

Oregon's Public Investment in Conservation, Prosperity and Fairness:

Reduced Taxation of
Farm Land and Forest Land
1974 - 2004

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A statement of all individuals on whom American Land Institute relied to design and carry out this analysis is found in **Appendix I**, Acknowledgments.

“What we were attempting to do . . . I’m going to put it crudely, and that was to give some goodies for being in a farm zone.”

State Senator Victor Atiyeh (R., Beaverton), carrying Senate Bill 101 on the floor of the Oregon State Senate, June 6, 1973.

“I don’t see anybody paying my taxes for me.”

Hood River County Measure 37 claimant, in testimony to the Senate Committee on Land Use and Environment, at a special public hearing, Hood River County Courthouse, February 11, 2005

Since 1974, pursuant to Senate Bill 101 (1973), owners of 23,506 acres of Hood River County farm land have received \$35.6 million in property tax reductions, or \$1,516 per acre. These tax reductions have been financed by the 93% of Hood River County property owners who do not live on farms paying \$30.20 more in property taxes, and receiving \$5.40 less in public services.

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EXECUTIVE SUMMARY

From 1974 through 2004, owners of farm and forest land in Oregon enjoyed \$4.8 billion in property tax reductions. The Legislature mandated tax reductions to compensate rural landowners for new zoning, and to increase farm and forest land productivity. Urban and suburban Oregonians financed these tax reductions by paying slightly higher property taxes -- the largest public investment in Oregon history. While tax cuts and zoning were in place, land productivity increased, and the market value of farm land increased faster than the stock market. Most owners of farm land have thus experienced no general unfairness. In 2004, prompted by many concerns, voters approved Measure 37, requiring compensation for reductions in value caused by land use regulations. However, compensation demands have not been based on reductions in value, as intended by Oregon voters, but on monopoly positions landowners never owned or lost. By allowing large subdivisions on farm land, monopoly value compensation unjustly enriches claimants, cancels the investment taxpayers have made in rural land productivity, and threatens to cripple land use and property tax laws that have supported 33 years of gains in rural land productivity.

Background

From 1950 - 1970, nearly all farm land in Oregon was unzoned, or zoned for development, and was assessed for property tax purposes on the basis of "highest and best use." During that time Willamette Valley population increased by 454,209 (**Table 1**) and land in farms fell by one-third (**Table 2**). In 1970, the population of the Willamette Valley was projected to grow by a million. Oregon Governor Tom McCall (R.) and legislative leaders believed lack of zoning and rising property taxes would lead to random development which would interfere with farm and forest practices, threatening the pillars of Oregon's economy.

Table 1

Population Growth in Oregon and Willamette Valley Counties 1950-2040

County	1950	1970	2004	2040
Benton	31,570	53,776	81,750	99,886
Clackamas	86,716	166,088	356,250	620,703
Lane	125,776	213,358	333,350	471,511
Linn	54,317	71,914	106,350	146,260
Marion	101,401	151,309	298,450	448,671
Multnomah	471,537	556,667	685,950	842,009
Polk	26,317	35,349	64,950	135,937
Washington	61,269	157,920	480,200	920,852
Yamhill	<u>33,484</u>	<u>40,213</u>	<u>89,200</u>	<u>166,776</u>
Total	992,387	1,446,594	2,496,450	3,852,605
Oregon	1,521,341	2,091,385	3,582,600	5,245,408

Source: Portland State University, Center for Population Research and Census.

Note: The Willamette Valley's percentage of statewide population growth was 79.7% 1950-1970, 70.4% 1970-2004, and is projected to be 81.6% 2004-2040. Projected growth of 1,356,155 in 2004 - 2040 triples growth of 454,209 in 1950 - 1970.

Policy Tools to Increase Productivity

Gov. McCall and legislative leaders took action to protect profitable farming and forestry. The 1969, 1971, and 1973 legislatures established productivity as the goal for farm and forest land, and enacted land use laws and property tax reductions to achieve that goal. In 1975, the Land Conservation and Development Commission (LCDC) adopted regulations that linked and implemented the new land use laws and property tax reductions.

Land use laws required counties to reform zoning: *First*, identify “large blocks” where farm and timber investments would be feasible because (1) farm and forest practices could occur free of conflicting development and lawsuits, and (2) land prices, rents, and property taxes would be based on farm and forest uses; *Second*, change zoning in those “large blocks” to limit agricultural land to farm use, and forest land to forest use. The Oregon Farm Bureau and the Oregon Forest Industries Council supported these laws, applicable on 15.6 million acres of farm land and 7.9 million acres of forest land (**Table 4**). In 1970, 1976, 1978, 1982, and 2000, opponents of the laws placed repeal measures on the ballot. Oregonians said “No” each time.

Property tax laws required counties to tax farm and forest land on the basis of lower “special assessment” valuations (SA) instead of higher assessed values (AV) without special assessment status. In 2003-04, farm land AV statewide totaled \$10.4 billion, and SA \$2.4 billion, 76% less (**Table 11**); forest land AV totaled \$4.4 billion, and SA \$470 million billion, 89% less (**Table 16**). Lower valuations since 1974 cut farm land taxes by \$3.8 billion, and, since 1977, forest land taxes by \$1 billion (**Table 3**).

This \$4.8 billion investment in farm and forest land productivity is the largest public investment in Oregon history -- triple, in constant dollars, money invested to build Bonneville Dam in 1937, the Dalles Dam in 1959, or Interstate 5 in 1966 (**Table 27**). Over \$2.8 billion, or 58%, of the \$4.8 billion in farm and forest land tax reductions were concentrated in the Willamette Valley (**Table 19**) which has only 10% of the state’s farm land, 31% of the state’s tax-benefitted forest land, but half the state’s best soils and farm sales, and 82% of projected population growth 2004-2040 (**Table 1**, note).

Productivity Increased

With farm zoning and tax cuts in place, farm land productivity increased in the Willamette Valley, 1976 - 2005, despite the fact population growth doubled over the period 1950 - 1970. Zoning halted two decades of rapid loss of Willamette Valley farm land (**Table 2**), protected farmers from conflicting uses, and allowed land to come on the market at prices and rents farmers could justify to expand farm size and reduce unit costs.

From 1978 - 2002, Willamette Valley farms with 260 acres or more increased 23% (**Table 12**), and farms selling crops worth \$100,000 or more increased 63% (**Table 13**). With more predictable investment and operating environments, and more efficient farms, from 1976 to 2005, Willamette Valley farm sales increased 5.2 times, from \$409 million to \$2.1 billion (**Table 14**).

Table 2

Land In Farms, in Acres Willamette Valley Counties, Oregon, 1950 - 2002						
	1950	1974	Gain (Loss)	1974	2002	Gain (Loss)
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.

Forest zoning and tax cuts also helped non-industrial private forest (NIPF) land supply logs Oregon mills needed to remain the nation's top lumber manufacturing state. In the late 1980s and 1990s, the Spotted Owl and other factors reduced timber harvests on federal land 70% - 90%. Forest zoning and property tax reductions helped Oregon overcome federal harvest reductions by keeping 2.8 million acres of lower-lying, highly productive NIPF lands in forest use. NIPF harvests that averaged 270 million BF in the 1960s and early 1970s, increased to 617 million BF in the 1990s.

Ballot Measures Affect Productivity Tools

In 1990 and 1997 Oregon voters enacted property tax limitations. In 2004, Oregon voters enacted a compensation requirement for land use regulation. All these measures affect the property tax and land use laws the Legislature adopted to increase farm and forest land productivity.

Property tax limitations changed how farm and forest land tax reductions are financed. From 1974 to 1990, each dollar of rural tax reduction in a given county was financed by a dollar increase in taxes on real property which did not enjoy special assessment of farm or forest land. The 1990 limit on tax rates and the 1997 limit on assessed values meant counties could no longer increase urban and suburban taxes to completely offset farm and forest land tax reductions. As a result, rural tax reductions increasingly were financed by local revenue losses and service cuts. In 2003-04, about 81% of the rural tax reductions were financed by revenue losses of \$115 million, with losses of \$45 million in Clackamas, Washington, and Marion counties alone (**Table 21**). Cumulatively, 1974-2004, \$3.8 billion of the \$4.8 billion total in farm and forest land tax reductions was financed by urban and suburban taxpayers paying slightly more property taxes, while \$987 million was financed by revenue losses (**Table 22**).

Table 3

**Summary, Tax Reductions Received by
Oregon Farm Land and Forest Land Owners, 1974-2004**

	Farm		Forest		Total	
	Acres	Tax Benefit	Acres	Tax Benefit	Acres	Tax Benefit
1 Baker	861,994	\$88,086,233	2,367	\$1,514,185	864,360	\$89,600,418
2 Benton	105,079	89,734,842	70,074	29,660,297	175,153	119,395,140
3 Clackamas	132,135	397,287,476	147,696	332,618,657	279,830	729,906,133
4 Clatsop	16,347	21,638,246	30,929	14,065,121	47,276	35,703,367
5 Columbia	44,188	27,705,547	120,111	16,185,928	164,299	43,891,475
6 Coos	74,054	22,179,053	213,104	23,432,485	287,158	45,611,538
7 Crook	763,804	33,539,045	90,770	3,957,372	854,574	37,496,416
8 Curry	43,143	31,072,262	105,961	8,250,962	149,104	39,323,224
9 Deschutes	166,572	59,311,292	29,259	23,153,444	195,831	82,464,736
10 Douglas	297,194	42,971,616	440,582	13,761,279	737,777	56,732,895
11 Gilliam	693,371	26,306,963	-	-	693,371	26,306,963
12 Grant	894,672	45,517,274	58,810	8,655,386	953,482	54,172,660
13 Harney	1,457,614	78,191,953	5,439	273,840	1,463,053	78,465,793
14 Hood River	23,506	35,630,212	10,060	4,775,729	33,566	40,405,941
15 Jackson	207,505	112,459,644	72,333	82,998,111	279,838	195,457,755
16 Jefferson	437,653	61,713,232	1,203	15,483	438,856	61,728,715
17 Josephine	23,194	31,789,821	70,183	17,483,380	93,376	49,273,201
18 Klamath	593,888	154,155,993	288,122	5,774,385	882,010	159,930,378
19 Lake	760,819	55,870,729	26,936	694,316	787,755	56,565,045
20 Lane	167,300	153,440,602	145,062	112,557,294	312,363	265,997,896
21 Lincoln	14,107	23,939,744	244,356	25,429,259	258,463	49,369,003
22 Linn	356,284	223,708,235	180,309	43,966,941	536,593	267,675,176
23 Malheur	1,306,165	138,061,644	-	-	1,306,165	138,061,644
24 Marion	292,719	439,052,219	70,959	45,777,161	363,678	484,829,381
25 Morrow	996,988	114,482,331	2,863	1,286,936	999,851	115,769,267
26 Multnomah	28,697	69,346,574	19,667	2,242,842	48,365	71,589,416
27 Polk	173,890	134,792,262	42,733	28,869,850	216,623	163,662,112
28 Sherman	454,219	21,939,640	-	-	454,219	21,939,640
29 Tillamook	31,791	27,191,182	49,039	2,741,565	80,830	29,932,747
30 Umatilla	1,325,832	242,666,270	28,844	939,416	1,354,676	243,605,686
31 Union	494,843	83,353,788	10,166	5,254,800	505,008	88,608,588
32 Wallowa	657,544	60,422,939	12,625	525,594	670,169	60,948,533
33 Wasco	768,636	86,316,984	23,183	1,080,264	791,819	87,397,248
34 Washington	121,719	419,720,634	126,833	134,615,648	248,552	554,336,282
35 Wheeler	655,370	13,290,931	222	16,482	655,592	13,307,412
36 Yamhill	<u>154,012</u>	<u>158,422,183</u>	<u>48,241</u>	<u>51,652,863</u>	<u>202,253</u>	<u>210,075,046</u>
37 Total	15,596,848	\$3,825,309,596	2,789,040	\$1,044,227,276	18,385,888	\$4,869,536,872

Note: Farmland benefits from 1974-2004, forest land benefits from 1977-2004. Acreage data from Oregon Property Tax Statistics: Fiscal Year 2003-04, except that Jackson County Forest land acreage is from 2001-02, the most recent year reported. Gilliam, Malheur, and Sherman Counties have no specially assessed forest land. Other counties' missing data not available. All figures include any homesite value that qualifies for special assessment. For 2003-05 DOR listed homesite values that were 2.7 percent of the farm total and 7.3 percent of the forest total. All dollar figures inflation adjusted to December 31, 2005.

Measure 37 requires government to compensate landowners if a land use regulation reduces the fair market value of land. Compensation is in two forms -- a payment of money, or, "in lieu of" such payment, a "waiver" to allow "a use" permitted when the owner acquired the property. Measure 37 operates indefinitely into the future.

Measure 37 threatens to cripple property tax and land use laws the Legislature has used for 33 years to increase rural land productivity. The most immediate threat is in the Willamette Valley and Hood River County. To the extent Measure 37 renders farming unfeasible, the justification for low taxation of farm land disappears.

Of 6,350 claims filed as of January 23, 2007, 66.3% are in the Willamette Valley, and 84.2% attack farm and forest zoning. In Hood River County, claims have been filed on 2,994 acres, or 13%, of the county's 23,506 acres of farm land. In Washington County, claims have been filed on 24,216 acres, or 20%, of the county's 121,719 acres of farm land. A subdivision in the middle of a commercial farm area would not merely take the claim property out of production, but also would generate conflicts with farm practices on all sides of the claim property. Measure 37 thus now affects half of farm operations in Hood River County, and 80% of farm operations in Washington County. Given that Measure 37 allows more claims into the future, farm areas in other counties are not far behind.

If Measure 37 claims involved a house or two, there would be little controversy. But DLCD has turned Measure 37 into a get-rich-quick scheme by allowing claimants to demand waivers for large subdivisions based on monopoly positions the claimant never previously owned or lost. Such claims pervert Measure 37's compensatory purpose.

Some claimants say they do not intend to immediately develop subdivisions, but are merely "covering my options." But creation of the legal right to build a subdivision in a commercial farm area itself destroys the investment climate for agriculture. Without across-the-fence certainty that they can conduct farm practices in the future, farmers will hesitate to invest in equipment and structures that can only be amortized over time. If farm investment slows, farm income will wither. If farming doesn't pay, an irresistible push to subdivide -- led by farmers who strongly opposed Measure 37-- will gather steam.

