregon

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I. INTRODUCTION

The long-standing complaint has been that Oregon's land use laws are unfair. That complaint is economic in nature: limiting "large blocks" of farm land to farm use reduces the market value of the land.

This is the American Land Institute's (ALI) second report to address that 'unfairness' complaint. Each report responds to the economic nature of the complaint by analyzing two economic factors -- which directly result from Oregon's land use law, and which benefit farmland owners economically.

First, in 2007,¹ ALI found that owners of Oregon farmland have received \$3.8 billion in compensation in the form of property tax reductions, 1974 - 2004, granted by the legislature in consideration of limitations on land use.

Second, was a surprising (see p. 13, below) result of the research on which the \$3.8 billion tax reduction finding was based: notwithstanding the alleged 'over-regulation' of Oregon's land use law, farmland market value increased for the vast majority of owners 19% faster than the S&P 500, 1964-2002.

ALI's 2014 report supplements and extends ALI's 2007 report in three ways:

- ◆ Estimates compensation in the form of farmland property tax reductions (**2004 - 2014**), providing a **40-year** (1974 - 2014) total;
- ◆ Compares growth in farmland market value to growth in the S & P 500, **2002 - 2012**, providing a **48-year** (1964 - 2012) comparison; and
- ◆ Describes how the Oregon Legislature and the Oregon Land Conservation and Development Commission (LCDC) responded to landowner concerns about unfairness by modifying the land use law to avoid or remedy unfairness.

¹ "Oregon's Public Investment in Conservation, Prosperity and Fairness: Reduced Taxation of Farm Land and Forest Land, 1974 - 2004." February 23, 2007 (92 pages plus appendices). That report is posted at Oregon State University's Scholars' Archives:
http://ir.library.oregonstate.edu/xmlui/bitstream/handle/1957/5503/Property_Tax_Report.pdf?sequence=4.

II. SUMMARY

Senate Bill 100 (1973) and the Oregon Land Conservation and Development Commission's (LCDC) goals (1975) required:

- ◆ Cities to adopt urban growth boundaries (UGBs) to contain sprawl, and
- ◆ Counties to use zoning to limit 15.6 million acres of farmland to farm use, and 8.0 million acres of forest land to forest use.

After eight statewide votes, many "fairness" adjustments by the legislature, and thousands of local debates, Senate Bill 100 has survived. More important, 36 counties and 241 cities have implemented LCDC's Goals -- a nationally unprecedented state land use policy success story.

Opponents said the law was unfair. They claimed limitations on farm and forest land would result in sweeping loss of market value. Opponents pushed to repeal or gut the law in nearly every legislative session, beginning in 1975. Failing there, opponents placed seven initiative measures on the ballot to repeal the law -- 1970, 1976, 1978, 1982, 1996, 2000, 2004.

Three factors show Oregon's land use laws have been fair for the vast majority of farm land owners:

- ◆ **Compensation:** \$5.75 billion compensation in the form of reduced property taxes, 1974 - 2014 (Table 19, p. 44);
- ◆ **Strong growth in farmland market value:** 5.52% faster than the S & P 500 statewide, 1964 - 2012 (Table 6, p. 31);
- ◆ **'Fairness' Adjustments and the Law:** Oregonians believe in fairness. They also want Oregon's land use laws implemented. Forty years of votes in the legislature and at the ballot box show Oregonians want the laws adjusted, not repealed, so fairness and Oregon's land use goals both can be achieved. **Section IV** (pp. 4 - 13) describes how the legislature and the LCDC added numerous elements of flexibility to Oregon's land use law to avoid or remedy unfairness.

Opponents claimed Oregon's land use laws were out of date, and had "ossified." To the contrary, from 1975 - 2005, the legislature altered state, city, and county planning laws 1,071 times,² likely more changes than to any other single body of state law.

² Comments on "Big Look: Choices For the Future," May 30, 2008 to Oregon Task Force on Land Use Planning, American Land Institute, July 11, 2008

III. THE POLICY VACUUM

During the post World War II boom, essentially non-existent county land use policy for suburban fringe and rural areas allowed rapid and needless loss of Willamette Valley farmland.

A. Non-existent or Meaningless County Land Use Policy

The 1947 Oregon legislature delegated to Oregon’s 36 counties the legislature’s authority under the Oregon Constitution to regulate the use of land. This 1947 delegation authorized, but did not require, counties to use ‘zoning’ to regulate the use of land for the general welfare.

Until 1975, the vast majority of rural land in Oregon’s 36 counties remained unzoned, or zoned with meaningless ‘green area’ plan designations that allowed essentially any use, either expressly, or because officials freely granted zone changes. At the same time, county assessors set taxable value on rural land at “highest and best use,” as opposed to current “farm use,” thereby pressuring owners to sell to avoid rising taxes. In the 1960s, this combination of “anything goes” zoning and property tax pressure existed throughout suburban fringe and rural areas in all states, not just Oregon.

B. Rapid Loss of Farmland

U.S. Department of Agriculture (USDA) reported that, from 1950 to 1974, land in farms in the Willamette Valley fell from 2.7 million acres to 1.8 million acres, a 33% decrease.

Table 1

County	Land in Farms, in acres					
	1950	1974	Gain	1974	2002	Gain
Benton	230,452	130,012	(100,440)	130,012	130,203	191
Clackamas	321,688	174,891	(146,797)	174,891	215,210	40,319
Lane	476,011	264,123	(211,888)	264,123	234,807	(29,316)
Linn	473,839	356,533	(117,306)	356,533	385,589	29,056
Marion	389,683	295,285	(94,398)	295,285	341,051	45,766
Multnomah	72,696	37,511	(35,185)	37,511	34,329	(3,182)
Polk	244,169	200,632	(43,537)	200,632	168,881	(31,751)
Washington	251,253	161,050	(90,203)	161,050	130,683	(30,367)
Yamhill	<u>286,420</u>	<u>199,269</u>	<u>(87,151)</u>	<u>199,269</u>	<u>196,298</u>	<u>(2,971)</u>
Total	2,746,211	1,819,306	(926,905)	1,819,306	1,837,051	17,745

Source: *USDA Census of Agriculture, 1950, 1974, 2002, Table 1, County Data*

Note: A portion of the 1950-1974 reduction in land in farms is due to reclassification to forest land.

IV. OREGON'S POLICY RESPONSE

In the mid 1960s, Oregon Governor Tom McCall (R.) and leaders of both parties in the legislature saw the rapid loss of Willamette Valley farmland in recent decades, and concluded that the broad, often unexercised, legislative delegation of authority to county governments to zone was not serving the public interest. Respected Willamette Valley farmers, like Hector Macpherson, then Chairman, Linn County Planning Commission, and James Smart, then Chairman, Polk County Planning Commission, earlier had each reached the same conclusion, and called on state leaders to act.

The 1910-1920's zoning system, which displaced the centuries-old Common Law of nuisance, was prompted by rapid urban population growth and industrialization after the Civil War. That system enabled cities to separate large, 'dirty' factories (e.g., iron smelters and slaughter houses), from 'clean' uses (e.g., houses, shops and schools). In the boom after World War II, however, the 1910-1920 system of zoning was creating *too much separation* at the urban/rural fringe, and beyond. Land use patterns in Oregon were being rapidly reshaped by autos, by federally-funded freeways, and water and sewer projects near the edge of regions, and by low suburban land prices and taxes. Following legislative task forces and interim committees in 1965 and 1967, Gov. McCall and legislative leaders, including St. Rep. Wallace Carson (R., Salem) and St. Sen. Hector Macpherson (R., Albany) began a nationally unprecedented, six-year effort to modernize the legislature's earlier broad delegation of zoning authority to cities and counties -- so municipal zoning could foster land use patterns that advanced the general welfare.

The key features of Oregon's policies to reform local zoning were:

- ◆ contain sprawl, redirect investment inward;
- ◆ limit large blocks of productive farmland to farm use; and
- ◆ incorporate flexibility to provide fairness for landowners.

A. Containment to Separate Urban from Rural

Three statutes, together with implementing regulations, are the heart of Oregon's 1969 - 1975 land use reforms:

Senate Bill 10 (1969) -- required, not just authorized, counties to zone all land in the county's jurisdiction;

Senate Bill 100 (1973) -- created the Oregon Land Conservation and Development Commission (LCDC) to refine SB 10's standards for city and county zoning, and to oversee and enforce local implementation of the new standards;

Senate Bill 101 (1973) -- the companion bill to SB 100; SB 101 established (a) statutory policy for agricultural land, and (b) compensatory special assessment valuation for farm land which state law limited to farm use.

Senate Bill 101 reaffirmed the 1969 Legislature's policy goal of productivity for farm land, and broadened the policy focus from "prime" farmland to "agricultural land." SB 101 emphasized the importance to Oregon's economy of continued productive use of agricultural land, and set a goal of keeping "large blocks" of agricultural land in production.

As codified, SB 101 provided:

"ORS 215.243 Agricultural land use policy. The Legislative Assembly finds and declares that:

"(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

"(2) *The preservation of a maximum amount of the limited supply of agricultural land* is necessary to the conservation of the state's economic resources and the preservation of such land *in large blocks is necessary in maintaining the agricultural economy of the state* and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

"(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion." (emphasis supplied)

LCDC's statewide planning goals (1975) -- During 1974, LCDC held 67 public hearings and work sessions in all parts of the state to refine the 1969 statutory farm land policy. On December 27, 1974, LCDC adopted 14 "statewide planning goals." Effective January 1, 1975, these goals:

- ◆ Mandated urban growth boundaries (UGBs) around each city (refining ORS 215.243(3));
- ◆ Defined “agricultural land” and “forest land;”
- ◆ Limited uses on agricultural and forest land outside UGBs (refining ORS 215.243(2));
- ◆ Focused development inside UGBs; and
- ◆ Partially ‘deregulated’ zoning for residential development to reduce housing costs.

B. LCDC’s Goal 3 Built on 1969 Farm Land Law

The “large blocks” policy of SB 101 (1973) is the foundation for the Land Conservation and Development Commission’s Goal 3, Agricultural Lands.

LCDC Chairman L. B. Day, who had Gov. Tom McCall’s confidence, and LCDC Commissioner James Smart, a respected Polk County farmer, each demonstrated political astuteness, a strong grasp of how property tax laws and land use laws interrelated, and a knowledge of useful sources of natural resource data. Each of these men also understood how agriculture generated non-farm employment and bolstered Oregon’s economy generally. Day headed Cannery Workers’ Local 701, members of which worked in canneries through Western Oregon; cherry-grower Smart was a leader in the Oregon Farm Bureau who chaired the Oregon Cherry Growers Association, which operated a Salem processing facility. Under Day’s and Smart’s leadership, LCDC’s Goal 3 combined seemingly disparate tax and land use policies and soil resource data into a new state agricultural land use law which:

- ◆ Defined “Agricultural Land” in an objective, scientifically-sound manner;
- ◆ Used existing statutes which determined eligibility for preferential property tax treatment to set uses allowed on “Agricultural Land.”

a. Definition of “Agricultural Land”

Goal 3, Agricultural Lands, uses the 8-class U.S. Soil Conservation Service (SCS) soil capability classification system to define “Agricultural Land:” Classes I-IV in Western Oregon; Classes I-VI in Eastern Oregon. Goal 3 required counties to zone such land “Exclusive Farm Use” (EFU). This definition grounded state land use law for farm land in an objective, scientifically-based body of data which is:

- ◆ Known and respected by farmers, extension agents, county planners, officials and rural residents; and

- ◆ Readily available in detailed, county-level, aerial photograph soil maps in a scale small enough to show fence lines.

Defining “agricultural land” by means of an objective, readily-available soil class data helped wring the back-scratching and good ol’ boy politics, not to say low-grade corruption, which long characterized county zoning decision-making.

(b) Inclusive Definition Implements Legislative “large block” policy;

LCDC Commissioner Jim Smart used to say, “When I drive my tractor, I run over Class I, Class II, Class III and Class IV soils. As the soil maps show, and as farmers know, the soils are not tidy like checkerboards, but are higgledy-piggledy. If we leave out the Class IV, we haven’t protected the I, II or III.”

Given the distribution of soils in Oregon, LCDC Goal 3's definition of “Agricultural Land” in Western Oregon as Soil Classes I - IV was resource inclusive, and enabled LCDC to effectuate the legislature’s policy goal of keeping “large blocks” in production.

(c) Requires counties to zone “agricultural land” EFU

The statutory EFU zone identified land which qualified for favorable special assessment valuation for tax purposes, regardless of how land was zoned, as long as uses on that land conform to the uses set forth in Oregon’s EFU statutes defining “farm use.” Under Goal 3, if land is “predominantly” soil class I-IV in Western Oregon, Goal 3 requires counties to zone that land EFU, irrespective of its current or non-existent zoning. By so extending EFU zoning to “agricultural land,” Goal 3:

- ◆ Automatically extended Special Assessment Valuation to any farmland zoned EFU;
- ◆ Established permissible uses for farm land set by elected state legislators, not LCDC;
- ◆ Allowed “large blocks” of commercially viable agricultural land to fall out of an unexpectedly long, two-part, county-by-county process (see below), 1975 - 1986, which involved:
 - ◆ Identifying Class I - IV soils located outside emerging urban growth boundaries, and
 - ◆ Determining “built and committed” exception areas³ -- i.e., where LCDC authorized counties to take an “exception” to Goal 3 and zone the area for small lot rural residential.

³ See below, p. 9

For eleven years, 1000 Friends of Oregon submitted detailed comments to LCDC on each county's proposals to LCDC on the extent of Classes I - IV soils to be zoned EFU, and the extent of built and committed exception areas.

C. Administrative Apparatus

SB 100 recognized that practical and flexible administrative capability at the state level was needed to ensure reasonable local implementation of LCDC's goals. Under SB 10 (1969), if a county failed to adopt zoning which complied with SB 10 standards by December 31, 1971, SB 10 required the Governor to assume responsibility for zoning in that county. This procedure quickly came to be regarded as unworkable. SB 100 (1973) created the Land Conservation and Development Commission (LCDC) and equipped it with the administrative tools the legislature believed necessary for LCDC to oversee local implementation of state land use policy. LCDC's duties and powers:

- ◆ In consultation with local government, LCDC was to adopt "compliance schedules" specifying steps local governments would take (e.g., resource inventorying and mapping, ordinance revisions, public hearings) to adopt or revise zoning to comply with LCDC's goals;
- ◆ Awarding and renewing annual grants to local governments, conditioned on a local government agreement to adopt and carry out its LCDC-adopted "compliance schedule;"
- ◆ Decide citizen appeals to LCDC --a process the 1979 Legislature transferred to the newly-created Oregon Land Use Board of Appeals (LUBA);
- ◆ "Acknowledge" that a local comprehensive plan and zoning complied with LCDC's goals, with the effect that LCDC's goals no longer applied directly to individual land use decisions.