Rural Tax Reductions Refute Measure 37 Arguments

The \$4.8 billion in tax reductions enjoyed by farm and forest landowners since 1974 refute the two main arguments advanced to support Measure 37. *First*, Measure 37 proponents argued Gov. McCall wanted compensation to be part of Senate Bill 100, but legislators failed to follow through on McCall's wish. Legislative history shows otherwise. Legislators anticipated SB 100 would widely limit the use of farm land. In June 1973, a month after enacting SB 100, the Legislature enacted Senate Bill 101, strengthening existing farm tax policy. By providing landowners a financial benefit in the form of a tax cut -- a "goodie," as Sen. Victor Atiyeh (R., Beaverton) put it on the Senate floor -- SB 101 provided landowners both an element of fairness and a boost to productivity, in that lowering fixed costs raises both profits and investment feasibility. The 1975 Legislature did much the same for forest land.

Second, Measure 37 proponents argued the 1973 land use laws have been unfair because a few rural land owners have borne the regulatory burden of zoning while a much larger number of urbanites and suburbanites have enjoyed the benefits. In fairness, the argument goes, urban and suburban citizens who benefit from rural land use laws should compensate rural landowners who are burdened. However, the 1973 Legislature provided such a burden-sharing process. The 96% of Oregonians who live in cities and suburbs -- and who have indeed benefitted economically and environmentally -- have shared in the burden of rural zoning by paying \$3.8 billion more in taxes, receiving \$987 million less in services. That is how the \$4.8 billion tax reduction enjoyed by the 4% of Oregonians who own farm and forest land was financed.

In most counties, urban and suburban taxpayers greatly outnumber rural landowners. As a result, the higher taxes individual urban or suburban taxpayers paid to finance substantial farm and forest land tax reductions have been essentially imperceptible. In 2003-04, in the Willamette Valley, where rural landowners received 56% of farm and forest tax reductions statewide, on a per capita basis, every person living in farm areas *received \$1,541*; every person not living in SAV farm areas *paid \$22 (Table 24)*; on the forest side, corresponding figures were *\$1,105 received*, and *\$15 paid (Table 25)*.

Critics might have preferred compensation in a different form, but \$4.8 billion in rural tax reductions -- financed by urban and suburban Oregonians -- shows the 1973 Legislature made compensation and fairness a major part of Oregon's land use law.

Finally, the basic assumption of both of the critics' arguments -- that zoning has reduced farm land values -- is also invalid. Viewed simply as an investment vehicle, farmland has performed superbly. While some nonfarm uses have been foreclosed, tax reductions addressed those limitations, which often were of little market significance (p. 43). From 1964 to 2004, the market value of farm land, *as regulated*, in the Willamette Valley, Southern Oregon, Central Oregon and the Coast, increased faster than shares of the nation's 500 largest publically traded companies as listed in the S & P 500. (**Table 16**).

The Willamette Valley farmer who sold land worth \$50,000 in 1964 and invested the proceeds in stocks to protect his retirement nest egg, lived to regret it. By 2004, the value of the stock grew to \$605,839. In contrast, \$50,000 worth of farm land grew to \$696,449 -- \$90,610, or 15%, better than the stock investment. In 15 Eastern Oregon counties population increased only 0.73% annually 1964-2004, from 225,717 to 302,400. However, while Eastern Oregon farm land values increased less than the S & P 500, farm land values still exceeded inflation by 42%.

Recommendations

The Oregon Department of Revenue should improve its biennial report of farm land and forest land tax reductions. State and local officials should take into account farm land and forest land tax reductions which farm and forest land owners have received 1974 - 2004, and will receive in the future, when calculating "just compensation" under Measure 37, or otherwise modifying the operation of Measure 37.

I. LEGISLATIVE GOAL: PRODUCTIVITY OF FARM AND FOREST LAND

The 1971 and 1973 Oregon Legislatures made productive use of farm and forest land a basic goal of state policy. The concern was the continued generation of farm and forest income, the bulwark of Oregon's standard of living, in the face of increasingly rapid population growth. No Legislature since 1973 has altered this basic goal. For two reasons, protecting the productivity of rural land is even more important today. First, in 2005, population growth 2000-2040 is expected to triple the growth of 454,209 in 1950 - 1970 that prompted the 1971 and 1973 Legislatures to act. Second, in an era of increasing globalization and loss of manufacturing jobs, farm land and forest land cannot be shipped "offshore," unlike the working assets of other enterprises.

A. Rural Land Productivity and Oregon's Standard of Living

Farm and forest land always have been Oregon's most valuable economic asset, and will be for the foreseeable future. While small in terms of percentage of either total state jobs or total state economic output, agriculture and forestry, together with other manufacturing activity, generate crucial "base industry"¹ or "traded sector" income through the sale of products out of state, as opposed to circulating money we already have. These products include rail cars, wheat, Christmas trees, sneakers, lumber, oscilloscopes, plywood, computer chips, grass seed, software, mint, Tazo tea, wine, mobile homes, and hotel rooms, gasoline, and meals sold to tourists.

The forest products industry is Oregon's largest manufacturing employer. That industry is based on the finest privately-owned softwood sawtimber growing land in the world, with 75% in growth-pressured Western Oregon. Over 75,000 Oregonians work in sawmills, plywood and veneer plants, pulp and paper manufacturing, logging and trucking companies, and wood furniture and other secondary wood products manufacturing. In 2004, sales of primary and secondary forest products exceeded \$10 billion. The food processing industry alone employs 17,000 Oregonians. In 2005, about 64,128 people who live on farms and ranches sold \$4.3 billion in crops and livestock, and food processing businesses sold an additional \$4.6 billion. Unlike high technology, agricultural income has grown consistently over the years. With 200 commodities, the diversity of Oregon's agriculture provides balance -- some are up, while others are down.

Income from farming, forestry and tourism is spent mainly as employee wages and salaries. That money is spent and respent by the employees of secondary economic players like banks, gas stations, hospitals, insurance companies, grocery stores, barber shops, law firms, movie theaters, construction companies, medical offices, schools, police departments, and all other public agencies. While economic measures of these secondary players would dwarf dollar flows from manufacturing, little of the secondary economic activity would exist if base industries were not operating profitably, and creating a need for secondary activity.

¹ Keegan, Charles E., III and Paul E. Polzin, "Trends in the Wood and Paper Assessment Industry: Their Impact on the Pacific Northwest Economy," *Journal of Forestry* 85 (11): 31 - 36 (1987).

B. Forest Land (1971)

In adopting the Forest Practices Act the 1971 Oregon Legislature found forests make a “vital” economic contribution, and declared that to “ensure the continued benefit” of forests for future generations, it is state policy “to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species ... as the leading use on privately-owned land.”

ORS 527.630 (1971) provides:

“(1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.” (emphasis supplied)

In 1988, Barte Starker, then a member of the Oregon Board of Forestry and Executive Vice President of Starker Forests, Corvallis, was asked his view of the key changes between 1988 and the year 2000. He said,

“The thing that won’t change is the fact that Oregon has some of the most productive timber land in the world, and we have Douglas-fir, the most valuable and structurally unique species in the world.”

When asked about his goals as a board member, Starker said,

“It is my hope that I can contribute to a stabilization in the land base and give forestry and the state of Oregon a stable future for investments in forestry.”

C. Farm Land (1973)

Senate Bill 101 (1973) provides Oregon’s basic policy for agricultural land use. Senate Bill 101 expanded on the productivity goal set by the 1969 Legislature for “prime farm land:” (“to preserve prime farm land for the production of crops,” (ORS 215.515)) by focusing on “agricultural land,” a broader class of farm land resource. As discussed below, (p. 16), Senate Bill 101’s focus on keeping “large blocks” of agricultural land in production, is the foundation for the Land Conservation and Development Commission’s Goal 3, Agricultural Lands.

"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)

II. LAND USE POLICIES TO ACHIEVE PRODUCTIVITY GOAL

Governor McCall and Oregon legislators concluded land use laws linked to property tax reductions were the best way to achieve the Legislature's goal of long-term rural land productivity. Over 35 years, the Oregon Legislature, the Board of Forestry, and the Land Conservation and Development Commission (LCDC), have adopted and refined policies to accomplish that goal three ways:

- identify large areas or "blocks" where commercial farming and forestry are feasible.
- limit land uses incompatible with farm and forest practices essential to growing and harvesting crops and timber; and
- reduce taxes on farm land and forest land.

Governor McCall and legislators believed such policies could achieve the productivity goal without stifling population or economic growth. Oregon has room to accommodate many more millions of people without developing significant amounts of farm and forest land. In 1970, England and West Germany were about the size of Oregon, but had nearly 20 - 30 times, respectively, Oregon's 1970 population. The beautiful working countrysides of England and Germany prove that even rapid population growth need not mean the end of farming and forestry.

In the 1970s, private forest land was farther from development pressures than farm land. No one knew it then, but Oregon was only a decade away from a need to stabilize the private forest land base more pressing than population growth: harvest reductions on federal lands.

A. Senate Bill 10 (1969)

To address growing public and legislative concern about population growth and potentially harmful land use patterns, in 1967 the Legislature created the Joint Interim Committee on Agriculture, including a Subcommittee on Land Use.

Senator Cornelius Bateson (D., Salem) chaired the Land Use subcommittee, which also included Sen. Raphael Raymond, Rep. Wallace Carson, Jr., (R. Salem), and Rep. Loren Smith (R., Corvallis).

The committee and the subcommittee met in late 1967 and throughout 1968. The committee heard from Oregon State University experts who stated that sprawl in Washington County was causing loss of \$35 million per year in Washington County alone, and that four acres of farm land are lost to farming for each dwelling. The Committee also sought advice on the use of U.S. Soil Conservation Service soil classifications as a means of identifying productive farm land.

The Committee adopted a report which recommended legislation the 1969 Legislature adopted as Senate Bill 10. The committee report shows that the committee intended the standards it proposed for local zoning be mandatory, and believed the issue of land use was of "vital" importance.

The Legislature changed the committee bill by transferring the duty to prescribe zoning for unzoned county land from the State Land Board, as the committee recommended, to the Governor. The Legislature adopted the standards for county planning as recommended by the Committee. Key provisions of Senate Bill 10 are set forth below:

Senate Bill 10 provided,

“...the Governor shall prescribe, may amend, and shall thereafter administer comprehensive land use plans and zoning regulations” for any lands that are not subject to a comprehensive plan and zoning pursuant to ORS Ch. 215 by December 31, 1971. Further, any plan prescribed or amended by the Governor “shall be in accordance with the standards provided in ORS 215.515 ...” ORS 215.510.

ORS 215.510 (Senate Bill 10) (1969) authorized the Governor to “cause to be instituted an appropriate proceeding to enjoin the construction of buildings, or performance of any other acts which would constitute a land use that does not conform to the applicable land use plan or zoning regulation.”

ORS 215.515 provided the standards which ORS 215.510 required the Governor to follow in prescribing or amending county comprehensive plans and zoning, including a goal of “productivity” for agricultural land:

To conserve prime farm lands for the production of crops and provide for an orderly and efficient transition from rural to urban land use.

SB 10 was controversial, based on objections related to property rights and local control. Zammo-ites (Zoning Adjustment Modification Organization, Inc.) from Clackamas County led the charge for repeal. Among other claims ZAMMO argued the Clackamas County Board of Commissioners adopted zoning called for by Senate Bill 10 without public hearing. By initiative petition, ZAMMO placed Measure 11 on the November 3, 1970 general election ballot. Oregon voters defeated Measure 11 by 342,503 to 272,765 (56% - 44%).

B. Senate Bill 100 (1973)

The 1973 Legislature was concerned counties had done little zoning in response to Senate Bill 10 (1969). However, the Legislature also recognized it was unfeasible for the Governor to act, in effect, as a county planning commission, as called for by Senate Bill 10. In response, and at the urging of Gov. Tom McCall and Sen. Hector Macpherson (R., Albany), a Willamette Valley dairy farmer, the Legislature debated Senate Bill 100. Finally, on April 12, 1973, the Senate passed Senate Bill 100, by a vote of 18 -12. On May 24, the House passed Senate Bill 100, by a vote of 40-20. Governor McCall signed Senate

Bill 100 into law on May 29, 1973, with an effective date of October 5, 1973.²

1. Duties of Land Conversation and Development Commission

SB 100 created the Oregon Land Conservation and Development Commission (LCDC) and required LCDC to:

- Adopt statewide goals for local plans and zoning
- Oversee the process of cities and counties revising existing plans and zoning to comply with LCDC's new goals.

In December 1973, Governor McCall appointed the first seven members of LCDC, and the Commission held its first formal meeting in February 1974, with the key task being the formulation of the statewide planning goals.

On December 27, 1974, after 67 public hearings and work sessions since February 1974, the Oregon Land Conservation and Development Commission (LCDC) fulfilled its duty under Senate Bill 100 by approving 14 statewide planning goals, to be effective January 1, 1975. Goal 3, Agricultural lands; Goal 4, Forest lands; and Goal 14, Urbanization implemented legislative goals and policy to protect the productive capability of farm and forest land. Representatives of the Oregon Farm Bureau Federation, especially Howard Fuji, and of the forest products industry, especially representatives of Weyerhaeuser Company, played major roles in the development of LCDC's Goal 3 and Goal 4.

LCDC Goal 14 required cities to adopt urban growth boundaries ("UGBs"). A UGB does not itself limit permissible uses of land. Instead, a UGB is a line on a map that separates "rural" areas from "urban" and "urbanizable" areas. UGBs limit sprawl by limiting the amount of urbanizable land included in the UGB to an amount a city proves to be needed to accommodate future urban population growth. Goals 3 and 4 only apply *outside* the UGB (see below). In contrast, so-called urban, or "pro-development" goals only apply *inside* the UGB. For example, Goal 10, Housing, prohibits zoning which unreasonably limits traditional, more affordable housing densities, and, Goal 9, Economy of the State, requires city inventories of industrial land to fit a city's current economic development goals.

² To accommodate Senate Bill 100's opponents, the State Senate did not include an emergency clause in the bill. Doing so would have allowed Senate Bill 100 to go into effect when the Governor signed it, thereby pre-empting an effort to place Senate Bill 100 on the ballot by gathering petition signatures. An effort to refer Senate Bill 100 to the voters materialized, but referral backers failed to submit the required number of signatures to the Secretary of State's office.

2. Efforts to Repeal Senate Bill 100 and LCDC's Goals

In 1976, 1978, 1982, 1996, and 2000 voters rejected efforts to repeal Senate Bill 100 and LCDC's goals, including the immediate application of goals.³ Developments during the campaigns showed a steady deepening and broadening of public support for the land use program.

In the 1976 election real estate developers were the biggest single source of contributions to *support* repeal. In 1978, after home builders saw that Goal 10, Housing, fostered construction of affordable housing inside urban growth boundaries, developers were the largest single source of contributions to *oppose* repeal.

In the 1982 election, Hewlett Packard Company, Palo Alto, sent James G. Law, its top plant locator nationally, to Portland to speak out against the repeal measure. He explained that HP was trying to build plants in California and Washington, but that these plants were tied up in 4-year litigation battles, while a plant in Corvallis, employing 3,400, had been approved in 2 - 3 months. Law's talk to the Downtown Rotary in Portland made headlines.

C. Senate Bill 101 (1973)

After enacting Senate Bill 100, the Legislature concluded action on Senate Bill 101, a property tax bill (see p. 24). Senate Bill 101 strengthened state land use policy for farm land beyond that provided by the "interim" goal provided in (ORS 215.515(4) (Senate Bill 10, 1969) (p. 10, *supra*). Legislators and farmers were mindful that land in farms in the Willamette Valley had fallen by roughly one-third from 1950 to 1970 (**Table 2**, p. 3), and concerned about nonfarm residences in commercial farm areas. This is because occupants of nonfarm residences challenge field-burning, chemical spraying, foul odors, and night-time harvest noise, and object to dogs being shot for chasing livestock.

Such conflicts pose immediate and long-term problems. *First*, even brief delays in planting, spraying or harvesting can spell disaster. *Second*, actual or feared conflicts discourage long term farm investments. Farmers buy land to expand the size of their operations, thereby reducing unit costs. Farmers also invest in drainage and irrigation systems, in more efficient harvesting equipment, and in processing facilities to add value to crops. Farmers won't invest in land or equipment if they are unable to engage in farm practices essential to generating income needed to pay off investment loans. If farm investment slows, farm income on which Willamette Valley cities and towns have relied for 150 years will decline.

ORS 215.243 (see p. 8-9) clarified and strengthened prior agricultural land use policy in four ways:

- Established the preservation of the state's agricultural economy as the purpose of the state's agricultural land use policy;

³ LCDC opponents also urged the Legislature in 1977, 1979, and 1981 to enact laws changing Senate Bill 100 so LCDC goals would not apply until the time local zoning was changed. This issue became moot by 1986, when counties finished changing plans and zones.

- Provided for “preservation of a maximum amount of a limited supply” of agricultural land;
- Broadened the scope of farm land protection policy by making “agricultural land,” the subject of state farm land policy, not merely “prime farm land,” (as provided by Senate Bill 10 (ORS 215.515(4)) in 1969), and, most important; and
- Focused on the need to preserve farm land in “large blocks,” a circumstance essential to the ability of commercial farm operators to operate free of nonfarm uses which conflict with accepted farm practices.

The Senate passed Senate Bill 101 on June 13 (23 - 5). The House passed Senate Bill 101 on June 29 (42-15.) Gov. McCall signed Senate Bill 101 into law August 22, 1973.

D. LCDC Goal 3, Agricultural Lands

LCDC’s Goal 3 is the heart of Oregon’s farm land preservation policy. As described below, Goal 3 is not only based on, and implements, prior land use and property tax policies set by the Legislature, but “marries” those policies. With the leadership of LCDC Chairman L. B. Day and LCDC Commissioner James Smart, LCDC crafted a farm land policy that was understandable by farmers and county officials, and respectful of previously set legislative policy.

1. Defining “Agricultural Land”

LCDC Chairman L. B. Day understood food processing⁴, was familiar with the legislative history of the interim goals provided by ORS 215.515 (1969), and understood that the U.S. Soil Conservation Service Soil Classification system offered an objective, widely-understood basis for farm land policy. He also was a state representative in 1967 and 1969 when the Legislature developed and enacted Senate Bill 10. In the 1967 Legislature, Day sponsored legislation calling for protection of soil classes I and II.

Chairman Day and LCDC Commr. James Smart, a respected Polk County farmer, long-time leader in the Oregon Farm Bureau, and former Chairman of the Polk County Planning Commission, also understood (1) the special assessment valuation developed in the 1960s and in Senate Bill 101 (1973), and (2) the state’s new agricultural land use policy established by Senate Bill 101 -- i.e., to protect a “maximum amount” of agricultural land in “large blocks.” (see p. 9)

During LCDC’s 67 public hearings and work sessions February to December 1974, Commr. Smart explained to LCDC members and the public that the 8-class SCS soil classification system expressed increasing limitations (e.g., slope, wetness, rockiness, fertility, etc.) on cultivability, that the system includes the dozens of soils series throughout Oregon, and that SCS had published detailed, county-by-county aerial-photographed, soil maps of nearly all Oregon harvested cropland. He also explained that farmers, extension agents and county planners understand those maps, and that mapped soil capability data was readily available, and provided a non-political, scientific way for

⁴

Day was head of Cannery Workers 701, a statewide Teamsters affiliate.

counties to inventory and zone farm land in a manner that carries out the “large blocks” goal of ORS 215.243.

Commr. Smart also explained that soil classes do not exist neatly over the landscape like squares on a chessboard. SCS soil maps show Class III and IV soils are randomly scattered over the landscape in splotchy shapes and varied sizes, typically 5 - 10, 20 acres, and randomly intermingled among Class I and Class II soils of similar size and shape. Commr. Smart repeatedly made this point, in terms such as:

“The typical Willamette Valley farm with I and II soils also has III and IV soils. The farmer farms them all, plowing and harvesting back and forth across his fields in straight lines, crossing over all the soils, II and IV alike. If we don’t protect the III and IV soils, you won’t have protected the Class I and II soils, and we won’t have protected farm operations.”

Based on this understanding of the distribution of agricultural soils over “large blocks” of land in commercial farm use, LCDC adopted an inclusive definition of Goal 3, “Agricultural Land”: Soil classes I-IV in Western Oregon, and soil classes I-VI in Eastern Oregon. This definition implemented *both* 215.515(4) (1969), which focused on “prime farm lands,” *and* ORS 215.243, the 1973 Legislature’s policy to preserve “a maximum amount of agricultural land in large blocks.” For the reasons given by Commissioner Smart, a narrower definition of agricultural land, in terms of soil classes, would have accomplished neither the 1969 Legislature’s goal to conserve “prime farm land,” nor the broader goal set by the 1973 legislative goal to protect a maximum amount of agricultural land in “large blocks.”

From 1975 to 1986, counties adopted EFU zoning to 15.6 million acres, roughly 3 million in Western Oregon and 12.5 million in Eastern Oregon (**Table 4**) (p. 17).

2. Determining Uses of “Agricultural Lands”

Since 1975, state laws granting farm land tax reductions have been directly linked to state laws limiting the use of farm land. That is, land zoned for farm use automatically receives a tax reduction, and the uses allowed on farm land are those approved by the Legislature in property tax statutes.

LCDC borrowed from property tax policy (ORS 215.213) to determine what uses county zoning could authorize on “agricultural land.” LCDC’s Goal 3 required counties to apply exclusive farm use (EFU) zoning, as provided in ORS Chapter 215, to land that county inventory procedures identified as “agricultural land.” ORS Chapter 215 enumerates the land uses that must be included -- but not exceeded by -- a county’s exclusive farm use zoning ordinance, if land subject to the zone is to be eligible for special assessment valuation. By thus borrowing from ORS Chapter 215, LCDC’s Goal 3:

- Conferred automatic special assessment valuation to any “agricultural land” which counties to zoned EFU.
- Provided a “safety valve” for Goal 3’s inclusive definition of “agricultural lands” (i.e., ORS 215.213(d) allows *nonfarm* dwellings on EFU-zoned “agricultural land” if a particular part of an ownership is “unsuitable for the production of crops and

livestock.” Thus, if LCDC’s Class I-IV definition of agricultural land happened to include land that was, in fact, not productive, a *nonfarm* dwelling could be located on that land without a zone change.)

- Provided important standards for *farm* dwellings. To approve a farm dwelling on EFU land, the county must find that the land is presently in commercial farm use, and that the proposed dwelling is the type customarily provided in conjunction with commercial farm use.

LCDC left to the judgment of future sessions of the Legislature to narrow or expand the uses allowed on “agricultural land” by directly amending Chapter 215. (Since 1975, the Legislature has done this many times.)

Even though land may be “agricultural land,” as defined by Goal 3, if partitioning and development that occurred prior to the adoption of Goal 3 “irrevocably committed” land to nonfarm use, LCDC’s Goal 2, Land Use Planning, authorized counties to designate such land an “exception,” and zone that land “rural residential.” As of 2005, about 890,000 acres statewide have been so designated. In addition, LCDC’s goals provided for designation of “non-resource” land -- land which is not agricultural or forest land. About 86,000 acres statewide have been so designated.

Table 4

**Farm and Forest Land Zoned for Farm and Forest Use,
Western and Eastern Oregon, 2004**

County	Farm			Forest			Total
	West	East	Total	West	East	Total	
Baker		861,994	861,994		39,262	39,262	901,256
Benton	105,079		105,079	175,186		175,186	280,264
Clackamas	132,135		132,135	255,115		255,115	387,250
Clatsop	16,347		16,347	295,864		295,864	312,211
Columbia	44,188		44,188	300,276		300,276	344,465
Coos	74,054		74,054	532,760		532,760	606,814
Crook		763,804	763,804		90,770	90,770	854,574
Curry	43,143		43,143	264,902		264,902	308,045
Deschutes		166,572	166,572		73,148	73,148	239,720
Douglas	297,194		297,194	1,051,335		1,051,335	1,348,530
Gilliam		693,371	693,371		-	-	693,371
Grant		894,672	894,672		147,025	147,025	1,041,697
Harney		1,457,614	1,457,614		5,439	5,439	1,463,053
Hood River		23,506	23,506		48,456	48,456	71,962
Jackson	207,505		207,505	450,890		450,890	658,395
Jefferson		437,653	437,653		78,339	78,339	515,992
Josephine	23,194		23,194	175,457		175,457	198,650
Klamath		593,888	593,888		720,304	720,304	1,314,192
Lake		760,819	760,819		262,686	262,686	1,023,505
Lane	167,300		167,300	810,692		810,692	977,992
Lincoln	14,107		14,107	344,832		344,832	358,939
Linn	356,284		356,284	457,933		457,933	814,218
Malheur		1,306,165	1,306,165		-	-	1,306,165
Marion	292,719		292,719	102,512		102,512	395,231
Morrow		996,988	996,988		49,390	49,390	1,046,378
Multnomah	28,697		28,697	25,317		25,317	54,015
Polk	173,890		173,890	212,465		212,465	386,355
Sherman		454,219	454,219		-	-	454,219
Tillamook	31,791		31,791	186,772		186,772	218,563
Umatilla		1,325,832	1,325,832		72,111	72,111	1,397,943
Union		494,843	494,843		144,434	144,434	639,277
Wallowa		657,544	657,544		130,221	130,221	787,765
Wasco		768,636	768,636		57,958	57,958	826,594
Washington	121,719		121,719	163,726		163,726	285,444
Wheeler		<u>655,370</u>	655,370		<u>102,514</u>	102,514	757,884
Yamhill	<u>154,012</u>		<u>154,012</u>	<u>124,163</u>		<u>124,163</u>	<u>278,175</u>
TOTAL	2,283,358	13,313,490	15,596,848	5,930,197	2,022,057	7,952,254	23,549,101

Source: Table 2 of County Assessors' Summary of Assessments and Levies (SAL) reports to DOR, fiscal year 2003-04, aggregated from Tax District level.

E. LCDC Goal 4, Forest Lands

LCDC adopted Goal 4, Forest Lands, on December 27, 1974, to be effective January 1, 1975. LCDC Goal 4 effectuates the Legislature's 1971 goal of forest land productivity. Forested land was to be identified based on productive capability of forest soils. Counties were required to "inventory, designate and zone" forest land for forest use. From 1975 to 1986, counties zoned 7.9 million acres of forest land for forest use, roughly 6 million in Western Oregon, and 1.9 million Eastern Oregon, with 983,000 acres of the Eastern Oregon total in Klamath and Lake Counties alone (**Table 4**).

LCDC amended Goal 4 in 1990 and 1994, further emphasizing that it is primarily implementing a forest land productivity purpose:

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

Factors of location, quality and available stumpage make Oregon's 7.9 million acres of privately-owned timber land generally more important to Oregon's future economy than Oregon's 13 million acres of federal timber land. Compared to U.S. Forest Service land, especially in Western Oregon, typically lower elevation private forest land:

- Is closer to mills, publically maintained roads, and fire control assets;
- Requires shorter hauls, which are increasingly expensive;
- Has less steep terrain, which reduces road-building, management, and harvest costs, and which also reduces soil loss and water pollution;
- Enjoys a longer working season because of less snow and other weather constraints; and
- Has deeper, richer soils and gentler climate providing higher site productivity for annual wood fiber growth.

Of particular concern was the nonindustrial private forest lands (NIPF) ownership of 5,000 acres or less, and without processing facilities. NIPF land is 35.4% of Oregon's total private forest land base, and 16% of Oregon's total forest land base, including U. S. Forest Service, BLM, and state forest lands.

In the mid 1970s, NIPF land was deemed critical for two reasons. First, NIPF land is second only to industrial land in terms of site productivity. Over 39% of NIPF land is "high" site class, compared to 46% for industrial land, and 14% for BLM, and 13% for U. S. Forest Service land. In addition, NIPF land has great volume of sawtimber. With impending harvest reductions on industrial land due to age class imbalances, timber from

NIPF lands was important. The “Beuter Report” (1976) found that with only a modest increase of management, harvest on NIPF land could increase from 260 million BF annually to 1.0 - 1.4 billion BF.⁵

F. Forest Practice Regulations

In 1971, the Board of Forestry adopted rules implementing the forest productivity goal of the 1971 Forest Practices Act. The 1971 rules made Oregon the first state to require reforestation after harvest. The premise of this rule is the world class quality of Oregon’s forests in terms of their capability to annually grow wood fiber. In the late 1980s; only 3 of 10 harvested acres in the 170-million-acre expanse of private forest land in the southern United States were being reforested.