The "Acknowledgment Review" process took from 1975 to 1986, in part because implementation often was "put on hold" pending the outcome of a ballot measure or a fight in the legislature.

D. Fairness By Flexibility

The legislature or LCDC either included elements of policy flexibility in the 1969 - 1975 reforms, or added fairness elements later. Part of this effort was prompted by the thought that the definition of "agricultural land" was broad and inclusive, and common

sense and fairness required that if particular land was not suitable for farming, it not be limited to farm use.

1. Nonfarm Dwellings (ORS 215.213)

By incorporating the statutory EFU zone in LCDC Goal 3, LCDC did two things. *First*, uses permitted on “agricultural land” were determined by the Legislature, not LCDC, and the legislature could alter the permissible use standard when it wished. *Second*, and more important, the EFU zone (ORS 215.213) established a built-in “safety valve,” providing an element of fairness for owners. If an owner could show that particular land zoned EFU was “unsuitable for the production of crops or livestock,” a nonfarm dwelling could be built.

2. Built and Committed Exceptions (1976)

LCDC interpreted its goals to allow “built and committed” exception areas. That is, even if land was Classes I-IV, and thus “Agricultural Land,” counties were not required to zone such land EFU if a county showed LCDC that a previously-approved pattern of non-farm development and partitioning made commercial agriculture “impractical.” Such areas were “exceptions” from Goal 3, and counties could zone such “built and committed” exception areas for small-lot rural residential. By 2005, LCDC had approved over 890,000 acres of built and committed exception areas.

3. Marginal Lands (1983)

Following public rejection in 1982 of a ballot measure to repeal Senate Bill 100 and LCDC’s Goals, the 1983 Legislature created a system⁴ by which counties could designate “marginal lands” and relax criteria for dwellings on parcels created before July 1, 1983. Only a few counties have used this system.

4. Template Forest Dwellings (1993)

HB 3661 authorized *nonforest houses* in forest zones through the so-called “template” process codified in ORS 215.750. This provision authorized houses on “impacted” forest land made less productive by prior parcelization and development. The Forest template dwelling profile is essentially a hybrid of built-and-committed “exception areas,” and non-farm dwellings allowed by ORS 215.213.

⁴ Or Laws 1983, Ch. 826, HA 3662 (ORS 215.317)

5. Lot-of-Record Dwellings (1993)

By enacting HB 3661⁵, the legislature responded to the “you’re changing the goal posts” variant of the “unfairness” complaint. HB 3661 provides:

“The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired *before the owners could reasonably be expected to know of the regulation*. In order to assist these owners while protecting the state’s more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:

- “(1) Provide certain owners of less productive land an opportunity to build a dwelling on their land; and
- “(2) Limit the future division of and the siting of dwellings upon the state’s more productive resource land.” (emphasis supplied)

HB 3661 authorized a broad range of additional residential development on Oregon’s ‘less productive’ farm and forest land -- using clear and objective standards that could be administered immediately by counties, rather than requiring a long, contentious and expensive rezoning process.

For parcels acquired before January 1, 1985, HB 3661 authorized so-called “lot-of-record” dwellings on the approximately 75% of existing EFU land that HB 3661 did not designate “high-value.” The bill also authorized lot-of-record dwellings on “high-value” farmland under similar, but more limited, circumstances.

HB 3661 also increased the opportunities for siting nonfarm dwellings outside the Willamette Valley. For approximately 90% of the EFU zoned land in the state, counties were authorized to allow a *nonfarm dwelling* on any *portion* of a lot or parcel unsuitable for farm production (ORS 215.284(2)-(3).) Before 1993, the entire parcel had to be unsuitable for production. In 2001, the Legislature amended HB 3661 to provide that new nonfarm dwelling *parcels* smaller than the minimum lot size could be created and developed (ORS 215.263).

⁵ Or Law 1993, Ch. 752

6. Measure 37 (2004) and Measure 49 (2007)

In 2004, in response to claims of unfairness, voters approved Measure 37, which resulted in 7,582 claims for either compensation, or repeal of zoning applicable to the claimant's land. Potentially 150,000 homesites on 514,000 acres were directly involved, essentially repealing SB 100 in the heart of the Willamette Valley's and Hood River Valley's farming areas, as well as in prime, low-elevation forest land.

In November 2007, voters said, 'We didn't mean THAT when we approved Measure 37.' The 2007 Legislature referred Measure 49 to the ballot. Measure 49 limited claims allowed by Measure 37 to 6,131 homes, and 3,878 new parcels (see **Table 3**, p. 25). The rural homes and parcels allowed by Measure 49 would not otherwise have been allowed in farm zones, and are a major "fairness" adjustment to Oregon's land use law.

The political context of Measure 37 and Measure 49, and the competing theories of fairness and "reduction in value," are discussed in Section V, pp. 14 -25.

E. Fairness By Compensation

When the 1973 legislature debated SB 101, there was awareness that SB 100 would result in much land being limited to farm use. Before Senate Bill 100, land zoned Exclusive Farm Use (EFU) was by request of the landowner; valuation was reduced as long as the owner limited land to farm use, as specified in the EFU statute. In 1964, farmland was zoned EFU in only Polk and Washington counties, and in small amounts. After SB 100, which required counties to apply EFU zoning to "agricultural land" as defined by LCDC's Goal 3, all land zoned EFU would automatically receive the lower valuation.

In enacting SB 100, the 1973 legislature also enacted SB 101 to increase benefits to farmland owners, and alter the valuation method previously provided in 1967.⁶ The legislature also clarified and strengthened the goals of farmland protection, and articulated the policy justification both for protecting farmland and extending benefits to farmers (see pp. 5-6).

On June 6, 1973, St. Sen. Victor Atiyeh (R., Beaverton), speaking in support of SB 101 on the Senate Floor, stated:

"What we're trying to do -- I'm going to put it crudely, and that is to give some goodies for being in a farming zone."

⁶ Oregon Laws 1967, Chapter 633.

Compensation results from low valuation, and levying taxes on below-market valuations.⁷ For example, in Tax Year 2003-04, *taxable value*,⁸ or market value as limited by Measure 50 (1997), of 15.6 million acres was \$10.4 billion, compared to *specialty assessed valuation* (SAV) of \$2.4 billion.⁹ When rural tax rates are applied to \$2.4 billion, instead of \$10.4 billion, a 77% reduction in taxable value statewide, low taxes result. For example, in 2004, farmland owners in Eastern Oregon's Grant County paid an average of 37¢/acre; in Southern Oregon's Jackson County, \$1.41/acre; and in the nine Willamette Valley counties, \$4 - \$8/acre, depending on soil quality and water availability.

In many states, farmland is assessed at its "highest and best use," or subdivision value. This approach pressures farmland owners to sell. Taxation based on lower farmland market value would reduce that pressure, and would be fair, but, unlike SAV in Oregon, would, in no sense, be a tax break or compensatory.

On March 26, 2007, *The Oregonian* published an op-ed written by James L. Huffman, then a professor at Lewis and Clark Law School, Portland, and attorney for Oregonians in Action, chief backer of Measure 37, and chief opponent of Measure 49. In a snide and arch manner, Huffman ridiculed ALI's report, claiming Oregon law does not give farmland compensatory tax treatment. Huffman based this claim on his legal opinion that taxation of farm land in Oregon is based on its "value for farming," and that "farmland assessment is designed to assure the farmer pay only their fair share, in light of restrictions on the use of their land."

If Huffman's reading of the law were correct, of course, Oregon farmers would have received no compensatory tax reductions since 1974 -- which would be news to them.

But Huffman's shoot-from-the-hip opinion was erroneous. He missed citations in ALI's report to Oregon Revised Statutes and Oregon Department of Revenue regulations which require county assessors to base farm land valuation not on market value, but on

⁷ Being taxed at market value would be both fair, and an advance in nearly all other states, in that farmland in most other states is still not meaningfully zoned and is taxed at development value, which pressures farmers to sell their land.

⁸ The market value price farmers pay to buy land zoned EFU is higher than the taxable value after 1997 when voters approved Measure 50, the constitutional tax limitation. Under Measure 50 (1997), taxable value is determined by taking the 1996 value, reducing it by 10%, and then adding no more than 3% annually thereafter -- so called "cut and cap."

⁹ Table 11, "Property Tax Reductions to Farm Land Owners, 1974 - 2004," *Oregon's Public Investment in Conservation, Prosperity and Fairness: Reduced Taxation of Farm Land and Forest Land, 1974 - 2004*, p. 63. American Land Institute, February 2007, assessors determine SAV by capitalizing farm rents, varying by class of land, using a favorable discount rate set by statute (ORS 308A.062 (2) - 308A.068).

special assessment value (SAV) -- a lower value derived not from sales of comparable land, but by capitalizing farm rents, using a statutory discount rate. Huffman also missed **Table 17** in ALI's report comparing farmland value at SAV and farmland at market value, county by county. **Table 17** shows that, in tax year 2003-2004, SAV farmland statewide was \$2.39 billion, or 77% below farmland at market value of \$10.37 billion. Assessors apply tax rates to the below-market SAV; when they do, below market -- or compensatory -- taxes, result.

F. Fairness By Market Value Growth

Strong growth in market value of EFU-zoned land provided a strong element of fairness to the state laws requiring land to be zoned EFU.

Farmers can read their balance sheets, and they know what farmland limited by EFU zoning in their area is trading hands for. It became clear in the late 1970s, and the decade of the 1980s, especially after the 1980-1982 recession, that farmland values were growing strongly. As this happened, boards of directors in county Farm Bureaus, especially in the Willamette Valley, increasingly concluded that SB 100 and LCDC's Goal 3 were not only *not* a problem, but were beneficial.

ALI's 2007 report was the first effort to estimate growth in farmland market value, and to compare that growth to growth in the S & P 500. That report's finding on growth in value was an unanticipated by-product of ALI's effort to estimate the cumulative total of property tax reductions.

That is, to calculate the amount of tax reduction, 1974 - 2004, ALI had to determine what taxes owners *would have paid* if rural tax rates had been levied on the market value of farmland (as limited by zoning), and then compare those taxes to the taxes which owners *actually* paid, based on rural rates being levied on much lower special assessment valuation (SAV). In determining market value, ALI Analyst Timothy G. Houchen noticed a surprising pattern: farmland market value showed a strong upward trend.

To show the significance of this trend, ALI compared it, county by county, year by year, to the Standard & Poors 500 (S & P 500), a well understood index.

ALI found that better-than-stock-market growth in land value for the vast majority of owners in four of Oregon's five regions -- growth in value that provided an element of fairness in addition to compensatory taxation.

V. POLITICAL FRAMEWORK

A. Challenges of Reform

Governor Tom McCall and the Oregon legislature's effort to reform city and county zoning has been challenging and controversial. Counties resisted limitations on wide open discretion to continue randomly approving subdivisions at the edge of town and homesites in the middle of commercial farm areas. Land speculators and developers also wanted easily-persuaded county officials to retain that discretion. Similarly, suburban cities (24 in Portland Metro region) resisted limitations on their discretion to use zoning to increase tax base. In 1978 zoning for 93% of vacant, residentially-zoned land in the Portland region was for higher-tax-ratable, large-lot, single-family homes, even though market demand for residential development was 50% -- the market demand reflecting falling household size (people per unit), and flat or falling real household income for half the population.

Cries of "property rights" and "local control" filled the halls of the legislature, ballot measure campaigns, TV ads, and mailings.

The "local control" complaint faded away when the Home Builders Association of Metropolitan Portland recognized in 1978 that LCDC's Goal 10, Housing, was a nationally unprecedented state law that provided builders an effective tool to require suburbs to zone vacant residentially-zoned land to reflect the income of people living and working in a given city. Many builders wanted to build into the middle and lower end of the housing market, but tax-revenue-driven zoning said, "Sorry." Builder recognition of the benefit of LCDC's Goal 10 created a new coalition of home builders and environmentalists -- each saying Oregon needed state laws to limit local zoning. The issue was no longer "local control," but whether current zoning was a detriment to the common good.

Developers were the largest financial contributors *for* repeal in 1976. In the 1978 repeal campaign, developers were the largest contributors *against* repeal. 'If we can build to the market inside the urban growth boundary, it's OK with us if SB 100 limits millions of acres outside the UGB to farm and forest use.'

With builders changing sides, "property rights" was left as the sole "unfairness" banner for repeal.

B. Farmer Support Crucial

Farmer support for Oregon's statewide land use laws was initially cautious, but increasingly strong. That support has been the crucial factor forging sustained voter and legislative majorities in support of SB 100. Oregonians know Oregon's land use law has its

most important impact on farmland. Oregonians also saw that farmers supported SB 100. Why? Because Oregon’s land use laws have helped farmers. *First*, farmers can see that rising farmland values have strengthened their balance sheets and borrowing power. *Second*, farmers know the low taxation that helps their operating margin is because EFU zoning automatically extends low property taxes to their farms. Farmers also understand how county finance works. That is, farmers recognize that the low property taxes they enjoy are a form of ‘compensation,’ financed by vastly greater number of urban and suburban taxpayers in the same county who have been paying *imperceptibly* higher taxes so the relatively few farmland owners can pay *substantially* lower taxes.

Farmer support is the key reason that, with a 4-year interruption, Oregon voters have supported the land use law spanning nine repeal ballot measures over 37 years.

Table 2

Statewide Votes on Land use Ballot Measures

General Election	Measure	Vote
1970	Measure 11, Repeal SB 10	No 56% - 44%
1976	Measure 10, Repeal SB 100	No 57% - 43%
1978	Measure 10, Repeal SB 100	No 61% - 39%
1982	Measure 6, Repeal SB 100	No 55% - 45%
1996	Measure 27, Repeal LCDG Goals, unless revived by legislative vote	No 73% - 27%
2000	Measure 7, Compensation for reduction in value. (Invalidated by Oregon Supreme Court)	Yes 53% - 47%
2004	Measure 37, Compensation for reduction in value (enjoined by Marion County Circuit Court, 2005, then stayed by 2007 legislature, January 2007)	Yes 61% - 39%
2007	Measure 49, Limited Measure 37 claims.	Yes 62% - 38%

C. Measure 7 (2000) and Measure 37 (2004)

The land use program’s bumpy political ride, 2000-2007, warrants special comment, because competing theories of “fairness” were at the center of a roller-coaster debate. At considerable political risk, that debate performed an invaluable educational and clarifying function.

In November 2000, Oregon voters approved Ballot Measure 7, 53-47, an amendment to the Oregon Constitution requiring compensation. The Oregon Supreme Court invalidated Measure 7, but proponents “cured” the defect, and placed Measure 37, a similar statutory measure, on the 2004 ballot, which passed 61 - 39. Measure 37 required

government to compensate owners for a reduction in fair market value of real property caused by a land use regulation. Compensation was in one of two forms: a payment of money equal to a reduction “as of the date” the owner filed a claim; or a “waiver,” i.e., allowance of “a use” permitted when the owner acquired the property. The local government could choose between the two remedies. But because Measure 37 provided no money for the \$17 *billion* in compensation demanded, and because payment was due in 180 days, all approved claims resulted in waivers.