Forest practice regulation mainly relates to road-building and harvest. These regulations can be thought of as restrictions on operations. However, operations which comply with regulations are exempt from legal attack by third parties. Forest practice regulation thus provides a framework within which forest land owners can make long-term investments based on assumptions regarding allowable management and harvest activities.

G. Adjustments to Agricultural Land Policy

Since 1975 the Legislature and the Land Conservation and Development Commission have frequently and significantly relaxed laws for individual dwellings on farm and forest land. These changes have been prompted by recurring complaints that people buy rural land with the intention to build a home, but zoning adopted thereafter thwarted their plans. Limitations on dwellings were relaxed on about 85% of farm land deemed less productive, less pressured by population growth, or both. Conversely, standards were tightened for roughly the 20% of 15 million acres of farm land deemed “high value.” About 80% of Oregon’s “high value” farm land is in the Willamette Valley, where high value land constitutes about 1.2 million acres of the Valley’s 1.5 million acres of farm land.

1. Marginal Lands (1983) (ORS 215.317)

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

2. Lot of Record (1993) (ORS 215.705)

In 1993 the Legislature adopted HB 3661 to further relax Oregon’s land use laws. In doing so, they responded to the same “changing the goal posts” complaint that

⁵ Beuter, John H. et al, *Timber for Oregon’s Tomorrow; An Analysis of Reasonably Possible Occurrences*. Oregon State University Research Bulletin, No. 19, 1976.

supposedly justified “Marginal Lands” legislation in 1983, and Measure 37 in 2004. 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 farm land under certain conditions.

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 are now 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).

Finally, HB 3661 authorized *nonforest houses* in forest zones through the adoption of the so-called “template” process in ORS 215.750. This provision authorized houses on “impacted” forest land made less productive by a combination of prior parcelization and development.

Since 1993, over 1,000 houses a year are approved on farm and forest lands using these and other criteria. Nonfarm and lot-of-record dwellings account for half of the new dwellings built in EFU zones. Forest template and lot-of-record dwellings account for 84% of the new dwellings built in forest zones.

3. \$80,000 Gross Income Test for Farm Dwellings (1994)

In 1994, LCDC adopted a rule interpreting the statutory standard that farm dwellings must be “customarily provided in conjunction with farm use.” The rule required

\$80,000 gross farm income for two of the last three years, or three of the last five years before a dwelling could be built on “high value” land in conjunction with that farm use. A \$40,000 test was required for non-high-value agricultural land. Under the rule, a farmer who planted an apple, pear, hazelnut, or cherry orchard, or grape vines, on enough acres to gross \$80,000 when the plants matured was required to wait 3 - 5 years to apply for a dwelling, notwithstanding the substantial and fixed nature of the landowner’s investment.

H. “Right to Farm” (1993) (ORS 30.930-947)

In 1993, the Legislature adopted “Right to Farm” legislation to limit nuisance or trespass lawsuits against farm and forest managers carrying out farm or forest practices. “Right to farm” legislation represents an additional legislative tool to achieve the goal of future income production on farm land.

In adopting this policy, the Legislature found:

- “Farm and forest practices are critical to the economic welfare of the state, and
- “The expansion of residential and urban uses on and near land zoned or used for agriculture or production of forest products may give rise to conflicts between resource and non-resource activities.” ORS 30.933(1)

In 1993, the Legislature declared it was state policy that farm and forest practices on land zoned for farm use and for production of forest products “be protected.” Also in its 1993 session, the Legislature reaffirmed the centrality of the 1973 policy for agricultural land use, as set forth in ORS 215.243 (1973), which calls for maintaining farm land in “large blocks:”

“Certain rights of action ... are inconsistent with land use policies, including policies set forth in ORS 215.243, and have adverse effects on the continuation of farming and forest practices and the full use of the resource base of this state.”

However, as explained by Dan Erickson, a Wasco County Judge and a commercial cherry grower, “Right to Farm” legislation is no substitute for land use policies. As Judge Erickson testified on February 11, 2005 at a Senate Land Use and Environment hearing on Measure 37 in Hood River,

“Cherries have zero tolerance for fruit fly. Spraying is mandatory. Right to farm protects farmers from nuisance litigation based on complaints over noise and smells, but not spray drift. This is perhaps the most serious conflict between farmers and nearby nonfarm land uses and the problem is not being handled by Right to Farm laws. EFU zoning needs to continue to be able to separate non-farm uses, such as houses and schools, which can result in costly conflicts over spray drift, from commercial farming areas by EFU zoning.”

III. PROPERTY TAX POLICIES TO ACHIEVE PRODUCTIVITY GOAL

Beginning in the early 1960s, the Legislature enacted property tax laws to address the financial impact of non-farm and non-forest use demand for farm and forest land. Legislators were concerned such demand would raise the market value and thus the property tax burden on farm and forest lands relative to income produced by those lands to levels that would make resource uses uneconomical.⁶

Tax policies for farm land fit hand in glove with land use policies, operationally and politically: Any land zoned exclusive farm use automatically receives special assessment valuation; farm and forest use of rural land is the justification for both lower rural taxes, and for the higher urban and suburban taxes needed to finance lower taxes on farm and forest land.

A. Special Assessment of Farm Land

The origins of Oregon's current assessment policy for farm land date from the Legislature's efforts in the 1950s to make more predictable, transparent, and fair Oregon's land appraisal system.⁷ By 1959, longstanding⁸ concern with the burden the property tax placed on farm land owners led the Oregon State Tax Commission (the predecessor to the DOR) to recommend study of the problem of keeping farm land in urban and suburban areas in farm use.⁹

1. 1960's Legislation

In 1961, the Legislature, acting on the interim committee's recommendations, created a partial exemption for farm land "zoned exclusively for farm use" to be assessed at its value for farm use rather than true cash value "if applied to other than farm uses."¹⁰ As a later commentator observed, "[Z]oning was used to carry out a taxing policy and such zoning had no independent importance to farmers."¹¹

⁶ Note: The tax rate reduction (Measure 5, passed in 1990) and the cutting and capping of assessed property values and their growth (Measure 50, passed in 1996) are discussed in section V, below.

⁷ Carlisle Roberts, *The Taxation of Farm Land in Oregon*, 4 Will.L.J. 431 (1967).

⁸ *Id.* at 432, note 6, citing the 1992 Report of the Committee on Tax Investigation of the State of Oregon (Salem, Oregon, State Printing Dept. 1923).

⁹ Roberts, *op cit.*, at 442, citing House Joint Resolution 38 (Oregon Laws 1959) and the resulting Report of the Legislative Interim Tax Study Committee.

¹⁰ Roberts, *op cit.*, at 443 and note 41, citing Oregon Laws 1961, Ch. 695 (HB1008).

¹¹ Edward Sullivan, *The Greening of the Taxpayer: The Relationship of Farm Zone Taxation in Oregon to Land Use*, 9 Will.L.J. 1, 9 (1973).

The 1963 Legislature provided for deferral of property taxes based on the difference between farm use value and market value for unzoned farm land, provided criteria for land that qualified for deferral, imposed additional taxes if unzoned farm land were disqualified from special assessment, and established the definition of “farm use” that eventually became a key part of county zoning for farm land.

As of January 1964, exclusive farm use zones existed only in Polk and Washington counties. In three later sessions, the Legislature altered the special assessment law to:¹²

1965 Mandate that “sales for bona fide farm use” be based on sales that would “justify their purchase by a prudent investor for farm use.”

1967 Exclude the value of non-farm uses of farm land for purposes of determining farm land valuation: “It is the legislative intent that bona fide properties shall be assessed at a value that is exclusive of values attributed to urban influences or speculative purchases.”

Revise the 1965 definition of sales method of appraisal;

Impose a minimum income test of \$500 “profit in money” for three of the five years preceding application for farm use assessment exemption or deferral for deferral farm land, to deter non-bona fide farms, such as hobby farms;

Set capitalization rate for farm rents using “the current rate of interest charged by the Federal Land Bank on first mortgages of farm land in the county in which the agricultural lands are located.” Oregon Laws 1967, Chapter 633.¹³

Set (in special session) a variable ratio for farm land (i.e., assessment at less than 100 percent of market value) for the income method of appraisal.¹⁴

¹² The history of farm land special assessment tax law has been summarized in several places, including Roberts, *op cit.*, and Sullivan, *op cit.* The list below is digested from the Legislative Revenue Office, Report #6-1994, *Oregon Tax Expenditures*. This report was the predecessor to the *State of Oregon 1997-99 Tax Expenditure Report*, (Salem, Oregon, Department of Administrative Services (DAS) and Department of Revenue (DOR)), and later volumes of the same report, produced by DOR. The 1997-99 edition includes estimates for the 1995-97 biennium.

¹³ The 1977 Legislature provided that the Federal Farm Credit Bank rate be averaged “over the past five reported calendar years, plus a component for the local tax rate.” ORS 308A.092 (2). (Current law).

¹⁴ The income method requires county assessors to estimate rent paid for specially assessed farm land each year, by class of land and area, on a per acre value basis, i.e., “[T]he economic rent the property would most probably command in the open market as indicated by current rents being paid, and asked, for comparable space.” OAR 150-308.205-(A) (2)(g). This method of establishing assessed value contrasts with using comparable sales of, for example, commercial and industrial property, which more clearly approximate market value.

In any context, the higher the capitalization rate, the lower the asset value ultimately determined by that rate. Assessment and appraisal experts uniformly say the capitalization rate set by ORS 308A.092(2) will produce land values lower than what would be implied by farm land rents based on commodity earning power, let alone implied by farm and nonfarm uses allowed in the EFU zone.

For example, in 2003-04, the Federal Farm Credit Board rate, specified by statute, was 8.08 percent, and the average rural tax rate estimated in Marion county, also required by statute, was 1.197 percent, for a total “cap” rate of 9.27 percent.¹⁵ In 2003-04, the per acre rent income for irrigated crop land of at least 25 acres in northern Marion County was \$140. Applying the statutory cap rate of 9.27% to \$140 rent income yields a \$1,510 per acre *SAV value* for irrigated crop land ($140/.0927 = \$1,510.25$).

By contrast, the county assessor’s estimate of *market value* for irrigated crop land in 2003-04 was \$6,935 per acre;¹⁶ actual market value was probably 50% higher. A capitalization rate that would generate a \$6,935 per acre value given \$140 of rent income, would have to have been 2.02%, or 7.25 percentage points lower. Use of the “high” statutory 9.27 % cap rate reduces taxes by reducing values. Given Marion County rural tax rates, the *statutory* cap rate produced an \$18.06 per acre tax. Using the lower 2.02% “market” cap rate would have produced an \$83.01 per acre tax.

2. 1973 (SB 101)

Following enactment of SB 100 on May 24, 1973, on June 29, the House followed the Senate and the 1973 Legislature enacted SB 101, a companion measure to SB 100. Authored by Sen. Hector Macpherson (R., Albany) and carried on the floor by Sen. Victor Atiyeh (R., Beaverton) (see **Appendix A**), SB 101 set forth legislative policy that zoning limitations on agricultural lands constituted the rationale and justification for property tax reductions:

“Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural lands and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.”¹⁷

¹⁵ These figures are used to illustrate the effect created by applying the statutory “cap” rate to farm income rather than using farm land sales as the basis for assessment. Marion County rate and rent income data supplied by Glen White, Farm Section Senior Appraiser. The passage of Measure 50 created a new assessment system for the 1997-98 fiscal year (discussed in **section IV.B.**, below), but preserves the proportional values between market and specially assessed values (as of 1995-96) described in this section.

¹⁶ Based on reappraisal in 2001 and annual adjustments using mass appraisal methods. This value is less than the then-current comparable sales prices of such land. The difference is due to a combination of the date prescribed in statute for determining market value (the previous January 1st) and the local procedures for gathering data. *Ibid.*

¹⁷ Codified as ORS 215.243.

As Sen. Victor Atiyeh put it on the Senate Floor on June 6, 1973, the Legislature intended these tax reductions as a financial benefit, a “goodie” extended in consideration of farm land limited by state law to productive farm use, thereby providing all Oregonians an economic and environmental benefit.

“And I’m going to put it crudely . . . we were attempting . . . to give some ‘goodies’ for being in a farm zone.”

On June 6, 1977, Sen. Mike Thorne (D., Pendleton) said senators anticipated that the just-passed Senate Bill 100 would bring about “a lot of zoning” for farm land. On the final debate on SB 101 on June 13, both Sen. Macpherson and Sen. Atiyeh made clear the tax reductions were in consideration of the zoning limitations, and of the contribution of continued “income” that both SB 100 and SB 101 contemplated.

Sen. Macpherson:

“I think it [SB 101] does carry through the philosophy that we have, that we want to tie up as much of our good farm land as we can in exclusive farm use zoning. To do this, we need to put the goodies in.”

Sen. Atiyeh:

[F]armers need land. They need land in order to produce their income. But there have been some problems . . . So what SB 100 is doing is, in effect, is to lock in even tighter farm zones [so] county courts cannot change it . . . [W]e are taking development rights away from the farmers in this bill, and we are, in effect, tying him up tighter than he ever has been before . . . we’re asking the farmer to make a contribution to us in the state of Oregon.”

SB 101 also defined grounds for disqualifying zoned farm land, added a ten-year property tax recapture penalty to disqualified land, and extended the recapture penalty for unzoned (deferral) farm land from five to ten years. In addition, SB 101 provided further “goodies” to farm land owners¹⁸:

- Included land under farm use building in special assessment;
- Rescinded the \$500 gross income requirement;
- Expanded the allowable nonfarm uses in EFU zones;
- Exempted EFU land from levies of new sewer and water districts;
- Valued EFU land at farm use value for inheritance tax purposes; and (a result of Sen. Thorne’s June 7 motion to re-refer to Environment and award the bill in committee to include favorable inheritance tax purposes.).

¹⁸ The following bulleted list is digested from the Legislative Revenue Office, Research Report #11-80, page 7.

- Protected farm uses in EFU zones from unreasonable restrictions because of noise, dust, odors, etc.

3. Post-1973 Adjustments

Farm land owners receiving benefits under deferral, outside of exclusive farm use zones, have faced more onerous requirements to receive and maintain their tax benefits than have EFU farm land owners. Since the adoption of SB 101, the Legislature has continued to refine the tax benefit laws to realize its intent, and to limit its application to bona fide farm use. Laws enacted to this end include:

- Coordinating farm and forest land special assessment exemptions;¹⁹
- Establishing and adjusting gross income requirements;²⁰
- Changing the valuation of farm homesites;²¹ and
- Making several other minor adjustments.²²

4. Taxation of Farm Land, 2004

In tax year 2003-04, special assessment of farm land applied to 15.6 million acres statewide. Value of farm land at specially assessed value in 36 counties totaled \$2.25 billion, and, at rural tax rates that vary by county, owners of the 15.6 million acres paid \$27.4 Million in property taxes, or an average of \$1.76/acre.

A farmer in Benton County growing grass seed on 400 acres paid \$7.84 per acre, or \$3,136, in property taxes in 2004. A cattle rancher in Grant County on 3,000 acres paid \$0.37 per acre, or, \$1,110 (**Table 5**) (p. 27).

¹⁹ I.e., changing land from farm to forest use and vice a versa would not cause disqualification. Oregon Laws 1981, Chapter 419.

²⁰ Originally establishing in 1967 as \$500 “profit in money” three of the five years preceding application for farm use assessment, rescinded in 1973, as noted above, reestablished in 1977, and expanded and indexed to inflation in 1991. Current law requires gross income of at least \$100 per acre, with a minimum of \$650 (for farms under 6.5 acres) and a maximum of \$3,000 (for farms over 30 acres) ORS 308A.071.

²¹ From farm use value to the average market value per acre for a continuing farming operation, applied only to the one acre containing the homesite.

²² E.g., retaining special assessment status for retired farmers continuing to occupy a farm homesite; extending special assessment status to aquacultural uses; disabling non-farm use triggering disqualification under certain conditions. See Legislative Revenue Office, Research Report #6-94, *op cit.*, at page 62..

Table 5

Taxation of Specially Assessed Farm Land, Oregon 2004

	County	Acres	Assessed Value	Rural Tax Rate	Taxes Paid	Taxes Paid/Acre
1	Baker	861,994	\$51,225,651	10.79	\$552,531	0.64
2	Benton	105,079	64,585,447	12.76	824,004	7.84
3	Clackamas	132,135	81,326,672	13.64	1,109,532	8.40
4	Clatsop	16,347	3,974,445	11.22	44,599	2.73
5	Columbia	44,188	9,906,850	10.99	108,911	2.46
6	Coos	74,054	25,316,902	11.46	290,080	3.92
7	Crook	763,804	35,516,630	12.68	450,477	0.59
8	Curry	43,143	17,370,810	7.69	133,619	3.10
9	Deschutes	166,572	14,951,192	13.13	196,334	1.18
10	Douglas	297,194	45,168,354	9.04	408,179	1.37
11	Gilliam	693,371	65,539,275	12.06	790,089	1.14
12	Grant	894,672	23,936,828	13.86	331,697	0.37
13	Harney	1,457,614	58,389,839	11.51	671,919	0.46
14	Hood River	23,506	44,009,806	11.44	503,278	21.41
15	Jackson	207,505	24,230,283	12.09	292,884	1.41
16	Jefferson	437,653	36,749,730	15.57	572,025	1.31
17	Josephine	23,194	11,691,280	6.98	81,554	3.52
18	Klamath	593,888	110,309,145	9.63	1,062,212	1.79
19	Lake	760,819	64,474,066	12.81	826,015	1.09
20	Lane	167,300	71,753,384	10.40	746,583	4.46
21	Lincoln	14,107	3,959,840	10.99	43,534	3.09
22	Linn	356,284	162,529,282	11.89	1,932,036	5.42
23	Malheur	1,306,165	120,351,330	11.25	1,353,982	1.04
24	Marion	292,719	206,266,590	11.69	2,411,810	8.24
25	Morrow	996,988	78,981,710	14.60	1,153,141	1.16
26	Multnomah	28,697	85,427,130	12.15	1,037,975	36.17
27	Polk	173,890	94,008,233	10.43	980,710	5.64
28	Sherman	454,219	55,497,160	16.88	936,652	2.06
29	Tillamook	31,791	24,108,883	9.81	236,415	7.44
30	Umatilla	1,325,832	227,026,715	12.87	2,922,585	2.20
31	Union	494,843	53,201,581	10.07	535,572	1.08
32	Wallowa	657,544	32,205,990	12.04	387,637	0.59
33	Wasco	768,636	94,021,650	14.09	1,325,231	1.72
34	Washington	121,719	70,859,630	14.60	1,034,889	8.50
35	Wheeler	655,370	20,891,193	15.34	320,478	0.49
36	Yamhill	<u>154,012</u>	<u>63,043,308</u>	12.64	<u>797,121</u>	<u>5.18</u>
	Total	15,596,848	\$2,252,806,814		\$27,406,293	1.76

B. Forest Land Taxation

From 1960-2004, forest taxation shifted significantly, focusing mainly on different tax treatment of timber relative to forest land, and the timing of tax collection on forest land.²³

1. Pre-1977 Laws

Following the development of centralized and substantially improved appraisal methods (leading to substantially increased timber valuations) in the late 1950s, the 1961 Legislature enacted full (eastern) and partial (western) exemptions on property taxes on standing timber (with harvest taxes on timber), and the Small Tract Option for western Oregon owners of 1,000 acres or less, allowing owners to pay property taxes based on the productivity value of the land rather than through the partial exemption system.²⁴ These changes put increased emphasis on accurate land values.²⁵

The State Tax Commission, and its successor, the Department of Revenue, resolved the challenge of valuing land²⁶ by developing a formula based on sales data. A 1975-76 effort to collect and analyze sales data showed that 1976 land values were undervalued by 50 percent.²⁷ DOR certified the increased forest land values in western Oregon counties, and the major timber companies appealed. The 1977 Legislature specified the 1976 land values for the 1977 tax roll (via HB 1077), and the Supreme Court decided, in 1982, on a

²³ This section draws heavily on the Legislative Revenue Office Research Report #6-00, *History of Timber Taxes*, which begins before statehood, in 1856. Earlier periods saw the development of the local property tax system, and the challenges of poor data quality, and the relative undervaluation (or valuing at zero) of forest land. Only in 1955 did the Legislature first require County Assessors to separate the timber and forest land value. The report also includes an extensive discussion of the changes in the taxation of timber and the distribution of its revenue. These are included in the discussion in this section only to the extent they bear on forest land taxation.

The timber tax system also includes several Forest Products Harvest Taxes for research, forest land protection, Department of Forestry programs, and assistance to nonindustrial private landowners. (See Legislative Revenue Office Research Report #7-00, *Revenues from Timber in Oregon*, p. 8.) These taxes are not included in the tax benefit estimate, as they confer no special assessment tax benefit relative to non-forest land properties.

²⁴ *Id.*, p. 5. The Small Tract Option was also limited to tracts whose trees averaged no more than 60 years old.

²⁵ *History of Timber Taxes*, *op cit.*, at 6.

²⁶ In brief, valuing land as a residual of the total value net of standing timber value did not yield reliable results. The timber represented the major value of most timber sales. Assumptions used in determining the present value of the timber (e.g., interest rates, allowances for risk) resulted in large percentage swings in the much smaller residual forest land value. *Ibid.*

²⁷ The analysis in this report is limited to property taxes on forest land. The only taxes on standing timber considered are the privilege taxes enacted in the 1990s, discussed above, p. 32, which functioned as a tax on forest land deferred until timber harvest.

higher land value, recovered with interest for 1977-82.²⁸

2. Western Oregon Small Tract Option

The 1961 Legislature created a program (HB 1758) to permit owners of less than 1,000 acres of western Oregon forest land, to pay property taxes based on land productivity, regardless of the value of the standing timber.²⁹ The WOSTOT program was substantially unchanged until 1997, when the size limit was increased to 5,000 acres, and the valuation method and qualification requirements were modified.³⁰

Under HB3575, enacted in 1999, the WOSTOT program was phased out in 2002. By 2003-04, essentially all former WOSTOT land was classified “designated” forest land. At that time 166,000 acres, or about 6% of SAV acreage statewide³¹ were enrolled in this program. Owners to 10 to 5,000 acres of forest were then treated as general forest land unless they met eligibility requirements for and enrolled in the Small Tract Forest land Option (STF).³² Under STF, land is assessed at 20 percent of forest use value and a privilege tax is paid at harvest.³³

3. 1977 (House Bill 3274)

The 1977 Legislature “replaced property taxes on standing timber with a severance tax and revamped tax treatment of timber land.”³⁴ HB 3274 also established a formula for setting western Oregon land values, using the 1977 market value as a base, with adjustments thereafter based on changes in young Douglas Fir stumpage prices. This

²⁸ *Id.*, at 7.

²⁹ WOSTOT was limited to forest land whose trees were on average no more than 60 years old. Productivity value was determined by the Department of Forestry. By contrast, under HB 1438, also passed in 1961, western Oregon timber and forest land not enrolled in WOSTOT was taxed on the partially exempted value of timber and on the value of the land for growing timber and not for any other use. HB 1438 also shifted the majority of the tax paid on timber and forest land to the year of harvest. *History of Timber Taxes, op cit.*, p. 5-7.

³⁰ DOR land valuation was substituted for the Department of Forestry method, reducing the assessed values of WOSTOT land. Also, forest land was disqualified when the average age of timber reached 90 years. *Id.* at pp. 17-18.

³¹ The current law, enacted in 2003, created a broad forest land program under which taxation of the timber harvest other than the Forest Products Harvest Tax (FPHT) was eliminated.

³² See also 2004 *Oregon Public Finance Basic Facts, op cit.*, p. 11.

³³ See description of the Small Tract Forest land program at http://www.oregon.gov/DOR/TIMBER/STF_option.shtml.

³⁴ *Id.*, at 8.

system remained in effect until changes made by the 1993 Legislature.³⁵

4. Post-1977 Laws

The 1991 Legislature revised the severance tax and the forest land property tax. In 1991, the Legislature adopted temporary redefinitions of several timber harvest taxes as taxes on the privilege of harvesting timber, and reduced tax rates to provide tax relief parallel to that extended to other property under Measure 5.

HB 2438 of the 1993 Legislature fundamentally changed taxation of timber and forest land. HB 2438 adopted a system³⁶ of specially assessed forest land values for Eastern Oregon and for eight Western Oregon land classes, subject to the Measure 5 rate limitations. HB 2438 also adopted a new log price index method for future value adjustments, and provided for a periodic review of the statutory values. Finally, HB 2438 limited assessed values to 20 percent of specially assessed value beginning in 1995-96, and provided for a privilege tax at harvest to tax the deferred 80 percent of specially assessed land value at harvest.³⁷

The next major change in forest land taxation was Measure 50. In brief, the Measure 50 reduction on forest land values was accomplished through reduction of the 1995 statutory values for forest land productivity classes. Taxable assessed value for 1997-98 was the lesser of:

- 90 percent of the 20 percent of specially assessed value in 1995-96, or
- 20 percent of the indexed statutory value for 1997-98.

Because Measure 50 did not affect privilege taxes, the reduction in taxes on forest land was less than for property generally.³⁸

The 1993 Legislature changed the method for calculating specially assessed values from a Department of Forestry index of productivity to the Department of Revenue system for other western Oregon private forest land. The conversion to the DOR system reduced small tract option assessed values.³⁹

³⁵ *Id.*, at 10. The structure for Eastern Oregon forest land and Western Oregon Small Tract Option forest land remained largely unchanged during this period. One notable exception was the establishment in 1981 of indexed forest land values in Eastern Oregon, made necessary by a dearth of sales data, difficulty in assessing forest land which often included grazing or recreational uses, and a very long growing cycle which increases the share of the tract value that lies in the timber rather than in the land. *Ibid.*, and *History of Timberland Valuation/Taxation in Oregon, op cit.*, at 28. A second exception were 1979 and 1983 revisions to eligibility for the small tract option tax, which left it more restrictive. (*History of Timber Taxes, op cit.*, at 10).

³⁶ The system was substantially one proposed by industry (the Oregon Forest Industry Council) and recommended by an interim legislative committee. *History of Timber Taxes, op cit.*, at 16.

³⁷ *Ibid.*

³⁸ *Id.* at 17.

³⁹ *Id.* at 18.

The 1999 Legislature made the final major change (HB 3575) to the current system, by providing that “[f]orest land value and maximum assessed value, under Measure 50, as if the land had been assessed at 100 percent of its indexed statutory value in 1995.”⁴⁰ The valuation was phased-in in two steps – to 75 percent of statutory value in 2000 and to 100 percent of statutory value in 2003 – with an associated reduction, and then elimination of the privilege tax. Small landowners were allowed to elect to stay in the 80-20 system adopted in 1993 through HB 2348. The Legislature also organized interim working groups to review of statutory forest land values and market values, and to recommend an optional small owner deferred tax program.⁴¹

The 2003 Legislature extended the 1999 phase-in for one year, for small tract (less than 5,000 acres) owners, and created a Small Tract Forest Land program.⁴²

5. Forest Land Base

Oregon has 7,952,254 acres of private forest land, in 33 counties; 1.9 million in Eastern Oregon, and 6.0 million in Western Oregon. This 7.9 million acres is owned by over 42,000 owners. However, owners with 49 acres or *less* comprise 80% of all owners, but own only 6.1% of private acreage (Table 6).

The 24,836 owners who own 1-19 acres make up 58.9% of all owners, but only 197,985 acres, or 2.4% of all acres. Owners of 20-49 acres are another 21.8% of total owners, but only another 3.7% of total acres. By contrast, 311 owners with 5,000 acres or more are less than 1% of total owners but own 76.7% of total acres.