Measure 37 became a get-rich-quick scam because the Department of Land Conservation and Development (DLCD) interpreted the measure to mean compensation should be based on “*monopoly*” values a landowner never owned, instead of a *reduction in value* a landowner actually experienced. Based on reduction in value, Measure 37 would have mainly generated claims for waivers allowing 1 - 2 dwellings, likely often to be compatible with commercial agriculture. Such claims likely would have been fair, and manageable, because farm land of most claimants has experienced:

- Better-than-stock-market appreciation in value; *or*
- No reduction in value as a result of farm and forest zoning; *or*
- Some reduction in value, but the claimant already has been partially or fully compensated by property tax reductions.

In summer 2005, DLCD began approving claims based on monopoly value compensation. Based on monopoly values, Measure 37 generated thousands of claims demanding large subdivisions which threatened adjacent farm operations on 3 - 4 times the acreage of the claim itself. As of January 23, 2007, landowners had responded to DLCD’s interpretation by filing over 7,000 claims involving 514,000 acres, and demanding \$17.4 billion in compensation. In January 2007, DLCD persuaded a trial judge to rule Measure 37 “requires” monopoly value compensation.¹⁰

1. Reduction in Value vs. Monopoly Value

Soon after voters enacted Measure 37 -- in December 2004 and June 2005 -- Dr. Andrew J. Plantinga¹¹ and Dr. William K. Jaeger,¹² Department of Agricultural and

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Vanderzanden vs. DLCD, opinion, Judge Don A. Dickey, January 8, 2007, p. 5, note 4.
http://www.oregon.gov/LCD/MEASURE37/docs/finals2007/M129783_Vanderzanden_Washington.pdf.

¹¹ Andrew J. Plantinga, “Measuring Compensation Under Measure 37: an Economist’s Perspective.” Oregon State University, December 9, 2004.

¹² William K. Jaeger, “The Effects of Land Use Regulation on Land Prices.” Oregon State University, June 8, 2005. Drafts of each of these papers were circulated prior to their publication

Resource Economics, Oregon State University, warned of the fallacy of Measure 37 compensation awards based on “monopoly value.”

Professor Plantinga noted Measure 37's interpretive dilemma: compensation was to be based on reduction in market value caused by land use regulations enforced many years ago, but calculated “as of the date” the owner files a claim. The trap, Professor Plantinga emphasized, is to conclude from the “as of the date” language that compensation is to be calculated on the assumption that claimant’s land is *exempt* from zoning, *but that all the surrounding land, which has been subject to the same zoning, remains zoned*. This interpretation appealed powerfully to potential Measure 37 claimants because, out of the blue, Measure 37 conferred on a claimant the lucrative position of “a monopolist in the land market.”¹³

The fallacy of this interpretation is two fold. *First, neither the claimant nor any of claimant’s neighbors ever enjoyed such a monopoly position anytime in the past and so never lost such a position. Second*, the “monopoly value” interpretation was based on an *increase* in value in claimant’s property caused by land use regulations that limit *other* people’s properties. That is the opposite Measure 37’s key requirement: that claimant experience a *reduction* in value caused by a regulation that restricts the use of *claimant’s* property.

The correct measure of reduction in value: what a claimant’s property “would have been sold for without the regulation minus its value with the regulation.”¹⁴ Determining value *with* the regulation is easy. But determining value *without* the regulation “involves an unobservable hypothetical.”¹⁵ That is, zoning *has* applied to the claimant’s property, and to thousands of acres of similarly-situated property, for the last 30 years. As a result, no unregulated market existed in 2006 from which comparable sales data can be drawn to establish the value of claimant’s land as if the regulation had never been adopted.

To overcome this problem, Professor Plantinga proposed calculating value *without*-the-regulation by adjusting claimant’s purchase price by the rate of inflation -- from the purchase date, to the date the claimant files a claim. Compensation would be the difference between the purchase price and the inflation-adjusted price. Dr. Plantinga’s proposal responded to Measure 37's interpretive dilemma three ways. *First*, it calculated

dates. In February 2007, Plantinga and Jaeger co-authored “The Economics of Measure 37,” EM 8925, February 2007, OSU Extension Service.

¹³ Plantinga, p. 10.

¹⁴ *Ibid.*, p. 7.

¹⁵ *Ibid.*

how much value would have increased without the regulation based on objective factors. *Second*, the *end point* of the interest calculation conformed to Measure 37's "as of the date" requirement. *Third*, the proposal would have avoided spurious monopoly values.

Professor Plantinga's critique was highly instructive, and his proposal was sound as a matter of economics. However, the proposal did not track Measure 37's reduction-in-market-value provisions. Thus DLCD decisions on claims using Professor Plantinga's proposal likely would not have withstood judicial scrutiny. In addition, some claimants inherited land, and have no "adjustable" purchase price, or have no-arms-length purchase price.

Professor Jaeger's June 2005 paper prophetically concluded:

"It is completely understandable that land owners limited by a land use regulation view the value of being free of that regulation in terms of the value of an exemption. That view, and the potentially enormous financial gains that would appear to result, are no doubt tempting to landowners ... [H]owever . . . it is not well understood. . . that these potentially enormous financial gains are actually caused by the land use regulations [that apply to other peoples' property].

* * *

"In debates and discussions on Measure 37 that preceded the election, and those that have continued since, there is little evidence of an awareness of the distinction between the value of an exemption and the value of an actual reduction in market prices.

"Public officials, politicians and the courts will no doubt be asking, 'Which interpretation did the voters have in mind when they approved Measure 37?'"¹⁶

2. A Judicial Warning and an OIA Proposal

On October 14, 2005, Marion County Circuit Court invalidated Measure 37 on several constitutional grounds, including that Measure 37 could allow "waivers" so huge as to be unrelated to Measure 37's compensatory purpose. The case was a "facial" attack on Measure 37, i.e., a case not involving a specific approval. In an appeal of such a case, the appellate court must reverse a ruling of unconstitutionality if the appellate court can see a way to interpret the statute that avoids the unconstitutional result.

¹⁶ Jaeger, pp. 22-23.

To create that “way,” and thus to reverse the lower court ruling and to revive Measure 37, OIA’s lawyers needed to propose to the Oregon Supreme Court a theory according to which (1) compensation could be calculated “as of the date” the claimant files a claim, but which would not (2) allow compensation awards so large as to be unrelated to Measure 37’s compensatory purpose. OIA’s December 5, 2005 brief to the Oregon Supreme Court proposed such a theory, namely that Measure 37 compensate a landowner for reduction in value caused by enforcement of a land use regulation, whenever that occurred, plus interest on that loss, from that date of the loss, to the date the owner demands compensation.¹⁷

OIA’s interest-payment proposal and Professor Plantinga’s inflation-adjustment proposal each addressed Measure 37’s interpretive dilemma by bringing the compensation calculation up to the date the owner files a claim. However, OIA’s proposal connected up with Measure 37’s reduction in value provision, and thus was able to legally reconcile Measure 37’s “as of the date” language with the constitutional imperative that waivers reasonably relate to Measure 37’s compensatory purpose.

To make clear how OIA wanted government officials to use its proposed method of calculating reductions in value to compensate for a loss that occurred decades ago, OIA used a hypothetical:

“If the state had confiscated \$1,000 from Smith’s saving account for the purpose of providing a public benefit, and 32 years later it is decided by popular vote that this was unfair, presumably all would agree that repayment should include an amount to offset lost interest as well as principal. *That is all that is required under Measure 37.*” (p. 43) (emphasis supplied)

By so clearly providing the Oregon Supreme Court this interpretation of Measure 37, OIA’s lawyers enabled the Supreme Court to reverse the trial on this point, which, on February 21, 2006, the Supreme Court did. In short, a brilliant bit of lawyering.

¹⁷ Like the OSU economists, OIA’s attorneys recognized the “correct” measure of compensation is the value of the property without the regulation, less the property’s value as regulated. Like the OSU economists, OIA’s attorneys recognized the practical impossibility of such a determination. OIA thus proposed paying interest, from date of the loss to the date of the claim, as a means of approximating the present value of a claimant’s 32-year-old loss (OIA’s brief, p. 42).

3. Three Governors Recommend Reduction in Value

On June 20, 2006, supported by ALI Executive Director, Henry R. Richmond, former governors Victor Atiyeh and Barbara Roberts, and John D. Gray met with Gov. Ted Kulongoski and his senior staff in the State of Oregon's downtown Portland office. Due to his father's death, former Gov. John Kitzhaber was not able to attend, but communicated concurrence with the views expressed by the other three leaders. Based on Mr. Gray's broad experience in real estate markets in many regions of Oregon, the former governors described the fallacy of approving compensation based on monopoly values. They offered an option: LCDC adopt by rule¹⁸ the proposal which OIA made in its December 5, 2005 brief submitted to the Oregon Supreme Court. At the June 20, 2006 meeting, Gov. Kulongoski expressed interest in the idea. At this time only about 2,000 claims had been filed, and only a few hundred had received Step One approval.

By adopting OIA's proposal, DLCD could have (1) placed Measure 37 on the footing likely intended by the voters,¹⁹ (2) greatly reduced the 7,562 Measure 37 claims subsequently filed, (3) reduced the compensation demanded in the fewer number of claims, and (4) insulated Measure 37 from constitutional attack in a future "as applied" case, i.e., a case involving an amount of compensation unrelated to loss.

Ultimately, the consensus reached by the "4 Friends of Oregon," (as Gov. Atiyeh dubbed the group) and other land use supporters closely involved in framing a response to Measure 37: Measure 37 was approved by the voters, and should only be modified by the voters, not by the Legislature, or an LCDC rule interpreting Measure 37.

Few claims could proceed to final approval between February 21, 2006, when the Oregon Supreme Court upheld Measure 37, to January 2007, when the 2007 legislature would convene, take up a referral bill for the November 2007 ballot, put the Measure 37 process on hold until the referral bill was finalized, and until a vote of the people could say "Yes," or "No" to revisions to Measure 37 proposed by the legislature.

There was time to do this even after the Oregon Supreme Court upheld Measure 37. On February 24, 2005, the Oregon Attorney General issued a letter of advice to LCDC that

¹⁸ Measure 37 is part of ORS Ch. 197, Oregon's basic land use law. ORS 197.010 authorizes LCDC to interpret ORS Ch. 197, including Measure 37, by rule.

¹⁹ A January 23-24, 2007 telephone survey of 500 registered voters conducted by Moore Information, Portland, found that 38% of voters want the Legislature to fix Measure 37 because "Measure 37 wasn't intended to allow big developments projects," and 23% said "The Legislature needs to repeal Measure 37."

Measure 37 waivers were “personal” and not transferable to a third party, and thus must carry out the development him or herself. Given the risk of death pending development, banks would not loan money for development pursuant to an untransferable Measure 37 waiver. The combination of the Attorney General’s opinion and action by the 2007 legislature essentially put Measure 37 on hold until voters could decide Measure 49.

Oregonians thus experienced a high-stakes, bruising, 16-month, political battle -- a six-month debate in the 2007 legislature to develop and refer Measure 49 to the voters, and a risky, costly ballot measure campaign to gain voter approval to scale back Measure 37.

As predicted, the number of claims sky-rocketed to over 7,500, the number and size of subdivisions did the same, and compensation increased to \$17 billion, leaving SB 100 in peril.

After the program's ‘defeats’ at the ballot box in 2000 and 2004, Senate Bill 100's political legitimacy was on the line. The resounding 62 - 38 November 2007 vote in favor of Measure 49 restored SB 100's political legitimacy, and vindicated the strategy that put faith in the legislature and the voters.

3. Reduction in Value Illustrated

A careful look at one Measure 37 claim shows the unreasonableness of providing compensation to Measure 37 claimants based on "monopoly" value instead of on actual reduction in value:

On October 12, 1965, claimant in M119803 acquired title to 54.08 acres of “prime” Class II Washington County farm land with no dwelling. On February 16, 2005, claimant filed a claim saying farm zoning in the mid 1970s reduced the market value of the land. Claimant demanded \$9.5 million in compensation on the theory that if, in 2005, claimant were exempted from farm zoning, but farm zoning was left in place on thousands of acres of farm land owned by claimant’s neighbors, the value of claimant’s 54 acres cut into 97 half-acre lots would increase to \$9.5 million. On August 9, 2005, DLCD approved the \$9.5 million waiver demanded in Claim M119803.

Analysis of land use regulations applicable to claimant’s property, and of relevant market values, indicates that, under OIA’s December 5, 2005 proposal to the Oregon Supreme Court, claimant experienced a \$184,346 reduction in value “as of the date” claimant filed her claim. This would have entitled claimant to a one-lot waiver, not a \$9.5 million, 97-lot waiver.

Before 1973, like other owners of 100,000-plus acres of farm land in Washington County, claimant was free to divide land into 2-acre homesites, the minimum size for a home on a septic tank and well. That meant a supply of about 50,000 homesites existed, plus thousands of sites on close-in forest land. In competition with that supply, claimant could have divided her land into 27 lots. Before new county and state land use regulations were enforced in 1973, farm land was selling for about \$1,279/acre.²⁰

1973 County Regulations. In June 1973, independent of any state requirement, Washington County applied a 38-acre minimum lot size (MLS) to most of the county's good farm land. That MLS prohibited division of claimant's property, as claimant would need 76 acres to divide her property with no parcel smaller than 38 acres. The 38-acre MLS also likely limited the 54 acres to one dwelling. Bearing in mind the county's vast supply of 2-acre rural homesites, how much, if any, did the county's 1973 38-acre MLS reduce the \$1,279/per acre market value of farm land, whether claimant's or others?

Assume that 10% of claimant's \$1,279/acre value related to nonfarm residential use, and that the 38-acre MLS eliminated that \$128/acre value, for claimant and for essentially all other owners of farm land. Claimant's loss on 54 acres would have been \$6,942. Using a 10-year bond rate that incorporates compounding to calculate interest on that \$6,942 loss, from June 1973 to February 2005, brings total compensation to \$83,806.

1994 State Regulations. LCDC's March 1, 1994 \$80,000 gross income test for a farm dwelling may or may not have prevented a farm dwelling on claimant's 54-acre property. Assuming it did, the reduction in value, in 1994, would be equal to one unimproved farm land homesite, which, in 1994, in Washington County, which was about \$55,000.²¹ Interest on that loss from March 1, 1994 to February 16, 2005 brings compensation for the 1994 reduction in value to \$100,540.

Summary. Total compensation due the claimant in M119803 is \$184,346, the sum (with interest) of the 1973 reduction of \$83,803, and the 1994 reduction of \$100,540. If claimant was provided compensation in the form of a waiver, instead of cash, a waiver roughly equal to claimant's \$184,346 reduction in value would have been one homesite²² --

²⁰ Interpolation of a 1969 - 1974 USDA Census of Agriculture average market values of farm land in Washington County (90.3% of 1974 value of \$1,416).