Table 6

Oregon Private Forest Land Ownership, by Size of Holding, 2001

Size (Acres)	Number of Owners	Percent	Number of Acres	Percent
1-9	17,349	41.1%	90,489	1.1%
10-19	7,487	17.8%	107,496	1.3%
20-49	9,185	21.8%	293,093	3.7%
50-99	3,880	9.2%	273,681	3.4%
100-199	2,312	5.5%	317,527	4.0%
200-499	1,155	2.7%	321,782	4.0%
500-999	311	0.7%	187,419	2.4%
1000-4,999	181	0.4%	266,571	3.3%
5,000+	<u>311</u>	<u>0.7%</u>	<u>6,105,485</u>	<u>76.7%</u>
Total	42,171	100.0%	7,963,543	100.0%

Source: Oregon Department of Revenue

⁴⁰ *Ibid.*

⁴¹ *Id.* at 20.

⁴² Legislative Revenue Office, Research Report #1-04, 2004 *Oregon Public Finance Basic Facts*, January 21, 2004, p. 11.

County assessors classify this 7.9 million acres in two categories: Highest and Best Use (HBU) and Designated. All the land in each category is taxed on the basis of “forest use” valuation - - i.e., the value of growing and harvesting trees of a marketable species.

HBU land is owned by forest products companies in 5,000-acre-plus holdings. HBU land is far removed from population centers and often paved roads, and its market value is the same as “forest use.” Thus, when HBU land is taxed on the basis of forest use valuation, there is no property tax reduction due to the forest use valuation. In 2003-04 county assessors classified 3,921,733 acres HBU.

Counties classify forest land as “designated land” on the theory the land has greater market value than for growing and harvesting merchantable sawtimber. To the extent RMV is higher than forest use value, the owner enjoys a tax reduction when assessors apply rates to forest use valuation. In 2003-04, assessors classified 4,030,521 acres “designated,” about half of which, or 2 million acres, was forest land in 5,000-acre or larger holdings.

ALI Project Advisory Committee Member Tom Linhares, former Columbia County Assessor, and Past President, Oregon County Assessors Association, advised that counties often over-assign forest land to the “designated” class, in part because, the owner of designated forest land which is converted to a non-forest use must pay a penalty; (see ORS 321.257-340).

Since 1990, county assessors have been required by ORS 308.215 to determine market value for forest land and report their findings to DOR, based on sales. However, counties have been slow to reclassify forest land to HBU. In several counties no reclassification process exists to do so.

ALI reviewed each county’s classifications of HBU and designated forest land. Absent circumstances in several urban-influenced counties, and considering information and recommendations of DOR forestry experts and county assessors, ALI reduced classifications in ten counties so designated lands did not exceed 40% of a county’s total private forest acreage; acreage above 40% was classified HBU.⁴³ ALI’s adjustments reduced designated acres by 1,241,480 to 2,789,041, and increased HBU acres to 5,163,213. (**Table 7** (p. 33)).

6. Taxation of Forest Land, 2004

In 2003-04, the market value of the 2.8 million acres of “designated” forest land was \$4.2 billion (reflecting downward adjustments required by Measure 50), while the specially assessed value of that 2.8 million acres was \$470 million (**Table 16**).

In 2003-04, owners of that 2.8 million acres of specially assessed land paid \$5.2 million in property taxes, or a statewide average of \$1.87 per acre (**Table 8**) (p. 34).

⁴³

Clackamas (60%), Marion (69.2) and Washington (77%) all had designations greater than 40%, but were not changed due to proximity population centers and high degrees of parcelization. Other than Josephine County, Clackamas County forest land is the state’s most parcelized. ALI proposed to Clackamas County that its designated land allocation be increased to be more in line with Washington and Marion counties, but county officials made convincing arguments not to do so.

Table 7

Adjustment to Reported Forest Use-Assessed Acreage, 2003-04

	Total Forest Use Assessment Acreage	Highest and Best Use	Designated	Reduction in Designated [Added to HBU]	Adjusted Designated	Adjusted HBU
Baker	39,262	36,895	2,367	-	2,367	36,895
Benton	175,186	5,848	169,338	(99,264)	70,074	105,111
Clackamas	255,115	107,420	147,696	-	147,696	107,420
Clatsop	295,864	264,935	30,929	-	30,929	264,935
Columbia	300,276	10,862	289,415	(169,304)	120,111	180,166
Coos	532,760	169,964	362,796	(149,692)	213,104	319,656
Crook	90,770	-	90,770	-	90,770	-
Curry	264,902	43,821	221,081	(115,120)	105,961	158,941
Deschutes	73,148	-	73,148	(43,889)	29,259	43,889
Douglas	1,051,335	610,753	440,582	-	440,582	610,753
Grant	147,025	-	147,025	(88,215)	58,810	88,215
Harney	5,439	-	5,439	-	5,439	-
Hood River	48,456	38,396	10,060	-	10,060	38,396
Jackson	450,890	378,557	72,333	-	72,333	378,557
Jefferson	78,339	77,136	1,203	-	1,203	77,136
Josephine	175,457	39,491	135,966	(65,783)	70,183	105,274
Klamath	720,304	9	720,295	(432,174)	288,122	432,183
Lake	262,686	235,750	26,936	-	26,936	235,750
Lane	810,692	665,629	145,062	-	145,062	665,629
Lincoln	344,832	100,476	244,356	-	244,356	100,476
Linn	457,933	277,625	180,309	-	180,309	277,625
Marion	102,512	31,553	70,959	-	70,959	31,553
Morrow	49,390	46,527	2,863	-	2,863	46,527
Multnomah	25,317	5,650	19,667	-	19,667	5,650
Polk	212,465	169,732	42,733	-	42,733	169,732
Tillamook	186,772	137,733	49,039	-	49,039	137,733
Umatilla	72,111	-	72,111	(43,266)	28,844	43,266
Union	144,434	134,269	10,166	-	10,166	134,269
Wallowa	130,221	117,596	12,625	-	12,625	117,596
Wasco	57,958	-	57,958	(34,775)	23,183	34,775
Washington	163,726	36,892	126,833	-	126,833	36,892
Wheeler	102,514	102,292	222	-	222	102,292
Yamhill	<u>124,163</u>	<u>75,922</u>	<u>48,241</u>	-	<u>48,241</u>	<u>75,922</u>
TOTAL	7,952,254	3,921,733	4,030,521	(1,241,480)	2,789,040	5,163,213

Note: Adjustment limits Designated acreage to 40 percent of total forest use assessed acreage. Exceptions include several urban counties (Clackamas, Marion, Multnomah, Washington), other counties based on analysis of ownership patterns by size of holding and discussion with County Assessor office and DOR staff (Crook, Douglas, Josephine, Klamath, and Lincoln), and Harney County, which reported a very small total forest land acreage.

Table 8

Taxation of Specially Assessed Forest Land, Oregon 2004

		Acres	Assessed Value	Rural Tax Rate	Taxes Paid	Taxes Paid per Acre
1	Baker	2,367	\$24,242	10.79	\$261	\$0.11
2	Benton	70,074	15,488,704	12.76	197,610	2.82
3	Clackamas	147,696	30,099,058	13.64	410,638	2.78
4	Clatsop	30,929	7,046,877	11.22	79,077	2.56
5	Columbia	120,111	33,538,369	10.99	368,705	3.07
6	Coos	213,104	53,886,347	11.46	617,428	2.90
7	Crook	90,770	4,389,156	12.68	55,670	0.61
8	Curry	105,961	23,707,395	7.69	182,362	1.72
9	Deschutes	29,259	1,154,290	13.13	15,158	0.52
10	Douglas	440,582	69,121,593	9.04	624,640	1.42
11	Gilliam	-	-	12.06	-	n/a
12	Grant	58,810	1,730,966	13.86	23,986	0.41
13	Harney	5,439	135,587	11.51	1,560	0.29
14	Hood River	10,060	237,476	11.44	2,716	0.27
15	Jackson	72,333	1,584,343	12.09	19,151	0.26
16	Jefferson	1,203	11,883	15.57	185	0.15
17	Josephine	70,183	2,311,515	6.98	16,124	0.23
18	Klamath	288,122	10,574,628	9.63	101,827	0.35
19	Lake	26,936	276,272	12.81	3,539	0.13
20	Lane	145,062	18,227,146	10.40	189,651	1.31
21	Lincoln	244,356	79,816,530	10.99	877,499	3.59
22	Linn	180,309	41,338,747	11.89	491,407	2.73
23	Malheur	-	-	11.25	-	n/a
24	Marion	70,959	15,873,820	11.69	185,608	2.62
25	Morrow	2,863	29,170	14.60	426	0.15
26	Multnomah	19,667	1,367,130	12.15	16,611	0.84
27	Polk	42,733	3,250,342	10.43	33,908	0.79
28	Sherman	-	-	16.88	-	n/a
29	Tillamook	49,039	14,436,447	9.81	141,566	2.89
30	Umatilla	28,844	621,436	12.87	8,000	0.28
31	Union	10,166	117,586	10.07	1,184	0.12
32	Wallowa	12,625	195,638	12.04	2,355	0.19
33	Wasco	23,183	577,928	14.09	8,146	0.35
34	Washington	126,833	28,874,780	14.60	421,710	3.32
35	Wheeler	222	16,541	15.34	254	1.14
36	Yamhill	<u>48,241</u>	<u>9,784,428</u>	<u>12.64</u>	<u>123,714</u>	<u>2.56</u>
37	Total	2,789,041	\$469,846,370	12.12	\$5,222,676	\$1.87

Source: Oregon County Assessor *Summary of Assessments and Levies (SAL)* Reports, as digested in *OPTS: 2003-04* (Oregon Department of Revenue).

Note: Except as noted above, data are taken from Designated Forest Land classification. Acreage and values of 11 counties are limited to a maximum of 40 percent of total specially assessed forest land (designated and Highest and Best Use). The counties are: Benton, Columbia, Coos, Crook, Curry, Deschutes, Grant, Josephine, Klamath, Umatilla, and Wallowa. This limitation better reflects the share of forest land which carries a market value greater than forest use. Several other counties with a high percentage of designated forest land either combine strong non-forest influences with relatively low acreage (e.g., Multnomah County) have verified the "designated" forest land classification through study (Lincoln County), or have little forest land acreage (Harney).

C. Justifications for Tax Reduction Beyond Fairness

Two factors suggest special assessment of farm and forest land is sound policy.

1. Benefits Urban and Suburban Taxpayers

The annual urban and suburban costs of rural area tax reductions are small compared to the economic benefit which continued efficient management of farm and forest land provides Oregonians who do not work in farming, food processing or forest-related companies. In 2004, urban and suburban Oregonians invested \$141.5 million in higher property taxes and lost public services to insulate farm and forest operations from conflicting development - - \$93.7 million on the farm side, and \$47.8 million on the forest side. In the same year farmers and forest products companies sold over 92 times that investment -- \$13.7 billion worth of crops, livestock and forest products, most of it to out-of-state buyers. As discussed above, most of that \$13.7 billion in receipts is paid to 92,000 employees of farms and forest products companies. In turn, those employees spend that money in town, where firms and service providers not directly involved in farm and forestry, in turn, pay out most of those receipts to their employees -- Oregonians perhaps likely only dimly aware they are connected to rural economic enterprises which create the basic wealth that benefits them and all other Oregonians.

2. Unique Risks to Farm and Forest Profitability

Capital in the form of farm land and forest land is subject to non-market risks of weather, drought, fire and infestation that other forms of income-generating capital are not. Reducing the fixed costs of enterprises which are based on farm and forest land helps mitigate such non-market risks.

IV. PROPERTY TAX LIMITATIONS

Oregon voters amended the Oregon Constitution by enacting Measure 5 in 1990 and Measure 50 in 1996.⁴⁴ These two property tax limitations altered the effect of the 1973 and 1977 legislatures' policies for assessment of farm land and forest land.

A. Measure 5 (1990)

Measure 5 set increasingly restrictive rate limitations, resulting maximum rates for non-school taxes to \$10 per \$1,000 of real market value, and for school taxes to \$4 per \$1,000 of real market value when fully implemented by 1995-96. If non-school and school taxes imposed on a property exceed the limit either measure, tax "compression" occurs.⁴⁵ From 1991 to 2003-04, Measure 5, alone, reduced local government property tax revenues by \$6.9 billion.⁴⁷

B. Measure 50 (1997)

Measure 50⁴⁸ limited growth in *assessed property values*. Each property's 1997-98 maximum assessed value became its 1995-96 real market value, less ten percent, with annual growth in value thereafter limited to the lesser of three percent, specially assessed value growth, or market value growth. For specially assessed farm and forest land, this is the Maximum Specially Assessed Value, or MSAV. Absent new construction, annual MSAV growth is the assessed value resulting from the application of limits in both Measure 5 and Measure 50 is the Taxable Assessed Value, or TAV.⁴⁹

⁴⁴ The measures were applied to specially assessed farm and forest land through laws enacted in the 1991 and 1997 legislative sessions. Neither measure applied to revenue bonds. Throughout this report, any reference to either measure is intended to include the implementing legislation as well.

⁴⁵ In tax compression, the rates for each tax applicable are reduced proportionally to arrive at overall rates that meet both the "non-school" and "school" limits. *Oregon Public Finance: Basic Facts* (Legislative Revenue Office: Salem, OR, 2001, p. D1).

⁴⁶ Measure limits do not apply to general obligation bonds. *Ibid.*, p. 13.

⁴⁷ *OPTS* Table E. 4 through 1997/1998; Table E.2 thereafter. Inflation-adjusted to 12/31/05.

⁴⁸ Voters had passed a tax limitation, Measure 47, in November 1996, but it was widely believed to be unworkable. The 1997 Legislature corrected drafting errors in Measure 37 and referred Measure 50 to the voters, who passed it.

⁴⁹ Before 1997, SAV was the taxable assessed value. After 1997, the valuation limit tests of Measure 50 required distinguishing between SAV and TAV. For substantially all Oregon specially assessed forest land, however, that was not the case, and the Measure 50 cut-and-capped value (90 percent of the value in 1995-96, and limited growth in future value in value to a maximum of three percent per year) described in the text is the taxable value. In the discussion below, SAV is intended to include both SAV and TAV for years after 1996-97, unless otherwise noted. Average county tax rates are reported in DOR's annual *OPTS* reports, but published urban and rural

From 1980 to 1996, assessed value of all property statewide increased from about \$65 billion to \$100 billion. From 1981 to 1991, market values grew from \$100 billion to \$190 billion sparking taxpayer objections. If that trend had continued, DOR projected 1997-1998 assessed values would have grown to \$210 billion. Instead, Measure 50 cut values to \$166 billion.⁵⁰

ALI has found no officially published estimate of tax revenue loss resulting from Measure 50's reduction in assessed values.

C. Relation to Farm and Forest Land Assessments

Neither Measure 5 nor Measure 50 addressed specially assessed properties. The Legislature extended Measure 5 and Measure 50 to specially assessed farm and forest lands. (See Oregon Laws 1991, Chapter 459 (House Bill 2550), and Oregon Laws 1997 Chapter 541 (Senate Bill 1215).) In this report, discussion of either measure is intended to include this 1991 and 1997 legislation.

After the implementation of both measures, special assessment still provides a significant reduction in assessed values of farm land. In 1999-2000, the Oregon Legislative Revenue Office estimated that total assessed value was about 78% of total real market value for all classes of property statewide.⁵¹ By contrast, the TAV of specially assessed farm land statewide was 17% of its total real market value, and the TAV of all specially assessed forest land, 1999-00 was 19% of its RMV.⁵²

Measure 50 takes the already low specially assessed values as they existed 1995-96 as a starting point, reduces their value by a further 10 percent for 1997-98, and limits annual increases to the lesser of a valuation based on the rental income approach, or an increase of 3% (ORS 308A.107(4).) Annual increases in valuation for other classes of taxable property are also limited to 3%, but, in those cases, the 3% limit relates to a higher starting base of 1995-96 values, closer to RMV associated with other classes of taxable property (ORS 308.146(4).) The 1997 Legislature extended Measure 50's tax reduction benefit to specially assessed farm and forest land, through Senate Bill 1215.

average tax rates only from 1997-98 forward.

⁵⁰ *OPTS* 1997-98, p. 2.

⁵¹ *Oregon Public Finance, op cit.*, at pp. D1-D2.

⁵² *Oregon Property Statistics, Fiscal Year 1999-00* (Oregon Department of Revenue: Salem, OR, 2000, p. C5.) Farm land figure is based on updated data provided by Abhay Thatte, DOR.

V. MEASURE 37

In November 2004, Oregon voters approved Ballot Measure 37, 61 - 39. Measure 37 requires government to compensate owners for reduction in fair market value of real property caused by land use regulation. Compensation is in two forms: a payment of money equal to a reduction “as of the date” the owner files a claim; or a “waiver,” i.e., the allowance of “a use” allowed when the owner acquired the property. Because Measure 37 provided no money for compensation, so all approved claims result in waivers.

Measure 37 has become a get-rich-quick scam because DLCD interpreted the measure to mean compensation should be based on “monopoly” values a landowner never owned, instead of on reduction in value a landowner actually experienced. Based on reduction in value, Measure 37 would have mainly generated claims for small waivers compatible with commercial agriculture. Based on monopoly values, Measure 37 has generated thousands of claims demanding large subdivisions which threaten adjacent farm operations. Compensation based on reduction in value is fair 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. As of January 23, 2007, landowners responded by filing over 7,000 claims involving 514,000 acres, and demanding \$10.4 billion in compensation. In January 2007, DLCD persuaded a trial judge to rule Measure 37 “requires” monopoly value compensation.⁵³ The Court of Appeals will not rule on this case until after the 2007 Legislature adjourns. Unless the Legislature modifies Measure 37, or the Court of Appeals reverses, Measure 37 will continue to award monopoly value compensation.

Most claims were easily and cheaply filed up to December 2, 2006. Landowners may file claims after December 2, 2006, but must attach an application for a land use approval -- something claimants who filed before December 2, 2006 must do at some point anyway. About 3,500 claims were filed between December 2, 2004, when Measure 37 became effective, and October 2006.⁵⁴ In the six weeks before the December 2, 2006 “deadline,” another approximately 3,500 claims were filed. Government is required to act on all claims within 180 days.

⁵³ *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.

⁵⁴ Claim processing stopped between October 15, 2005 and February 22, 2006, during the appeal to the Oregon Supreme Court of a trial court ruling that Measure 37 was unconstitutional.

Claims are processed in two steps. Step One resolves claim issues (e.g., the date the owner acquired title; the regulations that restricted the land) and whether relief is to be a payment of money or a “waiver.” Step Two involves an application for a land use approval, in which the type and size of the waiver is determined. As of December 4, 2006, of the roughly 7,000 claims filed, DLCD has given Step One approvals to about 1,600 claims; only about 100 claims have Step Two approvals.

Claim M119803, a typical Willamette Valley farmland claim, described below, illustrates the difference between compensation based on reduction in value vs. compensation based on monopoly value.

A. Warnings and Proposals About Monopoly Value Compensation

In December 2004 and June 2005, two Oregon State University economists warned that monopoly value compensation was economically fallacious. On October 14, 2005, a state judge ruled that compensation awards so large as to be unrelated to Measure 37's compensatory purpose were unconstitutional. In response to that ruling, Oregonians in Action's December 5, 2005 appeal brief proposed how state officials could interpret Measure 37 to avoid excessive compensation. On February 21, 2006, the Oregon Supreme Court reversed the trial court. On June 20, 2006, three former governors and John D. Gray advised Gov. Ted Kulongoski of the unreasonableness of monopoly value compensation, and recommended LCDC adopt OIA's proposal.

1. Two Economists' Warnings and a Proposal

Soon after voters enacted Measure 37, Dr. Andrew J. Plantinga⁵⁵ and Dr. William K. Jaeger,⁵⁶ Department of Agricultural and Resource Economics, Oregon State University, warned of the fallacy of Measure 37 compensation awards based on “exemption” or “monopoly value.”

Professor Plantinga noted Measure 37's interpretive dilemma: compensation is 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 appeals to landowners because, out of the blue, it confers on a claimant the lucrative position of “a monopolist in the land market.”⁵⁷

⁵⁵ Andrew J. Plantinga, “Measuring Compensation Under Measure 37: an Economist's Perspective.” Oregon State University, December 9, 2004.

⁵⁶ 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 dates. In February 2007, Plantinga and Jaeger co-authored “The Economics of Measure 37,” EM 8925, February 2007, OSU Extension Service.

⁵⁷ Plantinga, p. 10.

The fallacy of this interpretation is two fold. *First, neither the claimant nor any of claimant's neighbors enjoyed such a monopoly position anytime in the past and so never lost such a position.* *Second*, this interpretation is based on an *increase* in value in claimant's property caused by land use regulations that limit *other* people's properties. That is 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 is what a claimant's property "would have been sold for without the regulation minus its value with the regulation."⁵⁸ Determining value *with* the regulation is easy. But determining value *without* the regulation "involves an unobservable hypothetical."⁵⁹ 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 exists 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 responds to Measure 37's interpretive dilemma three ways. *First*, it calculates how much value would have increased without the regulation based on objective factors. *Second*, the *end point* of the interest calculation conforms to Measure 37's "as of the date" requirement. *Third*, the proposal avoids 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 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.

⁵⁸ *Ibid.*, p. 7.

⁵⁹ *Ibid.*

“Public officials, politicians and the courts will no doubt be asking, ‘Which interpretation did the voters have in mind when they approved Measure 37?’”⁶⁰

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.

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 does 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.⁶¹

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 Supreme Court this interpretation of Measure 37, OIA’s lawyers enabled the Supreme Court to reverse the trial on this point, which, on

⁶⁰ Jaeger, pp. 22-23.

⁶¹ 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).

February 21, 2006, the court did. In short, a brilliant bit of lawyering.

3. Three Governors Recommend Reduction in Value

On June 20, 2006, former governors Victor Atiyeh and Barbara Roberts, and John D. Gray met with Gov. Ted Kulongoski and his senior staff in Portland. 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 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 also recommended LCDC adopt OIA's December 5, 2005 proposal by rule.⁶² Gov. Kulongoski said he favored 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 politically unassailable proposal, DLCD would have (1) placed Measure 37 on the footing likely intended by the voters,⁶³ (2) greatly reduced the 5,000 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.

B. Compensation Based on Reduction in Value

Claims based on reduction in value typically would involve compensation equal to one, possibly two, homesites, or to the difference between higher per-acre values of rural land divided into smaller parcels, compared to lower per acre values of larger parcels which 1975 and 1994 regulations required, or both. The claim of the Prete family of Sisters, Oregon, co-sponsors of Measure 37, falls into this latter category.

In all claims, the question is when a land use regulation applied to a property, what uses the regulation restricted, and whether the restriction of those uses had the effect of reducing the property's fair market value.

1. Reduction in Value is Typically Modest

Supply and demand factors, and the timing and content of regulations adopted in the past 33 years, indicate that, with exceptions (e.g., land close to cities), the impact of farm and forest zoning on the value of farm and forest land typically was modest.

Huge Supply Means Little Value. Except for the small percent of farm land close to a town, prior to state limitations on farm and forest land adopted in 1973 and 1975, there was little non-farm or non-forest development *value* which those limitations *could* have reduced. The vast extent of rural acreage was unzoned. Almost any owner of farm and forest land could undertake almost any use. The huge supply of land developable for non-farm and non-forest uses meant that, with respect to the vast majority of

⁶² 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.

⁶³ 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."

properties, non-farm uses of farm land, and non-forest uses of forest land, had negligible, if any, market value. Thousands of ready-to-sell rural lots created in the early 1900s, in “fruit tree” subdivisions in the North Willamette Valley, and thousands of “sagebrush subdivision” lots created in the 1950s and 1960s in Central and Eastern Oregon, remained unsold in the early 1970s. Non-forest use of most industrial forest land has little, if any, nonforest use market value today, which is why counties tax most industrial forest land on that basis today.

Safety Valves Minimize Restrictive Effects. The farm use zoning that came into place in 1975 typically tended not to reduce market value because “safety valves” in EFU zoning minimized the restrictive effect of zoning. That is, EFU zoning *allowed* the type of residential development farmers in most cases contemplated: *farm* dwellings, either for family involved in the farm, or for farm help; and *non-farm* dwellings on land “unsuitable for the production of crops and livestock.”

1994 Changes. LCDC and legislative changes in 1994 tightened limitations on rural dwellings and partitions, stripping farm land of uses which have measurable market value. The owner of “high-value” Willamette Valley farm land who, in 1993, could (1) build a farm dwelling by filing a “farm management plan,” or (2) build a nonfarm dwelling on unproductive soils, and (3) divide land into 20-40 acre parcels, could not do so in 1995. This was due to LCDC’s \$80,000 gross income test for a farm dwelling, a prohibition of nonfarm dwelling on high-value land, and limits on partitions of high value land in Western Oregon to 80 acres, and, in Eastern Oregon, 160-acres. Under Measure 37, such an owner could demand compensation equal to the value of one homesite, or to loss of higher per acre land values when land is able to be sold in smaller parcels, or both, i.e., compensation equal to the reduction in value the landowner actually experienced.

2. Reduction in Value in Claim M119803

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 entitle 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.⁶⁴

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.

1973 State Regulations. On October 5, 1973, Senate Bill 100 became effective. On that date, SB 100 limited the use of "prime" farm land, like claimant's, to uses compatible with "the production of crops." This restriction did not limit partitioning of claimant's property beyond the county's 38-acre MLS, but probably did limit the type of dwelling that could be built on the "prime" farm land to a dwelling "customarily provided in conjunction with farm use."

1975 State Regulations. However, the 1973 limitation on dwellings lasted 15 months. As of January 25, 1975, LCDC's Goal 3 allowed "farm" dwellings on the same basis as the October 1973 limitations, but also allowed *nonfarm* dwellings on "agricultural land." Hence, with respect to dwellings, Goal 3 relaxed limitations. LCDC's Goal 3 also contained an MLS standard: "appropriate for the continuation of the commercial agriculture in the area." However, that standard did not limit ability to partition beyond the county's 1973 38-acre MLS.

1994 State Regulations. A new 80-acre MLS for "high value" land like claimant's would not have further restricted claimant's ability to partition. 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 \$55,000.⁶⁵ 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 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

⁶⁴ 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).

⁶⁵ 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.

claimant's \$184,346 reduction in value would have been one homesite⁶⁶ -- 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.

Another indication of unreasonableness of claimant's \$9.5 million demand is if we consider (as OIA suggests, p. 43), what would be due claimant if, in 1973, the county had *entirely taken* claimant's land to build a park, but failed to compensate claimant. If, in 2005, claimant demanded compensation for that total 1973 taking of her 54 acres, her loss would have been \$69,168 (\$1,279/acre x 54.08). Interest on that loss, from 1973 to 2005, would bring compensation to \$838,055. Hence, under OIA's proposal, the \$9.5 million claimant demands in 2005 is **\$8.6 million more** than what would be due claimant in 2005, if government had *entirely taken* claimant's 54 acres.

3. Modest Compensation is Fair

Compensation of \$184,346 may seem disappointingly modest to a landowner who, from out of the blue, had \$9.5 million dangled in front of her. However, such seemingly modest compensation is fair, given, as discussed above, \$184,346 is the reduction in value the claimant actually experienced. Moreover, the seemingly modest compensation is perhaps *more than fair*, given two additional factors: (1) the reductions in value claimant experienced already have been at least partially compensated by means of property tax reductions, and (2) as an investment asset, farm land has performed better than the stock market, notwithstanding the zoning restrictions.

Compensation Already Paid. Compensation of \$184,346 is perhaps high, not low, given that claimant already has been compensated for restrictions on nonfarm uses. Since 1974, urban and suburban taxpayers in Washington County have paid \$134 million more in property taxes to finance tax reductions for farm land. County-wide, those reductions, 1974 - 2004, averaged \$3,448 per acre (**Table 10**). If claimant in M119803 received the average tax reduction Washington County taxpayers already would have compensated claimant \$186,468 (54.08 acres x \$3,448/acre). That is, slightly more than the \$184,346 in compensation which claimant would have received under Measure 37⁶⁷.

Strong Rise in Farm Values. Farm land owners have prospered under farm zoning, not been abused by it. The year 1964 is close to when many Measure 37 claimants acquired title who later challenged LCDC's 1975 farm and forest regulations. The year 1964 is also when USDA reported average market value of farm land, for each Oregon county, based on strong statistical samples (p. 53). From 1964 to 2002, in the 21 Western Oregon and Central Oregon counties where 94% of Measure 37 claims have been filed statewide, the market value of farm land has risen faster than the stock market. (**Table 16**, p. 61). This fact, well understood by farmers -- but few others -- explodes the pervasive and oft-lamented myth that farm zoning has slashed land values.