²¹ John Krautscheidt, Farm Property Supervisor, Washington County Appraisers Office, 1963 - 1997, estimated \$50,000 - \$60,000 (Phone conversation, February 14, 2007). If improved with well and septic tank, including permit fee costs, value would be \$15,000 more.

²² According to the Rural Property Record No. R741380, Washington County Assessor's Office, the 2006 market value of an improved, .9 acre homesite in the vicinity of claimant's property was \$165,000. To make up the \$19,346 difference between claimant's loss of \$184,346 and the

not the 97 homesites DLCD approved. If the above assumptions are off by a factor of 2 or 3, claimant's waiver would be 2 or 3 homesites, not 97.

D. Measure 49 (2007)

In June 2007, the legislature enacted Measure 49 -- and referred it to the November 2007 ballot. Measure 49 modified, but did not repeal, Measure 37. Claimants were entitled to go through a modified claim process, documenting purchase date, subsequent changes of title, and reduction in value. Measure 49 cut back the number of non-farm and non-forest partitions and dwellings which Measure 37 would have allowed under the "monopoly value" theory of lost value, which both Oregonians in Action and OSU Professors Plantinga and Jaeger showed to be wrong. Measure 49 allowed claims of 1 - 3 lots without proof of loss, and claims of 4 - 10 lots with proper proof of loss based on appraisals²³. Claims above 10 lots were disallowed. Claims were transferable.

Ballot measure campaigns usually start one year in advance of a November election. Program supporters in June 2007 thus were faced with the seemingly impossible task of raising \$3 million almost immediately, to support a campaign leading to the November 2007 vote. At a mid-June 2007 de facto campaign committee meeting of about 10 people (including Henry R. Richmond) at the World Forestry Center, Oregon Nature Conservancy Executive Director (TNC), Russell Hoeflich, gave a rousing speech: "We need to win 60 - 40, not a 51 - 49 squeaker." On behalf of TNC, Hoeflich stunned the group by issuing a 1 - 1 challenge donation of \$1 million. Eric Lemelson, Dayton, quickly made another stunning statement: a personal commitment of \$1 million to meet Hoeflich's challenge. Thus, in 15 minutes time, Hoeflich and Lemelson raised \$2 million, transferring the committee's mood from gloom to optimism. More important, Hoeflich and Lemelson saved the program. John D. Gray and Edmund Hayes, Jr., each quickly pledged \$100,000, spurring other donors, including Nike co-founder Phil Knight.

Voters approved Measure 49, 62% to 38%; the second strongest statewide vote in support of SB 100 in 37 years. In scaling back Measure 37, presumably many voters came to see that claims like M139803 were not claims for a "loss of value," but often for outlandish windfall, *increases* in value, caused by sudden "monopoly" spot-zoning -- i.e., neighboring owners are still zoned EFU.

\$165,000, the county could have waived development fees, or written a check.

²³ The majority of 4 - 10 lot claims opted to "amend down" to 1 - 3 lots. Testimony of Richard Whitman, Director, Department of Land Conservation and Development, to House Interim Committee on Agriculture and Natural Resources, Oregon Legislature, January 13, 2008.

Under Measure 49, after three years of processing claims, the number of valid claims was reduced from 7,582 to 4,407. On approved claims, 3,878 new parcels were allowed, and 6,131 new dwellings (averaging 1.8 dwellings per claim) -- a significant "fairness" adjustment to the program, given that neither the new houses nor new dwellings otherwise would have been allowed under the pre-Measure 37/Measure 49 land use law.

Table 3

Dwellings and Parcels Approved Under Measure 49 (2007)

County	New Dwellings	Average New Dwellings Per Claim	New Parcels
Baker	112	1.7	54
Benton	90	1.6	53
Clackamas	1,145	1.7	802
Clatsop	51	1.8	33
Columbia	87	1.9	60
Coos	180	1.9	103
Crook	42	2.1	26
Curry	96	2.0	46
Deschutes	135	1.6	96
Douglas	201	1.7	142
Grant	5	1.7	5
Hood River	163	1.4	112
Jackson	434	1.7	298
Jefferson	182	2.2	111
Josephine	132	1.8	98
Klamath	193	2.1	76
Lake	1	1.0	1
Lane	450	2.0	279
Lincoln	109	1.8	49
Linn	327	1.8	214
Malheur	17	1.5	10
Marion	356	1.7	221
Multnomah	79	1.7	36
Polk	305	1.8	184
Tillamook	70	2.0	41
Umatilla	55	2.2	30
Union	27	1.5	19
Wallowa	61	2.2	37
Wasco	44	1.7	21
Washington	593	1.7	383
Yamhill	389	1.7	238
State Total	6,131	1.8	3,878

Oregon Department of Land Conservation and Development, "Ballot Measure 37 (2004) and 49 (2007): Outcomes and Effect," January 2011, p. 11

VI. METHOD

ALI used the two most reliable data sets available to estimate (1) growth in market value of farmland, 2002 - 2012, and (2) the amount of compensation owners of farmland received 2004-2014 in the form of property tax reductions.

A. Market Value Growth

County-level farmland market value data is provided by (1) the USDA's Census of Agriculture (COA), typically collected and published on five-year intervals, and (2) county assessors data, reported to, and annually published by, the Oregon Department of Revenue -- in Oregon Property Tax Statistics (OPTS).

As discussed below, each of these data sets has strengths and limitations; each data set serves as a useful check on gaps or anomalous numbers in the other.

ALI's 2007 conclusions on market value growth report were based solely on COA data, given problems ALI found with county assessor data, 1964 - 2002, especially in early years. Since 2002, as discussed below, county assessor data has improved. This report therefore presents its conclusions on market value growth based on both the COA and county assessor data.

1. Census of Agriculture

The COA has reported county-level, average per acre market value of farm land in each state in 1964, 1969, 1974, 1978, 1982, 1987, 1992, 2002, 2007 and 2012. COA market value per acre data has been queried and reported consistently. By mailed questionnaires, COA surveys roughly 40 percent of Oregon farms regarding the market value of farm land, among other issues. The quality of the reported market values varies, from very good (e.g., farms held in trust, with provisions for annual appraisal) to occasionally poor (e.g., farm land long-held in the same family, owned free and clear, which is neither held for its asset value nor tapped as collateral for loans)²⁴. However, the COA surveys enjoy a high response rate, prompted by follow-up letters, and even phone calls to non-responding farmers.

These factors make the COA the best source to assess long-term trends in market value by county. COA values thus show the rapid growth of values after 1974, the

²⁴ Joe Miller, Statistician, National Agricultural Statistics Service. Telephone conversation, November 16, 2006.

plummet in value between 1982 and 1987, and the gradually increasing rate of recovery in the 1990s. COA data also show differences in growth trends among Oregon counties. These trends were not always reflected in county assessor reported market value in many counties.

Two aspects of COA's survey method affect market value in ways county assessor data do not, but these aspects are likely offsetting. *First*, the COA asks for the value of land and buildings, not just land, and does not provide a way to distinguish between the two. This factor increases value per acre overall, perhaps by 2% - 3%.²⁵

Second, the COA does not distinguish special assessment status of farm land. This tends to underestimate average per acre value. That is, overall COA acreage has exceeded county-assessor-reported specially assessed acreage. COA's more inclusive extent of land surveyed likely includes less desirable, hilly land that cannot be cropped, and is therefore less valuable. Fortunately, this disparity has slowly declined. Between 1974 and 2002, COA acreage fell from 113 percent of ALI acreage to 106.4 percent.

2. County Assessor Data

Assessor data is based on periodic formula-driven adjustments, and periodic on site "windshield inspections," to verify farm use.

ALI reviewed market values which county assessors reported to DOR, 1964 - 2002, and which DOR publishes annually in Oregon Property Tax Statistics (OPTS). ALI found many counties with years of non-reporting, variable methods of reporting county-to-county, and frequent obvious errors in total market value, most of which ALI was able to "correct" through year to year interpolation and comparisons to abutting counties with reasonable numbers. Measure 50 (1997) compounded county assessor reporting of market value. Approved by voters in 1997, Measure 50 led many assessors to believe determining and reporting market value was pointless. Under Measure 50, assessors were required to set and tax value by starting with the 1996 market values, reducing those values by 10%, and then adding value in each future year at a rate not to exceed 3% in any year. Why bother with also figuring out what actual market value might be? These limitations prevented ALI from relying on assessor data as the sole data source for determining market value, 1964 - 2002.

²⁵ For Tax Years 2003-05, Oregon Department of Revenue estimated homesite value to be 2.7 percent of total farm value.

County assessor estimates of market value on individual properties, when done and when done correctly, are to follow standards used by appraisers. However, county assessor estimates of farm land market value typically are not based on appraisals of individual properties, except in the case of disqualification from special assessment.²⁶

B. Compensation by Tax Reduction

ALI's determination of tax reductions 2004 - 2014 is a three-step process which requires establishing two values and then subtracting the first value from the second:

Value 1: what farmland owners actually paid county-by-county. This is determined by multiplying the rural tax rate in each county (estimated by ALI) by the taxable assessed value (TAV) as reported annually by the Oregon Department of Revenue, in Oregon Property Tax Statistics (OPTS);

Value 2: what farmland owners would have paid county-by-county if they had been taxed based on market value (as reported by or estimated from OPTS and additional assessor data instead of TAV.) In the absence of special assessment, tax rates are reduced to the level necessary, in conjunction with the larger tax base, to achieve a given amount of tax revenue, and multiplying the rates by the higher taxable farmland value, i.e., the 1995-96 market value reduced by ten percent for 1997-98 and limited to three percent growth thereafter under Measure 50 (1997).²⁷

Total tax reduction is determined by subtracting value 1 from value 2, and summing the difference in years 2002 to 2014.

²⁶ Telephone conversation with Dr. Greg Perry, November 17, 2006.

²⁷ This summary of ALI's method is set forth completely in the 2007 report, *Oregon's Public Investment in Conservation, Prosperity and Fairness*, Appendix C., pages 1 - 6.

VII. FINDINGS AND CONCLUSIONS

Oregon laws limiting the use of farmland to farm use have been fair for the vast majority of owners of farmland because owners have received substantial compensation, and because the vast majority of owners have enjoyed stronger-than-stock-market growth in the value of their land.

Based on the average of (1) USDA Census of Agriculture (COA) data and 2) county assessor data published by Oregon Department of Revenue (OPTS), Oregon farmland increased 5.52% faster than the S & P 500 for 48 years, 1964 -2012 (**Table 6**), p. 31.

For 40 years, 1974 - 2014, owners of farmland enjoyed \$5.7 billion in compensatory property tax reductions in consideration of limitations imposed by state law on the use of farm land (**Table 18**), p. 43.

A. Farmland Market Value Compared to S & P 500

Comparing farmland market value growth to S & P 500 growth, 1964 - 2012, varies depending on whether the market value data being compared is drawn from USDA Census of Agriculture (COA) data , or from county assessor (OPTS) data. Regardless of which of these two sets of farmland market value is used, Oregon farmland has performed strongly compared to growth in the S & P 500 for nearly half a century, 1964 - 2012.

1. USDA Census of Agriculture (COA)

Oregon farmland increased 1,537%, 1964-2012, or 1.92% slower than the S&P 500, which increased 1,567%.

Table 4

Farmland Market Value Growth v. S & P 500, 1964 -2012
S & P 500 increased 1567% 1964 - 2012
USDA Census of Agriculture (COA)

	Counties	Percent increase 1964 - 2012	Difference v. S & P 500	Mar. Value v. S & P 500
Oregon	36	1,537%	(300)	(1.92)%
Willamette Valley	9	1,877%	310	19.78%
Southern OR	3	2,304%	737	47.03%
OR Coast	6	1,726%	159	10.15%
Central OR	3	1,870%	303	19.34%
Eastern OR	<u>15</u>	1,432%	(135)	(8.62)%
Total	36			

The county-level COA data on which the findings in **Table 4** are based are from **Tables 7 - 12** (pp. 32 - 37).

Farmland market value increased most where most of Oregon’s farm population and farmland market value are located. That is, about 73% of Oregon’s farm population of 64,128²⁸ in 2000, and 64% of the \$10.366 billion in farmland market value in Tax Year 2003-04²⁹ is located in the four regions (Willamette Valley, Oregon Coast, Central Oregon and Southern Oregon) where farmland market values increased faster than the S & P 500, 1964 -2012.

2. Oregon Property Tax Statistics (OPTS)

OPTS data shows Oregon farmland increased 1,770%, 1964-2012, or 12.96% faster than the S & P 500, which increased 1,567%.

Table 5

Farmland Market Value Growth v. S & P 500, 1964 - 2012
S & P 500 increased 1567% 1964 - 2012
Oregon Property Tax Statistics (OPTS)

	Counties	Percent increase 1964 - 2012	Difference v. S & P 500	Mar. Value v. S & P 500
Oregon	36	1,770%	203	12.96%
Willamette Valley	9	2,495%	967	59.22%
Southern Oregon	3	3,965%	2,128	153.03%
Oregon Coast	6	1,243%	(324)	(20.68)%
Central Oregon	3	2,043%	476	30.38%
Eastern Oregon	<u>15</u>	1,254%	(313)	(19.98)%
Total	36			

The county-level OPTS data on which the findings in **Table 5** are found are from **Tables 13 - 18** (p. 38 - 43).

²⁸ 64,128 in 2000. U.S. Census Bureau, 2000 Census of Population and Housing, Summary, File 3, Table p. 5, "Urban and Rural Population."

²⁹ \$10.366 billion in Tax Year 2003-2004. American Land Institute, 2007, *op cit.*, **Table 11**, p. 63. Dollar figure inflation-adjusted to December 31, 2005.

Farmland market value growth in Eastern Oregon lagged the S & P 500 by 8.62% per the COA data, and 19.98% per the OPTS data. However, only 9.4% of the 7,462 Measure 37 claims filed were in the 15 Eastern Oregon counties³⁰, indicating less concern with the land use laws in Eastern Oregon, notwithstanding slower growth in farmland market value.

3. Average of COA and OPTS

Table 6 presents averages of the statewide and regional findings in Table 4 and Table 5, based on COA and OPTS data, respectively.

Table 6

Farmland Market Value Growth v. S & P 500, 1964 - 2012
Average of USDA Census of Agriculture and Oregon Property Tax Statistics

	Counties	COA	OPTS	Average
Oregon		(1.92)%	12.96%	5.52%
Willamette Valley	9	19.78%	59.22%	39.50%
Southern Oregon	3	47.03%	153.03%	100.03%
Oregon Coast	6	10.15%	(20.68)%	(5.27)%
Central Oregon	3	19.34%	30.68%	25.01%
Eastern Oregon	<u>15</u>	(8.62)%	(19.98)%	(14.30)%
	36			

B. Compensation by Property Tax Reduction

ALI's 2007 report found the owners of 15.6 million acres of farmland in Oregon's 36 counties received \$3.8 billion in property tax reductions, 1974 - 2004. When ALI adjusted that \$3.8 billion figure for inflation in 2014, for purposes of the 10-year extension in this report, the 1974 - 2004 inflation-adjusted figure comes to \$4.562 billion (Table 19, p. 44).

Using the method and data sources described above at pp. 26 - 28, the statewide farmland tax reduction, 2004 - 2014, is estimated at \$1.2 billion, which, when added to the \$4.562 billion figure, comes to a 40-year total, 1974 - 2014, of \$5.7 billion. (Table 19 shows detail by county.)

³⁰ "Measure 37: Is it Doing What Oregon Voters Wanted?" American Land Institute, September 17, 2007, Table 5, p. 11.

Table 7

**Oregon Farmland Market Value Growth v. S & P 500 Index, 1964 - 2012
(Census of Agriculture)**

COUNTIES	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase 1964-2012	1964-2012 Growth vs. S&P 500
Baker	63	74	150	279	394	285	381	504	546	1,161	1,014	1510%	--
Benton	220	409	665	1,400	2,226	1,509	1,829	2,527	3,854	5,343	5,932	2596%	Greater
Clackamas	539	852	1,451	2,815	3,766	3,754	5,302	7,447	9,600	13,727	13,486	2402%	Greater
Clatsop	399	437	673	1,134	2,226	1,641	2,307	3,112	2,776	6,096	5,548	1290%	--
Columbia	347	498	706	1,359	2,193	1,527	1,769	4,004	3,813	6,486	5,493	1483%	--
Coos	154	226	422	894	1,068	897	1,237	1,450	3,364	3,749	3,225	1994%	Greater
Crook	39	55	81	140	382	251	246	359	531	955	909	2231%	Greater
Curry	125	180	325	761	879	794	1,380	2,017	1,949	3,508	3,408	2626%	Greater
Deschutes	128	267	461	885	1,108	1,213	1,670	2,715	5,172	6,885	7,015	5380%	Greater
Douglas	141	191	358	743	992	911	1,153	1,814	2,060	3,400	3,084	2087%	Greater
Gilliam	51	62	117	169	325	155	173	265	305	443	498	876%	--
Grant	29	43	92	176	319	216	216	339	306	667	805	2676%	Greater
Harney	35	40	93	141	311	191	253	294	289	523	548	1466%	--
Hood River	1,072	1,229	1,937	4,411	5,627	4,763	6,830	6,681	9,364	17,690	19,000	1672%	Greater
Jackson	151	224	334	871	1,236	1,260	1,809	1,784	2,824	5,843	4,682	3001%	Greater
Jefferson	77	102	190	259	414	274	341	384	561	810	641	732%	--
Josephine	437	534	821	2,132	4,119	3,625	4,141	4,177	4,153	8,847	10,052	2200%	Greater
Klamath	102	169	236	481	816	640	676	872	1,012	1,580	1,475	1346%	--
Lake	46	58	125	233	387	301	299	529	487	929	1,017	2111%	Greater
Lane	362	550	774	1,677	2,215	1,444	2,051	3,428	4,572	7,432	6,824	1785%	Greater
Lincoln	222	315	631	1,194	1,639	1,451	1,842	3,285	2,607	5,248	4,795	2060%	Greater
Linn	251	387	672	1,254	1,789	1,280	1,748	2,552	2,849	4,347	4,840	1828%	Greater
Malheur	80	98	165	278	466	381	460	587	537	1,099	1,174	1368%	--
Marion	461	630	1,076	2,154	2,881	2,148	3,099	4,248	5,107	6,908	7,942	1623%	Greater
Morrow	60	67	169	286	302	257	337	338	365	739	951	1485%	--
Multnomah	896	892	1,775	3,181	5,787	3,840	4,227	7,030	10,876	12,654	11,928	1231%	--
Polk	307	384	687	1,436	2,087	1,525	1,903	3,214	4,948	5,473	6,141	1900%	Greater
Sherman	79	97	148	215	316	257	283	326	368	628	596	654%	--
Tillamook	408	555	901	1,965	2,954	2,448	2,990	4,082	5,259	6,236	6,259	1434%	--
Umatilla	113	142	230	442	584	447	483	759	765	1,157	1,633	1345%	--
Union	108	140	254	456	767	466	501	823	1,044	1,505	1,548	1333%	--
Wallowa	62	79	146	273	418	301	350	537	614	1,150	1,263	1937%	Greater
Wasco	43	65	119	196	346	297	355	353	394	740	753	1651%	Greater
Washington	593	851	1,416	2,618	3,801	2,861	4,606	6,045	7,294	10,185	9,371	1480%	--
Wheeler	22	31	43	97	177	125	185	298	274	464	648	2845%	Greater
Yamhill	367	446	925	1,778	2,717	2,100	2,749	4,459	6,885	8,855	9,162	2396%	Greater
Oregon	\$115	\$150	\$250	\$504	\$705	\$542	\$663	\$960	\$1,202	\$1,890	\$1,882	1537%	--
S & P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	
CPI	31	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.342	229.478	640%	
Oregon grew 1.92% slower than the S & P 500: 1,537% (OR growth) - 1,567% (S & P 500 growth) = 30 ÷ 1,567 = (1.92%)													

Table 8

**Farmland Market Value Growth v. S & P 500 Index
1964 - 2012 (Census of Agriculture)**

REGIONS SUMMARY	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Willamette Valley	391	563	945	1,864	2,635	1,977	2,743	4,073	5,441	7,444	7,724	1877%	Greater
Eastern Oregon	66	83	150	272	425	314	366	495	519	924	1,012	1432%	--
Central Oregon	63	91	141	252	467	355	405	530	904	1,370	1,237	1870%	Greater
Oregon Coast	228	313	527	1,094	1,532	1,230	1,631	2,455	3,271	4,648	4,158	1726%	Greater
Southern Oregon	164	221	365	858	1,247	1,174	1,535	1,923	2,446	4,581	3,947	2304%	Greater
Oregon	115	150	250	504	705	542	663	960	1,202	1,890	1,882	1537%	--
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	
CPI	31	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.342	229.478	640%	

Willamette Valley: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, Yamhill

Eastern Oregon: Baker, Gilliam, Grant, Harney, Hood River, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler

Central Oregon: Crook, Deschutes, Jefferson

Oregon Coast: Clatsop, Columbia, Coos, Curry, Lincoln, Tillamook

Southern Oregon: Douglas, Jackson, Josephine

Table 9

**Farmland Market Value Growth, Willamette Valley v. S & P 500 Index
1964 - 2012 (Census of Agriculture)**

WILLAMETTE VALLEY	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent 1964-2012 Increase Growth vs. 1964-2012 S&P 500	
Benton	220	409	665	1,400	2,226	1,509	1,829	2,527	3,854	5,343	5,932	2596%	Greater
Clackamas	539	852	1,451	2,815	3,766	3,754	5,302	7,447	9,600	13,727	13,486	2402%	Greater
Lane	362	550	774	1,677	2,215	1,444	2,051	3,428	4,572	7,432	6,824	1785%	Greater
Linn	251	387	672	1,254	1,789	1,280	1,748	2,552	2,849	4,347	4,840	1828%	Greater
Marion	461	630	1,076	2,154	2,881	2,148	3,099	4,248	5,107	6,908	7,942	1623%	Greater
Multnomah	896	892	1,775	3,181	5,787	3,840	4,227	7,030	10,876	12,654	11,928	1231%	--
Polk	307	384	687	1,436	2,087	1,525	1,903	3,214	4,948	5,473	6,141	1900%	Greater
Washington	593	851	1,416	2,618	3,801	2,861	4,606	6,045	7,294	10,185	9,371	1480%	--
Yamhill	367	446	925	1,778	2,717	2,100	2,749	4,459	6,885	8,855	9,162	2396%	Greater
Willamette Valley	391	563	945	1,864	2,635	1,977	2,743	4,073	5,441	7,444	7,724	1877%	Greater
Oregon, net of Willamette Valley	78	100	173	321	497	384	454	611	716	1,235	1,241	1489%	--
Oregon	115	150	250	504	705	542	663	960	1,202	1,890	1,882	1537%	--
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	

Sources: Census of Agriculture, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data.

Note: 'Willamette Valley' and 'Oregon, net of Willamette Valley' regional values were derived from county values per acre weighted by acreage.

+1877% (WV growth) - 1567% (S&P 500 growth) = 310 ÷ 1567 (S&P) = 19.78% faster than S & P 500.

Table 10

**Farmland Market Value Growth v. S & P 500 Index Growth, 1964-2012 (Census of Agriculture)
Oregon Coast, Southern Oregon**

OREGON COAST	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Clatsop	\$399	\$437	\$673	\$1,134	\$2,226	\$1,641	\$2,307	\$3,112	\$2,776	\$6,096	\$5,548	1290%	--
Columbia	\$347	\$498	\$706	\$1,359	\$2,193	\$1,527	\$1,769	\$4,004	\$3,813	\$6,486	\$5,493	1483%	--
Coos	\$154	\$226	\$422	\$894	\$1,068	\$897	\$1,237	\$1,450	\$3,364	\$3,749	\$3,225	1994%	Greater
Curry	\$125	\$180	\$325	\$761	\$879	\$794	\$1,380	\$2,017	\$1,949	\$3,408	\$3,408	2626%	Greater
Lincoln	\$222	\$315	\$1,194	\$1,194	\$1,639	\$1,451	\$3,285	\$3,285	\$2,607	\$5,248	\$4,795	2060%	Greater
Tillamook	\$408	\$555	\$901	\$1,965	\$2,954	\$2,990	\$2,990	\$4,082	\$5,259	\$6,236	\$6,259	1434%	--
Oregon Coast	\$228	\$313	\$527	\$1,094	\$1,230	\$1,230	\$1,631	\$2,455	\$3,271	\$4,648	\$4,158	1726%	Greater
Outside Oregon Coast	\$111	\$146	\$243	\$461	\$697	\$654	\$654	\$924	\$1,179	\$1,827	\$1,830	1542%	--
Oregon	\$115	\$150	\$250	\$504	\$705	\$542	\$663	\$960	\$1,202	\$1,890	\$1,882	1537%	--
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	
SOUTHERN OREGON	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Douglas	\$141	\$191	\$358	\$743	\$992	\$911	\$1,153	\$1,814	\$2,060	\$3,400	\$3,084	2087%	Greater
Jackson	\$151	\$224	\$871	\$871	\$1,236	\$1,260	\$1,809	\$1,784	\$2,824	\$5,843	\$4,682	3001%	Greater
Josephine	\$437	\$534	\$821	\$2,132	\$4,119	\$3,625	\$4,141	\$4,177	\$4,153	\$8,847	\$10,052	2200%	Greater
Southern Oregon	\$141	\$221	\$365	\$858	\$1,247	\$1,174	\$1,535	\$1,923	\$2,446	\$4,581	\$3,947	2304%	Greater
Outside S. Oregon	\$112	\$146	\$457	\$457	\$693	\$517	\$642	\$921	\$1,174	\$1,774	\$1,799	1509%	--
Oregon	\$115	\$150	\$250	\$504	\$705	\$542	\$663	\$960	\$1,202	\$1,890	\$1,882	1537%	--
S&P 500	\$82	\$98	\$86	\$96	\$110	\$304	\$408	\$885	\$990	\$1,503	\$1,362	1567%	

Sources: Census of Agriculture, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data.

Note: 'Southern Oregon' and 'Outside S. Oregon' regional values were derived from county values per acre weighted by acreage.

Table 11

Farmland Market Value Growth v. S & P 500 Index Growth, 1964-2012 (Census of Agriculture)
Eastern Oregon

EASTERN OREGON	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Baker	\$63	\$74	\$150	\$279	\$394	\$285	\$381	\$504	\$546	\$1,161	\$1,014	1510%	--
Gilliam	\$51	\$62	\$117	\$169	\$325	\$155	\$173	\$265	\$305	\$443	\$498	876%	--
Grant	\$29	\$43	\$92	\$176	\$319	\$216	\$216	\$339	\$306	\$667	\$805	2676%	Greater
Harney	\$35	\$40	\$93	\$141	\$311	\$191	\$253	\$294	\$289	\$523	\$548	1466%	--
Hood River	\$1,072	\$1,229	\$1,937	\$4,411	\$5,627	\$4,763	\$6,830	\$9,364	\$9,364	\$17,690	\$19,000	1672%	Greater
Klamath	\$46	\$169	\$236	\$481	\$816	\$640	\$640	\$872	\$1,012	\$1,580	\$1,475	1346%	--
Lake	\$46	\$58	\$125	\$233	\$387	\$299	\$299	\$529	\$487	\$929	\$1,017	2111%	Greater
Malheur	\$80	\$98	\$165	\$165	\$466	\$381	\$460	\$587	\$537	\$537	\$1,174	1368%	--
Morrow	\$60	\$67	\$286	\$286	\$302	\$257	\$337	\$338	\$365	\$739	\$951	1485%	--
Sherman	\$79	\$97	\$148	\$215	\$316	\$257	\$283	\$326	\$368	\$628	\$596	654%	--
Umatilla	\$113	\$142	\$230	\$442	\$584	\$447	\$483	\$759	\$765	\$1,157	\$1,633	1345%	--
Union	\$108	\$140	\$254	\$456	\$767	\$466	\$501	\$823	\$1,044	\$1,505	\$1,548	1333%	--
Wallowa	\$62	\$79	\$146	\$273	\$418	\$301	\$350	\$537	\$614	\$1,150	\$1,263	1937%	Greater
Wasco	\$43	\$65	\$119	\$196	\$346	\$297	\$355	\$353	\$394	\$740	\$753	1651%	Greater
Wheeler	\$22	\$31	\$43	\$97	\$177	\$125	\$185	\$298	\$274	\$464	\$648	2845%	Greater
Eastern Oregon	\$66	\$83	\$150	\$272	\$425	\$314	\$366	\$495	\$519	\$924	\$1,012	1432%	--
Outside E. Oregon	\$232	\$320	\$523	\$1,057	\$1,568	\$1,225	\$1,612	\$2,234	\$3,104	\$4,545	\$4,259	1732%	Greater
Oregon	\$115	\$150	\$250	\$504	\$705	\$542	\$663	\$960	\$1,202	\$1,890	\$1,882	1537%	--
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	
CPI	31.00	36.70	49.30	65.20	96.50	113.60	140.30	160.50	179.90	207.34	229.34	640%	

Census of Agriculture, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data.

Note: 'Eastern Oregon' and 'Outside E. Oregon' regional values were derived from county values per acre weighted by acreage.

1567% (S&P 500) - 1432% (EO growth) = 135 ÷ 1567 (S&P 500) = 8.62% less than S & P 500

Table 12

**Farmland Market Value Growth v. S & P 500 Index Growth, 1964-2012 (Census of Agriculture)
Central Oregon**

CENTRAL OREGON	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Crook	\$39	\$55	\$81	\$140	\$382	\$251	\$246	\$359	\$531	\$955	\$909	2231%	Greater
Deschutes	\$128	\$267	\$461	\$885	\$1,108	\$1,670	\$1,670	\$2,715	\$5,172	\$6,885	\$7,015	5380%	Greater
Jefferson	\$77	\$102	\$190	\$259	\$414	\$274	\$341	\$384	\$561	\$810	\$641	732%	--
Central Oregon	\$63	\$91	\$141	\$252	\$467	\$355	\$405	\$530	\$904	\$1,370	\$1,237	1870%	Greater
Outside C. Oregon	\$120	\$156	\$260	\$498	\$740	\$563	\$703	\$1,010	\$1,261	\$1,947	\$1,960	1536%	--
Oregon	\$115	\$150	\$250	\$504	\$705	\$542	\$663	\$960	\$1,202	\$1,890	\$1,882	1537%	--
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	
CPI	31.00	36.70	49.30	65.20	96.50	113.60	140.30	160.50	179.90	207.34	229.34	640%	

Census of Agriculture, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data.

Note: 'Central Oregon' and 'Outside C. Oregon' regional values were derived from county values per acre weighted by acreage.

OR Coast, 1726% (OR Coast growth) - 1567% (S&P 500 growth) = 159 ÷ 1567 = 10.15% more than S & P 500 (Table 7)

Southern Oregon, 2304% (S. OR growth) - 1567% (S&P 500 growth) = 737 ÷ 1567 = 47.03% more than S & P 500 (Table 7)

Table 13

Oregon Per Acre Farmland Market Value Growth v. S & P 500 Index, 1964 - 2012 (OPTS)

OREGON COUNTIES AND STATEWIDE	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Baker	35	40	84	133	235	125	306	254	383	505	727	1960%	Greater
Benton	123	202	372	1,115	1,584	1,217	1,818	1,495	4,377	5,514	4,898	3880%	Greater
Clackamas	291	420	783	1,970	2,392	2,665	3,484	7,471	10,150	17,840	12,963	4357%	Greater
Clatsop	283	304	477	1,115	2,037	1,714	2,328	3,123	4,501	6,521	6,269	2117%	Greater
Columbia	191	255	389	798	1,289	1,205	1,555	1,674	2,746	5,816	4,435	2219%	Greater
Coos	66	90	182	399	447	598	1,065	1,160	2,691	2,999	2,580	3784%	Greater
Crook	13	18	28	29	87	95	109	167	271	487	464	3341%	-
Curry	268	359	698	1,500	1,101	897	1,452	2,272	2,787	5,016	4,873	1715%	-
Deschutes	71	127	254	490	435	501	717	1,724	3,620	5,592	2,538	3498%	Greater
Douglas	41	52	103	138	206	171	258	1,336	1,451	2,688	2,307	5588%	Greater
Gilliam	48	56	110	146	215	128	147	173	181	180	217	353%	--
Grant	24	32	75	91	160	85	208	173	259	573	672	2743%	Greater
Harney	35	39	94	179	206	112	127	148	209	171	478	1250%	--
Hood River	527	588	952	2,225	3,138	2,610	3,488	4,910	8,963	8,961	16,772	3083%	Greater
Jackson	90	123	198	506	733	728	1,012	1,664	2,836	7,409	3,546	3861%	Greater
Jefferson	107	134	264	164	267	200	201	299	658	759	986	821%	--
Josephine	319	374	599	1,556	2,526	2,648	2,987	3,160	3,740	5,241	3,852	1108%	--
Klamath	93	139	215	438	650	452	514	574	909	1,156	1,014	991%	--
Lake	46	56	126	235	343	238	270	289	427	624	687	1381%	--
Lane	255	357	546	1,174	1,446	1,037	1,666	1,387	3,863	7,630	5,675	2122%	Greater
Lincoln	770	1,018	2,188	2,188	2,310	2,424	3,170	3,538	3,783	5,356	4,096	432%	--
Linn	140	198	375	886	1,111	802	1,258	1,362	1,237	3,712	3,252	2222%	Greater
Malheur	74	87	153	281	411	241	226	325	408	586	805	985%	--
Marion	335	430	782	1,663	2,286	1,680	2,427	5,066	6,574	10,330	8,396	2406%	Greater
Morrow	47	51	132	224	273	239	253	254	286	503	666	1322%	--
Multnomah	600	598	1,189	2,499	3,093	3,657	4,850	7,480	9,931	8,854	15,140	2423%	Greater
Polk	189	226	422	1,073	1,105	1,051	1,351	2,356	3,199	5,943	5,267	2693%	Greater
Sherman	54	64	102	149	199	179	249	247	306	289	290	433%	--
Tillamook	286	365	631	1,375	1,867	1,714	2,093	2,776	3,681	2,203	3,423	1098%	--
Umatilla	83	99	168	267	368	313	338	522	473	579	634	668%	--
Union	59	73	139	221	391	207	248	479	514	1,017	1,183	1902%	Greater
Wallowa	15	18	35	165	292	154	380	303	429	472	918	6078%	Greater
Wasco	29	40	79	140	177	152	249	282	355	667	678	23	-
Washington	580	774	1,384	3,029	3,651	4,649	6,217	7,490	9,712	13,442	10,723	1750%	Greater
Wheeler	14	19	28	72	111	116	99	130	328	491	600	4090%	Greater
Yamhill	254	296	639	1,472	2,086	1,511	2,788	3,307	5,068	9,413	7,432	2831%	Greater
Oregon	75	96	179	342	470	377	509	707	987	1,516	1,411	1770%	Greater
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.3	229.6	641%	
S&P 500	81.7	97.7	86.0	95.5	109.6	304.0	408.1	885.1	989.8	1,503.4	1,362.2	1567%	

Sources: Oregon Department of Revenue, USDA Census of Agriculture, US Department of Labor, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data, ALI.

Note: Oregon grew 12.96% faster than the S&P 500: $1,770\%$ (Oregon growth) - $1,567$ (S & P 500) = 203 , and $203 \div 1,567 = 12.96\%$.

Table 14

Farmland Market Value Growth v. S & P 500 Index, 1964 - 2012 (OPTS)

Regions Summary

REGIONS SUMMARY	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964-2012	1964-2012 Growth vs. S&P 500
Willamette Valley	264	350	642	1,482	1,860	1,660	2,372	3,524	5,000	8,366	6,864	2495%	Greater
Eastern Oregon	48	59	115	207	296	202	258	300	392	501	658	1254%	--
Central Oregon	41	57	108	126	187	178	212	398	806	899	621	2043%	--
Oregon Coast	216	280	509	959	1,139	1,095	1,760	2,017	3,064	2,248	2,178	1243%	--
Southern Oregon	71	92	159	337	501	484	631	1,536	2,102	4,698	2,869	3965%	Greater
Oregon	75	96	179	342	470	377	509	707	987	1,431	1,331	1770%	--
CPI	31	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.342	229.478	641%	
S&P 500	81.69	97.71	86.00	95.53	109.61	304.00	408.14	885.14	989.82	1,503.35	1,362.16	1567%	-

Sources: Oregon Department of Revenue, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data.

Note: Regional values were derived from county values per acre weighted by acreage.

Willamette Valley: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, Yamhill

Eastern Oregon: Baker, Gilliam, Grant, Harney, Hood River, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler

Central Oregon: Crook, Deschutes, Jefferson

Oregon Coast: Clatsop, Columbia, Coos, Curry, Lincoln, Tillamook

Southern Oregon: Douglas, Jackson, Josephine

Farmland Market Growth v. S & P 500 Index, 1964 - 2012 (OPTS)

Willamette Valley

WILLAMETTE VALLEY	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964 - 2012	1964 - 2012 Growth vs. S&P 500
Benton	123	202	372	1,115	1,584	1,217	1,818	1,495	4,377	5,514	4,898	3880%	Greater
Clackamas	291	420	783	1,970	2,392	2,665	3,484	7,471	10,150	17,840	12,963	4357%	Greater
Lane	255	357	546	1,174	1,446	1,037	1,666	1,387	3,863	7,630	5,675	2122%	Greater
Linn	140	198	375	886	1,111	802	1,258	1,362	1,237	3,712	3,252	2222%	Greater
Marion	335	430	782	1,663	2,286	1,680	2,427	5,066	6,574	10,330	8,396	2406%	Greater
Multnomah	600	598	1,189	2,499	3,093	3,657	4,850	7,480	9,931	8,854	15,140	2423%	Greater
Polk	189	226	422	1,073	1,105	1,051	1,351	2,356	3,199	5,943	5,267	2693%	Greater
Washington	580	774	1,384	3,029	3,651	4,649	6,217	7,490	9,712	13,442	10,723	1750%	Greater
Yamhill	254	296	639	1,472	2,086	1,511	2,788	3,307	5,068	9,413	7,432	2831%	Greater
Willamette Valley	264	350	642	1,482	1,860	1,660	2,372	3,524	5,000	8,366	6,864	2495%	Greater
Oregon	75	96	179	342	470	377	509	707	987	1,516	1,411	1770%	Greater
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.3	229.6	641%	
S&P500	81.7	97.7	86.0	95.5	109.6	304.0	408.1	885.1	989.8	1,503.4	1,362.2	1567%	

Sources: Oregon Department of Revenue, USDA Census of Agriculture, US Department of Labor, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data, ALI.

Notes: Willamette Valley regional values were derived from county values per acre weighted by acreage. Willamette Valley grew 59.22% faster than S & P 500: $2,495\% \text{ (WV growth)} - 1,567 \text{ (S \& P 500)} = 928$, $928 \div 1,567 = 59.22\%$.

Farmland Market Value Growth v. S & P 500 Index Growth, 1964-2012 (OPTS)

Oregon Coast, Southern Oregon

	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964 - 2012	1964 - 2012 Growth vs. S&P 500
OREGON													
COAST													
Clatsop	\$283	\$304	\$477	\$1,115	\$2,037	\$1,714	\$2,328	\$3,123	\$4,501	\$6,521	\$6,269	2117%	Greater
Columbia	191	255	389	798	1,289	1,205	1,555	1,674	2,746	5,816	4,435	2219%	Greater
Coos	66	90	182	399	447	598	1,065	1,160	2,691	2,999	2,580	3784%	Greater
Curry	268	359	698	1,500	1,101	897	1,452	2,272	2,787	5,016	4,873	1715%	Greater
Lincoln	770	1,018	2,188	2,188	2,310	2,424	3,170	3,538	3,783	5,356	4,096	432%	--
Tillamook	286	365	631	1,375	1,867	1,714	2,093	2,776	3,681	2,203	3,423	1098%	--
Oregon Coast	216	280	509	959	1,139	1,095	1,760	2,017	3,064	4,161	2,900	1243%	--
SOUTHERN OREGON													
Douglas	\$41	\$52	\$103	\$138	\$206	\$171	\$258	\$1,336	\$1,451	\$2,688	\$2,307	5588%	Greater
Jackson	90	123	198	506	733	728	1,012	1,664	2,836	7,409	3,546	3861%	Greater
Josephine	319	374	599	1,556	2,526	2,648	2,987	3,160	3,740	5,241	3,852	1108%	--
Southern Oregon	71	92	159	337	501	484	631	1,536	2,102	4,698	2,869	3965%	Greater
Oregon	\$75	\$96	\$179	\$342	\$470	\$377	\$509	\$707	\$987	\$1,516	\$1,411	1770%	Greater
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.3	229.6	641%	
S&P 500	81.7	97.7	86.0	95.5	109.6	304.0	408.1	885.1	989.8	1,503.4	1,362.2	1567%	

Sources: Oregon Department of Revenue, USDA Census of Agriculture, US Department of Labor, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data, ALI.

Notes: Oregon Coast and Southern Oregon regional values were derived from county values per acre weighted by acreage.

Oregon Coast grew 20.68% slower than the S&P 500. $1,243\% \text{ (OR Coast growth)} - 1,567 \text{ (S \& P 500)} = (324)$, and $(324) \div 1,567 = (20.68\%)$.

Southern Oregon grew 153.03% faster than the S & P 500. $3,965\% \text{ (So. OR growth)} - 1,567 \text{ (S \& P 500)} = 2,398$, and $2,398 \div 1,567 = 153.03\%$.

Farmland Market Value Growth v. S & P 500 Index, 1964 - 2012 (OPTS)

Eastern Oregon

	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964 - 2012	1964 - 2012 Growth vs. S&P 500
EASTERN OREGON													
Baker	\$35	\$40	\$84	\$133	\$235	\$125	\$306	\$254	\$383	\$505	\$727	1960%	Greater
Gilliam	48	56	110	146	215	128	147	173	181	180	217	353%	--
Grant	24	32	75	91	160	85	208	173	259	573	672	2743%	Greater
Harney	35	39	94	179	206	112	127	148	209	171	478	1250%	--
Hood River	527	588	952	2,225	3,138	2,610	3,488	4,910	8,963	8,961	16,772	3083%	Greater
Klamath	93	139	215	438	650	452	514	574	909	1,156	1,014	991%	--
Lake	46	56	126	235	343	238	270	289	427	624	687	1381%	--
Malheur	74	87	153	281	411	241	226	325	408	586	805	985%	--
Morrow	47	51	132	224	273	239	253	254	286	503	666	1322%	--
Sherman	54	64	102	149	199	179	249	247	306	289	290	433%	--
Umatilla	83	99	168	267	368	313	338	522	473	579	634	668%	--
Union	59	73	139	221	391	207	248	479	514	1,017	1,183	1902%	Greater
Wallowa	15	18	35	165	292	154	380	303	429	472	918	6078%	Greater
Wasco	29	40	79	140	177	152	249	282	355	667	678	2277%	Greater
Wheeler	14	19	28	72	111	116	99	130	328	491	600	4090%	Greater
Eastern Oregon	52	59	115	207	296	202	258	300	392	581	703	1254%	--
Oregon	75	96	179	342	470	377	509	707	987	1,516	1,411	1770%	Greater
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.3	229.6	641%	
S&P500	81.7	97.7	86.0	95.5	109.6	304.0	408.1	885.1	989.8	1,503.4	1,362.2	1567%	

Sources: Oregon Department of Revenue, USDA Census of Agriculture, US Department of Labor, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data, ALI.

Notes: Eastern Oregon regional values were derived from county values per acre weighted by acreage. Eastern Oregon grew 19.98% slower than the S&P 500. $1,254\% \text{ (Eastern Oregon growth)} - 1,567 \text{ (S \& P 500)} = (313)$, and $(313 \div 1,567 = 19.98\%)$.

Table 18

**Farmland Market Value Growth v. S & P 500 Index, 1964 - 2012 (OPTS)
Central Oregon**

CENTRAL OREGON	1964	1969	1974	1978	1982	1987	1992	1997	2002	2007	2012	Percent Increase, 1964 - 2012 Growth	1964 - 2012 Growth vs. S&P 500
Crook	\$13	\$18	\$28	\$29	\$87	\$95	\$109	\$167	\$271	\$487	\$464	3341%	Greater
Deschutes	71	127	254	490	435	501	717	1,724	3,620	5,592	2,538	3498%	Greater
Jefferson	107	134	264	164	267	200	201	299	658	759	986	821%	--
Central Oregon	41	57	108	126	187	178	212	398	806	899	880	2043%	Greater
Oregon	75	96	179	342	470	377	509	707	987	1516	1411	1770%	Greater
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	207.3	229.6	641%	
S&P500	81.7	97.7	86.0	95.5	109.6	304.0	408.1	885.1	989.8	1,503.4	1,362.2	1567%	

Sources: Oregon Department of Revenue, USDA Census of Agriculture, US Department of Labor, Bureau of Labor Statistics Consumer Price Index Detail Table 24, Yahoo Finance S&P 500 Historical Data, ALI.

Notes: Central Oregon regional values were derived from county values per acre weighted by acreage.

Central Oregon grew 30.30% faster than the S&P 500. $2,043\% \text{ (Central Oregon growth)} - 1,567 \text{ (S \& P 500)} = 476$, and $476 \div 1,567 = 30.30\%$.

Table 19

1974 - 2014 Farmland Tax Expenditure Estimates (000's)

County	1974/1975 - 2003/04	2004/2005 - 2013/2014	1974/75 - 2013/14	1974-1975 - 2003/2005 Published TE
Baker	\$105,071	\$24,358	\$129,429	\$88,086
Benton	\$107,037	\$27,657	\$134,694	\$89,735
Clackamas	\$473,891	\$143,941	\$617,832	\$397,287
Clatsop	\$25,810	\$5,949	\$31,760	\$21,638
Columbia	\$33,048	\$7,999	\$41,047	\$27,706
Coos	\$26,456	\$5,337	\$31,793	\$22,179
Crook	\$40,006	\$17,486	\$57,492	\$33,539
Curry	\$37,063	\$7,537	\$44,601	\$31,072
Deschutes	\$70,747	\$23,930	\$94,677	\$59,311
Douglas	\$51,257	\$25,305	\$76,562	\$42,972
Gilliam	\$31,379	\$8,375	\$39,755	\$26,307
Grant	\$54,294	\$18,215	\$72,509	\$45,517
Harney	\$93,269	\$12,984	\$106,252	\$78,192
Hood River	\$42,500	\$20,375	\$62,875	\$35,630
Jackson	\$134,144	\$37,834	\$171,978	\$112,460
Jefferson	\$73,613	\$18,260	\$91,872	\$61,713
Josephine	\$37,919	\$6,629	\$44,548	\$31,790
Klamath	\$183,880	\$20,518	\$204,398	\$154,156
Lake	\$66,644	\$22,538	\$89,181	\$55,871
Lane	\$183,026	\$19,702	\$202,729	\$153,441
Lincoln	\$28,556	\$7,807	\$36,362	\$23,940
Linn	\$266,843	\$74,524	\$341,367	\$223,708
Malheur	\$164,682	\$36,441	\$201,123	\$138,062
Marion	\$523,709	\$133,067	\$656,775	\$439,052
Morrow	\$136,556	\$38,099	\$174,655	\$114,482
Multnomah	\$82,718	\$20,456	\$103,174	\$69,347
Polk	\$160,782	\$42,807	\$203,589	\$134,792
Sherman	\$26,170	\$10,651	\$36,821	\$21,940
Tillamook	\$32,434	\$1,221	\$33,655	\$27,191
Umatilla	\$289,456	\$93,107	\$382,563	\$242,666
Union	\$99,426	\$23,389	\$122,815	\$83,354
Wallowa	\$72,073	\$23,494	\$95,567	\$60,423
Wasco	\$102,960	\$21,106	\$124,067	\$86,317
Washington	\$500,650	\$135,484	\$636,133	\$419,721
Wheeler	\$15,854	\$6,133	\$21,987	\$13,291
Yamhill	\$188,969	\$42,942	\$231,911	\$158,422
Total	\$4,562,892	\$1,185,657	\$5,748,548	\$3,825,310

VIII. APPENDICES

A. About the Authors

- A-1 Henry R. Richmond
- A-2 Timothy G. Houchen

B. Eulogies and Remarks of Henry R. Richmond

- B-1. Eulogy, Clifford R. Kenagy, Albany, Oregon, April 19, 2011
- B-2. Eulogy, David R. Lett, McMinnville, Oregon, December 7, 2011
- B-3. Presentation, 1000 Friends of Oregon's Tom McCall Legacy Award, to Peter G. McDonald, Portland, Oregon, March 1, 2013

Appendix A

About the Authors

A-1: Henry R. Richmond

A-2: Timothy G. Houchen

Henry R. Richmond

Education:

BA, History, University of California, Berkeley, 1967
JD, School of Law, University of Oregon, 1971

Employment:

Law Clerk to U. S. District Court Judge Gus J. Solomon, Portland, Oregon, 1971-72

Incorporator (1970) and Staff Attorney (1972 - 1975), Oregon Student Public Interest Research Group (OSPIRG), (OSPIRG studies and publicizes consumer and environmental issues).

Founder, with Oregon Governor Tom McCall, and Executive Director, 1000 Friends of Oregon, March 1975 to November 1993.

Founder, National Growth Management Leadership Project (state-level organizations from 25 states concerned with land use policy reform), 1988; Chairman, 1988-1996.

Founder, American Land Institute, 1996 to 2015.

Professional Activities:

Argued first case under Oregon's land use law in the Oregon Supreme Court, Petersen v. City of Klamath Falls (1977), winning a reversal of two lower court rulings and establishing the principle that local land use decisions must conform to state land use laws.

Co-editor, Oregon State Bar's 27-chapter text, "Land Use," first edition (1976) and second edition (1982).

Member, Board of Directors, Congress for the New Urbanism, San Francisco, California 1994-1999.

Member, National Advisory Board, Trust for Public Land, San Francisco, California, 1996-2000.

Honors:

Rockefeller Public Service Award, December 1980, Washington, D.C.

Honor Award, Oregon Division, Izaak Walton League of America, 1984

Distinguished Service Award, University of Oregon, 1985

Richard L. Neuberger Award, Oregon Environmental Council, 1993

Lifetime Achievement Award, Partners for Livable Communities, Washington, D.C., 2014

Timothy G. Houchen

Education:

Master of Public Affairs, Urban and Regional Planning, Princeton University, Princeton, New Jersey, 1988.

Juris Doctor, University of Washington, Seattle, Washington. Concentration in land use and related courses, 1986.

Bachelor of Arts, Economics and Mathematics, University of Oregon, Eugene, Oregon, 1981. Concentration in statistical theory, urban economics, and policy applications of economic analysis,

Employment:

Economist/Research and Land Use Policy Analyst, American Land Institute, June 1997 - 2014. Researched land use planning and economic development issues including: Tax policy and regulation on farm and forest lands; housing prices and land use regulation; and urban metropolitan infrastructure. Produced economic and policy analysis for proposed national land use research organization, as well as detailed financial plan and budgets.

Policy and Planning Consultant, Self-employed, June 1996 - June 1997. Projects included: Development of national results-based strategic planning system; consultant to statewide civic policy group on strategic planning; analysis of indicators for city transportation agency system planning.

Senior Policy Analyst, Oregon Progress Board, Salem, Oregon, August 1989 - April 1996. Researched and drafted policy goals and quantifiable indicators for Governor-led board implementing Oregon's first strategic plan for economic development. Managed data development projects for key policy indicators. Advised wide variety of groups on outcomes-based planning.

Acting Director, Oregon Progress Board, Salem, Oregon, June 1995 - October 1995. Guided agency during significant transition in mission and organization. Participated in board plans to create community-defined state management system.

Economic Policy Analyst, Oregon Economic Development Department, Salem, Oregon, June 1988 - July 1989. Produced analysis of priority issues for strategic planning committee on keystone policy of state economic development plan: Education and workforce.

Research Analyst, Washington Department of Natural Resources, Seattle, Washington, June 1987 - September 1987. Produced report on urban waterfront legal framework and issues for Seattle business leadership task force investigating central waterfront development alternatives.

Appendix B

- B-1. Eulogy, Clifford R. Kenagy, Albany, Oregon, April 19, 2011
- B-2. Eulogy, David R. Lett, McMinnville, Oregon December 7, 2011
- B-3. Presenting Peter G. McDonald award, Portland, Oregon, March 1, 2013

Eulogy

Clifford R. Kenagy

1921-2011

by

Henry R. Richmond

Albany Mennonite Church

Albany, Oregon

April 19, 2011

We thought we were pretty hot stuff, the young lawyers at 1,000 Friends of Oregon. We were going to sue our way to implementing Senate Bill 100. Doubtless there would be some farmers out there who would help us succeed.

We soon realized we had it backwards: without the farmers, we didn't have a chance. The challenge of land use in Oregon was not mainly legal or technical. It was political and moral. A ruling won in court can always be changed by the legislature or a vote of the people. Only farmers who owned and worked the land had the credibility to argue effectively for conservation. More important, only the farmers of obvious personal integrity, who quietly spoke up for conservation from a position of principle and conviction, could provide the strength of leadership to turn things the right way in a legislative hearing or LCDC meeting. Clif Kenagy was at the top of the list among those leaders.

I never saw Clif wear his religion on his sleeve, Yet, Clif's faith was central to his life. I always sensed he thought land was God's, that man was merely a guest, a "stranger," as Leviticus 25 puts it, that land was the corpus of a trust, owners were trustees, and the current generation had an income interest in the land, but no right to plunder something that not only belonged to posterity, but was sacred.

I first met Clif in 1973, at a legislative hearing on SB 100. I was an observer. He was an effective witness.

In October 1974, Clif and Lois were among the first 100 member of 1000 Friends of Oregon, before Tom McCall announced the group on January 8, 1975, at his last press conference as Governor.

A month later Clif and Lois asked me to represent them in the first citizen appeal to LCDC of a local land use ordinance. I remember Clif and Lois and I, the Benton County Counsel and LCDC Hearings Officer Jack Clough, conducting the first hearing in the Benton County Courthouse, all sensing we were breathing life into the oversight role which Senate Bill 100 assigned to the State of Oregon.

A book could be written about what Clif and Lois did over the next 35 years to advance the cause of land use planing in Oregon. Countless Legislative and LCDC meetings. Petitioners and plaintiffs in law suits and appeals. Comments on local plans. Battling repeal initiatives at the ballot box. Legislative and county commission election campaigns.

I have always said that the best thing about working for 1000 Friends of Oregon for 20 years was the opportunity and the privilege to meet the superb human beings who were not just drawn to the cause of land use planning, but who created it. Farmers who learned the land use issues in the 1960's by chairing county planning commissions, as Hector Macpherson did in Linn County and Jim Smart did in Polk County.

It was not simply a pleasure. People like Clif gave 1000 Friends staff the confidence to sally forth -- because people like Clif gave the cause its true strength and credibility.

When Bob Stacey emailed me about Clif's death, I wrote back that, for me, Clif and Lois have been models of decency, good will, integrity and commitment as long as I have known them. So when former 1000 Friends' staff attorney Blair Batson and I called on Lois last week, Lois was Lois. Straight to the point. How she had returned from a family reunion in Indiana in time for Clif to see her, and to squeeze her hand. How hard it was to not be with Clif. The blessings of children, her beloved Tina, and grandchildren. How proud she was of Peter and his farming accomplishments. And then she said, matter-of-factly, "And now I have to think anew of what my responsibilities should be to make my community a better place."

Blair and I sat there a bit stunned at this simple, instinctive goodness. A Mennonite Mother Teresa. Clif and Lois. Lois and Clif. Had Lois died first, Clif would have said much the same, though likely a bit more slowly, with fewer words, and with that flash of twinkle that made all the females at 1000 Friends adore him.

Farewell, friend to me, and to Oregon. Thank you for the undying inspiration.

Eulogy

David R. Lett

1939 - 2008

Lover and Defender of Oregon's Land

by

Henry R. Richmond

Community Center
McMinnville, Oregon
December 7, 2008

David Lett loved the land and worked 35 years to defend Oregon laws that limit farm land to farm use. His commitment to land conservation shows the same traits he brought to wine making.

First is insight. Before anyone, David saw that, as in Burgundy, the Pinot Noir grape could reach its true maturity and finest flavor in the Willamette Valley's cooler, later-ripening climate.

Likewise, in 1964, in Burgundy and elsewhere in Europe, David saw two things about countryside preservation. First, preservation was a precondition for wine-making. Second, law, not the whim of landowner gifts, was the proper way to preserve farm land. A decade later, David saw that Oregon's 1975 laws requiring urban growth boundaries and farm zoning could separate urban from rural, and protect working rural landscapes, much as European laws had done for generations.

Second was David's fierce commitment to excellence. His standards of quality for pinot noir were purity, delicacy, and finesse. He believed many styles, not just Eyrie's, could meet those standards. But wines that used tricks to cover flaws, or that elevated blockbuster jammy-ness over true flavor, gained his unvarnished scorn.

Likewise, David growled his rejection of attempts -- in Salem or the county court house -- to water down the land use law, usually with a firm reminder of mission: "What does THAT have to do with conservation?" David's unwavering commitment to the core tenets of the land use law was a constant inspiration to 1000 Friends' staff attorneys, as they countered endless assaults.

Third, steadfastness. In 1966, David and Diana bought 20 acres and planted vines. Then they devoted prime years of their young married lives to selling college text books, while they tended to young vines, changed Jim's and Jason's diapers, and transformed a turkey processing shed into a winery. And, as we all know, Diana has been the elegant backbone, and unsung heroine, of Eyrie Vineyard's success.

Likewise, in the early 1970s, before the Land Conservation and Development Commission's goals, David worked long and hard with David Adelsheim, Bill Blosser and Dick Erath to put farm land protections in Yamhill County's Comprehensive Plan. Working through official advisory committees in the Dundee and Chehalem Mountain areas, these pioneer grape growers collected data, county-wide, on soil type, elevation, slope, and aspect -- documenting thousands of acres of plant-able sites. David Adelsheim recorded the findings on a now historic map. They took their map to meetings of the eight other area advisory committees. They argued the wine industry's potential economic benefits were huge, but depended on zoning plant-able ground for farm use. They gradually won over the farmers and industrial forest land owners who dominated the other committees. With broad rural support thus developed, county commissioners were

politically able to adopt, in 1974, the winemakers' recommendations. Those policies remain in Yamhill County's plan today.

This effort epitomizes the culture of collaboration that long has been a hallmark of Oregon wine-making. More important, this effort allowed scores of aspiring winemakers - including many here today -- to buy land in reliance on protective, area-wide zoning. The advantages of that zoning, enshrined, as in Burgundy, in local law, were crucial. First, reasonably-priced land, because price reflected the farm, not residential, uses allowed by zoning. Second, operational predictability, because farmers, not complaining urbanites, were likely to live across the fence. Third, low property taxes, now about \$2 per acre per year.

But David knew maintaining the benefits of Yamhill County's plan meant defending Senate Bill 100. That led David, in 1978, to accept my and Allen Bateman's invitation to join 1000 Friends of Oregon's Board of Directors. He served for the next 30 years. No other Director's service comes even close.

The threats David feared came to pass -- repeal initiatives in 1976, 1978, 1982, 2000, 2004, and 2007, plus frequent battles in the legislature. David threw Eyrie Vineyard's growing reputation and resources into statewide campaigns, and into hearing rooms in Salem. He spoke up on legislative races and county issues. Throughout, his goal was simple: protect Senate Bill 100, as it sunk its roots deeper in Oregon's political soil -- much as he nurtured vines struggling to sink their roots.

Thus it is that, as in Burgundy, the success of pinot noir wine in Oregon has proceeded on a foundation of land conservation -- indeed, on a 35-year struggle for Oregon's soul -- as much as it has on knowing how to plant vines, or vint wine.

Fourth, love of the land. David's commitment to land use planning grew out of his love for all of Oregon, not just the Red Hills of Dundee. Selling text books in the late 1960s took David to every corner of the state. He loved Eastern Oregon's dramatic expanses. He loved the North Umpqua, especially at Steamboat. He loved Willamette Valley farm scenes, guiding his '61 Morgan, top down, over undulating, farm-to-market roads -- like Worden Hill, North Valley, Laughlin, Howell Prairie, Mineral Springs, and Wilsonville. He loved the Coast, and boating in Yaquina Bay -- in what may be Oregon's only genuine Maine lobster boat. Maybe David thought a Maine lobster boat was the only "right" way to get about in an Oregon estuary. So, just as, in 1965, he hauled his carefully selected vine cuttings up to Oregon from UC Davis, he hauled a Maine Lobster boat across the country, to Oregon -- and did it HIS way.

A quote from a 1986 Matt Kramer interview captures -- almost as well as a tape-recording -- David's defiant devotion to Oregon land:

“You know, I had a point to prove. So I was hell-bent to prove it. And when I ran into snotty wine writers -- who will go unmentioned -- who would say, ‘This doesn’t taste like Burgundy.’ I’d say, ‘It’s not supposed to taste like Burgundy. It’s supposed to taste like Oregon. And this is pinot noir, and you’re not used to pinot noir. You’re a cabernet drinker. What do you know?’”

We will miss that acerbic, winningly humorous conviction. But we can celebrate today, and be thankful, that we knew David Russell Lett, a man who bravely and zestfully, and -- yes, with historic benefit to his adopted state -- acted on his convictions, a man who long will be remembered as a true and great Friend of Oregon.

Presentation

1000 Friends of Oregon's

McCall Legacy Award

to

Peter G. McDonald

1940 - 2013 (March 29, 2013)

Founding Member, Board of Directors

1000 Friends of Oregon

1974 - 1985

Member, 1000 Friends of Oregon Foundation

1998 - 2010

by

Henry R. Richmond

Executive Director, 1000 Friends of Oregon

1974 - 1993

Benson Hotel

Portland, Oregon

March 1, 2013

The Board of Directors of 1000 Friends of Oregon occasionally bestows the Tom McCall Legacy Award on an individual who has made an exceptional and enduring contribution to Oregon's land use program. For his two-pronged, 40-year record of leadership to enable Senate Bill 100 to survive and succeed, Peter G. McDonald richly deserves this award. It is my honor to present that award to him tonight.

We all know what Oregon Governor Tom McCall did. For many years he brought the land use issue to the attention of Oregon voters and legislators. Throughout 1972, St. Sen. Hector Macpherson (R., Albany) worked with a committee of interest groups to develop three drafts of a bill, introduced in the 1973 session as Senate Bill 100. Hector and Kitty's son, former St. Rep., and now LCDC Commissioner, Greg Macpherson, is here tonight. Gov. McCall took the lead in pushing SB 100 through the 1973 legislature. St. Rep. Nancie Fadeley (D., Eugene) chaired the House Environment and Land Use Committee. Janet McLennan, later President, 1000 Friends of Oregon's Board, served as Committee Legal Counsel. Both Janet and Nancie are here tonight. Nancie got 40 votes on the House Floor, and SB 100 went to Gov. McCall's desk.

Through 1974, including over 100 hearings and work sessions, McCall supported LCDC's development of goals intended to dramatically change land use patterns across Oregon:

- ◆ Urban Growth Boundaries around each Oregon city;
- ◆ *Outside* UGBs, 15 million acres of land suitable for crops and livestock, and 9 million acres suitable for merchantable timber would be limited to farm and forest use. In 1973, this land was mostly un-zoned, or zoned for subdivisions;
- ◆ *Inside the UGB*, zoning for new housing would be relaxed to increase choice and affordability.

Tom McCall's bold policy legacy was nationally unprecedented. It was also controversial and bitterly opposed. The question was, would the policy happen on the ground?

Enter 1000 Friends of Oregon. By late 1974 the potentially sweeping impact of LCDC's Goals became clear. The immediate threat was that SB 100 was poised to die in its crib. Under the banner of "local control!" local governments opposed SB 100. The problem was, of necessity, SB 100 gave city and county officials the power to say what SB 100 and LCDC's goals meant. Unless courts were able to review and correct local government misinterpretations, the prospect was SB 100 and LCDC's Goals would be interpreted to mush.

1000 Friends of Oregon was formed primarily to ensure the feasibility of court review so disagreements about how the law should be interpreted could be impartially resolved. Longer term, 1000 Friends was to watchdog and publicize SB 100's implementation generally. Over 20 years, 1000 Friends' superb staff attorneys -- Bob Stacey, Dick Benner, Robert Liberty, Mark Greenfield, Mary Kyle McCurdy, Blair Batson,

and Charlie Swindells -- won dozens of court decisions. Those decisions rejected corrosive local decisions, and replaced them with precedential rulings. Those rulings upheld legislative and voter intent, and provided the interpretive building blocks state and local officials and lower courts had to use for deciding how to administer SB 100, decision by decision.

These court rulings were essential. Nonetheless, they were only a stop-gap achievement. Why? Because on any day, the Oregon legislature -- or the voters -- could undo the court rulings by a majority vote. And pressure on the legislature to do just that has been intense and relentless.

In every session of the legislature from 1975 to 2011, opponents introduced bills to repeal or cripple SB 100 or LCDC's goals. When repeal efforts failed in the legislature, opponents tried the ballot box -- in 1976, 1978, 1982, 1994, 1998, 2000, and 2004.

The remarkable thing is that, in the face of this heated and persistent opposition, SB 100 has not only survived, but, measured by its own, voter-approved, 1974 goals, SB 100 has been a nationally unprecedented success. Nearly 40 years ago, LCDC Goal 14 required each Oregon city to adopt an urban growth boundary (UGB). Today, UGBs remain around each Oregon city. Goal 3 required 15 million acres of farm land to be rezoned Exclusive Farm Use. It took from 1975 to 1986 for all 36 counties to do that. Today, 16 million acres of farm land is zoned EFU, with 200,000 acres added last year alone. In the sprawl-tamed Portland metro area, with shorter trips, Oregonians drive 20% less than other Americans. Since 1980, housing prices in the Portland region have been lower than all other metro regions up and down the West Coast. Further evidence exists, but I will forego.

So, how and why did SB 100 survive and succeed?

Not because of Tom McCall. We will owe him forever for his unrivaled leadership to secure the enactment of SB 100 and for his support of strong LCDC goals. And he fought repeal campaigns in 1976, 1978 and, especially, 1982. But Tom McCall died January 8, 1983, 30 years ago.

And not because of 1000 Friends. Its role was, and remains, crucial. But, as discussed, what 1000 Friends did and what 1000 Friends can do, ultimately, is insufficient by itself to overcome persistent opposition to the law.

What SB 100 has always needed more than technical expertise or legal work, is political support -- specifically majorities of Oregon legislators and Oregon voters continuously persuaded that SB 100 -- *especially its most controversial and significant part, limiting farm land to farm use* -- is good for Oregon.

Seven supportive Governors helped build that support. So did dozens of superb editorial and news writers. But, people who own farm land, and who successfully work it, have more credibility than anyone to persuade non-farmer Oregonians that laws protecting farmland are a good idea. And making that case is exactly what Oregon farmers have done. From across the state, farmers, including tree farmers, have come forward and publically explained why SB 100 is good for agriculture, and good for Oregon. To name a few:

Bill and Jo Strader, and Richard Sommers, Douglas County
Tibor and Nancy Stefansky, and Clyde Holliday, Grant County
Larry Wells, Manton Carl, Jack Chapin, and Tom Brawley, Marion County
Dave Vanasche , Ken Buel, Tom Vanderzanden, John Platt, Elizabeth Furse, and Don Logan, Washington County
Jim Smart and Dean and Cathy Freeborn, Polk County
John Shelk, Crook County
Hector Macpherson and Charlie Hecht, Linn County
Cliff Lamb, Lane County
Judson Parsons and Diana Gardener, Jackson County
Clif and Lois Kenagy, Peter Kenagy, and Barte Starker, Benton County
The McCarthy, Blaine, Moller, and Mills families, Hood River County
Gary Harris and Mickey Killingsworth, Jefferson County
David Lett, Sam Sweeney, Jim Letourneau, and Gary Johnson, Yamhill County.
Stafford Hansell, Umatilla County
Leaders and members of the Tillamook County Creamery Association

These and many other farmers spoke up locally, testified in Salem, went to the county commission and county planning commission meetings, drove in “tractor parades” in downtown Portland, spoke at local luncheon clubs against ballot measures, put up big signs in their fields, and gave interviews to journalists.

Opponents said, “I should be able to do whatever I want with my land.” Farmers replied, “We own the land LCDC is rezoning, and we *favor and need* the limitations over ‘large blocks’ of farm land.” For many non-farmers, that settled the issue.

The farmers who made the most difference were those with reputations for personal integrity, farmers with reputations for skill and success, farmers with records of leadership in their industry group, farmers who gave time and talent to serve on county planning commissions, committees, and boards, and farmers who served on civic organizations, farm-related or not. Such farmers could quietly, but firmly, speak up for conservation from a position of principle and conviction -- providing the strength of leadership needed to turn things the right way in a legislative hearing or LCDC meeting. Peter McDonald is at the top of the list of such farmer land use advocates -- farmers who,

by their actions, committed their hard-won reputations to the cause of land use planning, giving that cause the political asset it needed most.

For six years, 1966 - 1972, Peter served as a professional forester in the Kenya Forest Department. He returned to Oregon just as Tom McCall was stirring the land use pot, and immersed himself in the battle for SB 100.

Evidenced by judgments of his peers, Peter soon developed a reputation as a skilled and successful farmer and forester, recognized across the state for the excellence of his work.

In 1973, Peter established a hazelnut orchard on Inchinnan Farm, and has expanded it since. By 1990, the Nut Growers Society of British Columbia, Washington and Oregon named Peter "Nut Grower of the Year."

Peter also managed Inchinnan Farm's substantial forest. By 1993, the Society of American Foresters recognized Peter as "Oregon Tree Farmer of the Year."

Peter's performance led to a position on industry leadership. He served on the federally-established Oregon Hazelnut Marketing Board, 1983 - 1992, and on the industry Promotion Council, from 1990 to present. He served on the Oregon Hazelnut Commission, 1988-1994, the last two years as elected Chair.

Peter accepted the request of the U.S. State Department to consult with hazelnut farmers in Azerbaijan in 2001, and in the Republic of Georgia in 2009.

Peter also served on government boards and commissions, where his views on land use could have educational as well as official impact:

- ◆ Portland Metro Future Vision Commission, 1993-1995,
- ◆ Metropolitan Boundary Commission, 1977-1981,
- ◆ Willamette Greenway Commission, 1976-1980,
- ◆ Clackamas County Planning Commission, 1975 - 1977,
- ◆ Clackamas County Coordinating Committee, 1973-1974, and
- ◆ Clackamas County Board of Adjustment, 1974 - 1975.

Peter also provided leadership on non-profit boards, often as an officer, sometimes as President:

- ◆ Nature Conservancy -- TNC has a table here tonight. Thank you, again, Russ Hoeflich, for your great leadership in 2007 on Measure 49.
- ◆ St. Andrew's Society
- ◆ Oregon Historical Society

- ◆ American Parkinson Disease Association
- ◆ Oregon Parks Foundation
- ◆ Oregon Humane Society
- ◆ Oregon Garden Foundation
- ◆ Oregon Heritage Tree Committee

From 1985 to 2006, Peter and Jill somehow found time to lead 14 groups to East Africa.

And, oh yes, Peter speaks Swahili. Really.

With his record of excellence and leadership in farming, and with his remarkable record of government and non-profit service, when Peter McDonald testified in Salem, or in Clackamas County, or wrote letters, published op-eds, put up lawn signs, endorsed or opposed candidates or measures -- all of which he did -- people paid attention.

But there is more, and this is what I meant by Peter's "two pronged" record of leadership. Besides being a highly credible farmer who championed SB 100, Peter McDonald also oversaw the work of 1000 Friends of Oregon in its critical formative years. In October 1974, Peter accepted my and Gov. McCall's invitation to serve on 1000 Friends' founding Board of Directors. He served until 1985. Any court ruling filed by 1000 Friends attorneys requires Board approval, based on a staff memo. Thus, Peter McDonald played a direct role in 1000 Friend's most important litigation effort. Peter also supported 1000 Friends' important coalition-building efforts with the Home Builders Association of Metro Portland.

Later, Peter served on the Board of the 1000 Friends of Oregon Foundation, from 1998-2009, overseeing management of the endowment Hall Templeton established in 1992. All the while Peter generously contributed funds to 1000 Friends.

No person has had a longer formal connection to 1000 Friends' governing bodies or staff -- 36 years -- than has Peter McDonald.

So we owe a double debt of gratitude to Peter. By dint of his impressive record of government and non-profit service, and his reputation as a leading hazelnut grower and award-winning forester, Peter could and *did* play a crucial role in persuading legislators, county officials, journalists and voters to uphold SB 100. And that same record, and that same reputation, *bolstered 1000 Friends' own credibility* as its staff sallied forth in a rambunctious climate to defend and implement SB 100.

For this exceptional lifetime achievement in citizenship, generosity, courage, and leadership, I am honored, on behalf of 1000 Friends of Oregon, to present the Tom McCall Legacy Award to my hazelnut mentor, my friend, and to Oregon's good friend, Peter McDonald.