⁶⁶ 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 \$165,000, the county could waive development fees, write a check, or both.

⁶⁷ Measure 37 is silent on whether compensation in either form should take into account tax reductions farm and forest land owners have received since 1974. However, Senate Bill 588, introduced February 15, 2007, calls for compensation to be reduced by property tax reductions.

The claimant in M119803 has been an even more successful investor. Not long after claimant in M119803 filed her claim, a neighboring farmer offered in writing to buy claimant's land for \$12,500 per acre, or \$676,000. The claimant's representative rejected the offer, saying claimant preferred \$9.5 million, which claimant was then waiting for DLCD to award. Claimant acquired title in October 1965. Assuming claimant's per acre value in 1973 was about \$552⁶⁸, the 1973 value of her 54 acres was \$29,852. A payment of \$676,000 in 2005 would have provided claimant a 2,264% return on investment. Assuming that in 1965, claimant had sold her land at its unregulated per acre value of \$552, and invested the \$29,852 proceeds in the stock market. Using the S & P 500 as an index, claimant's investment would have increased 1,193%, to \$356,134 in 2005 -- half as well as holding on to the land and selling to her farmer neighbor in 2005.

The strong financial performance of farmland over the last 40 years is a good general answer to the oft-heard tale of woe: "I counted on selling this land for my retirement:"

"You're lucky you didn't sell your land before farm zoning and invest the proceeds in the stock market to protect your retirement nest-egg. The stocks would have given you less to retire on today, compared to the value of the fully marketable farm land you still own. Count your blessings, sell your land to a farmer, and retire -- knowing you are better off than the city boys who turned over their equally-hard-earned savings to Merrill Lynch."

In any event, claimant and most other owners of farms are not deserving of a policy of exceedingly generous pity. No financial rationale attributable to land use regulation exists that would warrant vast compensation for claimant. Far from being a hapless victim of regulation, claimant's investment in her 54 acres has been highly successful -- double the performance of the stock market.

C. Monopoly Value Compensation is a Get Rich Quick Scam

Monopoly power in any market distorts supply and demand. Monopoly value compensation under Measure 37 distorts supply and demand in Oregon's rural land markets. By exempting the claimant in M119803 from farm zoning, but leaving farm zoning in place for claimant's neighbors, monopoly value compensation restricts supply and relocates demand. **Without** that restriction on supply, demand for residential development would associate with thousands of acres of farm land surrounding claimant's 54 acres. **With** that restriction on supply, demand for residential development is concentrated on claimant's suddenly "scarce" property. Monopoly value compensation thus (1) revives development rights which, through higher property taxes, urban and suburban taxpayers already compensated farm land owners to forego, and (2) allows Measure 37 claimants to concentrate already-compensated development rights on their own property. This revival of development rights, and the transfer of those rights to a claimant's property, unjustly enriches claimants, and is unfair to urban and suburban taxpayers, and to claimant's farmer neighbors.

⁶⁸ In 1964, the average market value of Washington County farm land, including improvements, was \$593/acre. 1964 USDA Census of Agriculture, Table 10.

1. Monopoly Value Unjustly Enriches Claimant

The difference between the \$9.5 million DLCD approved and claimant's \$184,346 reduction in value -- \$9,310,654 -- is an unearned windfall. A \$9.5 million monopoly value compensation award unjustly enriches claimant for two reasons:

\$9,310,650 Position Never Owned or Lost. Before adoption of the 1973 land use regulation, zoning allowed 2-acre lots residential development on both claimant's land, and on the thousands of acres of farm land owned by claimant's neighbors. No owner of any of this land ever was in a position where his/her land was *unzoned but everyone else's land was limited to farm use*. That is, before the 1973 regulation *neither the claimant nor any of claimant's neighbors owned the kind of lucrative, monopoly-type position* that claimant in 2005 demands Measure 37 confer on her.⁶⁹

\$184,346 Already Compensated. Claimant's \$9.3 million windfall is also unjust because claimant has already been compensated for the \$184,346 part of the \$9.5 million which she did lose (p. 45).

So where does the \$9,310,654 windfall come from? Claimant contends market demand for half-acre homesites exists that would push the value of claimant's 54 acres up to \$9.5 million. If so, nearly all that *demand will be deflected from the thousands of still-regulated land owned by claimant's neighbors*, and concentrated on claimant's land. That is, claimant's \$9,310,654 million windfall is due to the transfer to claimant's "scarce" 54 acres, the modest amounts of foregone market value attributable to nonfarm uses, which, in 1973 and 1994, were disallowed. The dynamic of claim M119803, and hundreds of claims like it, is that the development rights that are being transferred are rights which urban and suburban taxpayers in Washington County already compensated landowners to forego.

Assume demand for 96 half-acre lots is being transferred from 96 other 54-acre parcels, or 5,130 acres, surrounding claimant's 54 acres. At \$9,310,654 that is \$1,815 per acre of lost/transferred development value. But the average cumulative tax reduction on farm land financed by Washington County's urban and suburban taxpayers since 1974 has been \$3,448 per acre.

2. Monopoly Value Compensation is Unfair to Taxpayers

Approval of a \$9.5 million, 97-lot subdivision on claimant's 54 acres is unfair to the taxpayers of Washington County who have paid higher taxes to eliminate development rights that would interfere with productive use of prime farm land. The goal of those payments, equal to \$3,448 per acre, was that Washington County farm land be able to continue to annually generate hundreds of millions in farm income in perpetuity. Measure 37 is a scam on county tax payers because it (1) abruptly cancels that investment, and the future income that investment otherwise likely would have secured, (2) allows

⁶⁹

Professors Plantinga and Jaeger also point out claimant's \$9.5 million demand is based on an *increase* in the value of her land suddenly made "scarce" by land use regulations which restrict *other peoples'* property. This is directly opposite Measure 37's requirement for compensation: that a land use regulation restricts the *claimant's* property, with the effect of *reducing* market value.

Measure 37 claimants, quite unknowingly, to effectively appropriate to themselves not just the development rights which taxpayer payments previously have extinguished, but also the higher property taxes county taxpayers have paid to extinguish those rights.

3. Monopoly Value Compensation Threatens Farmer Investments

Farmers neighboring Measure 37 claimants have invested in equipment, trucks, structures, etc., which must be amortized over time. These farmers have relied on farm zoning to make those investments (p. 85). Repeal of farm zoning on a Measure 37 claimant's land which is not justified by substantial harm to the claimant caused by that farm zoning, is doubly unfair to neighboring farmers who rely on that zoning. *First*, their farm operations will be harmed by conflicts from an unjustified subdivision on claimant's land. *Second*, the rights to develop embodied in that unjustified subdivision have been transferred by Measure 37 from the neighboring farmers' land to that subdivision.⁷⁰

D. DLCD Chose Monopoly Value

DLCD's decision to base compensation on monopoly value, and DLCD's decision to do so, case by case, rather than by interpretive rule, has had major land conservation, administrative, and budgetary consequences.

1. The Road Not Taken: Prompt Clarity

In January - March 2005, DLCD could have adopted interpretive rules to clarify key Measure 37 issues, including compensation. Such action, regardless of its substance, would have been well within the 180-day time limit for ruling on the first claims filed after Measure 37's December 2, 2004 effective date. Any challenge to such rules would have gone directly to the Oregon Court of Appeals (ORS 183.400). The Attorney General could have persuasively urged the Court of Appeals to expedite the case, which likely would have resulted in a decision resolving the compensation issue by June 2005,⁷¹ when the Legislature was still in session, and able to modify DLCD's choice if it wished.

As is true in many such circumstances, DLCD's authority to interpret Measure 37's compensation requirement to mean "reduction in value" was not free of doubt. However, had LCDC drawn on the 2004 OSU analysis, and carefully crafted a "reduction in value" position, DLCD probably could have persuaded the Court of Appeals that such an interpretation was a reasonable exercise of administrative discretion. The Court of Appeals often attaches significance to an agency's interpretation of a statute which the Legislature has authorized the agency to interpret.

OIA submitted its reduction in value proposal to the Supreme Court on December 5, 2005. Even if LCDC had waited until January 2006 to adopt such a rule, that action still would have greatly reduced the number of claims, as well as the amount of compensation

⁷⁰ Heather Blaine-McCurdy, "Taking Into Account What's Fair for All," *Oregonian*, February 23, 2007, p. C7.

⁷¹ Such a ruling may have mooted the Marion County Circuit Court case that led to the October 14, 2005 invalidation of Measure 37, and subsequent February 21, 2006 reversal by the Supreme Court.

demanded in many claims. In December 2005, only 1,600 claims had then been filed, and only a few hundred had gone through Step One (p. 39) of the claims process. From October 14, 2005 to February 21, 2006, during the Supreme Court's consideration of the constitutional case, the claims process was suspended. That four-month period was an ideal moment for rule-making.

2. The Road Taken: Administrative Limbo

Instead of rule-making, DLCD interpreted "compensation" via decisions on individual claims. In approving monopoly value demands, and allowing landowners to use Measure 37 to bootstrap themselves into windfall monopoly positions they never owned and never lost, DLCD:

- Disregarded warnings from reputable economists, a state judge, and three former Oregon governors about problems with monopoly value compensation;
- Disregarded OIA's politically unassailable proposal how to interpret Measure 37 to avoid excessive compensation awards, and the flood of claims which DLCD's approval of monopoly value compensation invited;
- Transformed Measure 37 from a compensation measure based on reduction in value, likely intended by Oregon voters, (see p. 42) into a get-rich-quick scam based on spurious monopoly value demands;
- Put Measure 37 at risk of constitutional invalidation in a future "as applied" case involving an excessive compensation award; and
- Handed over responsibility to interpret Measure 37 to random litigants, and a miscellany of trial court judges, thereby consigning Measure 37 to 3-5 years of administrative limbo, heightened controversy, and, the risk that, during that period, rights to subdivide in the middle of commercial farm areas would vest.

At a January 23, 2007 legislative hearing, two years and three months after Measure 37's enactment, DLCD Director Lane Shetterly testified that the State of Oregon, at a cost of millions, was then defending 135 lawsuits where the meaning of Measure 37 was in dispute, and that resolution of these and other anticipated lawsuits would take "2 - 3 years" to conclude.⁷² As of February 22, 2007, the case involving the issue of how to calculate compensation still has not reached the Court of Appeals.

⁷²

Local governments are involved in additional litigation over Measure 37's undefined terms.

VI. METHOD TO ESTIMATE TAX REDUCTIONS, 1974 - 2004

ALI developed methods to estimate tax reductions received by owners of farm and forest land, by county, by year, 1974-2004, due to specially assessed valuations (SAV)⁷³ rather than real market valuations (RMV) -- distinct from the additional tax reductions owners of farm and forest land received due to Measure 5 and Measure 50.

The challenge was estimating market value of farm and forest land, by county and by year. County Assessors largely reported accurate *specially assessed values*⁷⁴ throughout the 30-year period covered by this report. However, for most of this period, and for most farm and forest land, the *market value* of specially assessed lands was neither recorded nor reported by County Assessors, nor was it assembled or estimated elsewhere. As a result, the estimates of RMV 1974 - 2000 stated in this report constitute a first attempt.

Limitations on available official market value data make it impossible to develop any kind of a “gnat’s eyelash” estimate of county level property tax reductions by year, over a 30 year period. However, ALI sought the advice of many working professionals on how best to design and consistently apply a method to estimate market values (see *Acknowledgments, Appendix A*). A full discussion of the process to develop the estimation methods, including false starts and revisions along the way, is contained in *Appendices D & E*. The discussion below summarizes those two appendices.

As discussed below, the components of ALI’s method result in estimates that, if anything, are conservative, and understate county-level property tax reductions. *Appendix B* provides a glossary of the terms this report uses to describe that method.

A. Methods for Both Farm Land and Forest Land

Five factors are common to both farm and forest analyses.

1. Evaluation of Official Data

County Assessors submitted *Summary of Assessments and Levies (SAL)* reports to the DOR each year over the entire study period, and were ALI’s main source of SAV data, including both valuation and acreage by county, as well as the first year a given county reported such data. ALI found counties reliably reported SAV data in roughly 80-85% of tax years, largely because property owners actually paid taxes on the basis of SAV values.

⁷³ Special assessment terminology differs between farm and forest lands. Specially Assessed Value is intended to mean farm or forest use value, rather than sales value of farm or forest land. Farm use value is determined at the county level by farm land rental value survey (see p. 24). Forest use value is centrally determined by DOR using valuation models that may consider forest land sales, stumpage values, immediate harvest values, log prices or other commercially reasonable factors or data that promote real market value analysis of forest land. (ORS 321.207.)

⁷⁴ The quality and consistency of reporting has improved significantly over time, but there is still considerable room for improvement.

When SAV data was missing or misreported in the SAL reports (e.g., inclusion of improvement value; data entry error resulting in 1000 percent growth), ALI “corrected” reported data by looking to rate-of-change-in-value data in nearby counties with known market value history, and with similar agriculture sectors. SAL data also were useful as an indicator of shifts in a given county’s recording and reporting practices, including possible problems with reported market value data. SAL data report farm homesite value, specify other improvement value, and distinguish between improved and unimproved properties.

Between 1973 and 1991 County Assessors were not required to report or even track the market values of farm lands, and only Malheur and Baker counties did. In 1991, when reporting of market values was mandated as part of the application of Measure 5, market values were reliably available only from a few counties that had previously begun tracking them. Over the next 13 years, more counties reported market value and data quality greatly improved. By 1996-97, as counties complied with the market value reporting requirement, 27 counties reported full and consistent market value data.⁷⁵ However, following passage of Measure 50 in 1997, data quality faltered in over half the counties, and took several years to recover.⁷⁶ It was not until 2002 that nearly all counties were regularly reporting market value data.

2. Adjustment of Official Method

Since enactment of the Budget Accountability Act of 1995 the Oregon Department of Revenue (DOR) has estimated the biennial “tax expenditure” -- revenue loss, or shift of tax burden among tax payers -- associated with all federal and Oregon laws that have the effect of reducing tax revenue (ORS 291.201.) These policies include special assessment of farm and forest land, and associated homesites. DOR published the first “Tax Expenditure Report” in 1996 for the 1997-99 biennium, and included revenue impact estimates for the 1995-1997 biennium as well.

ALI evaluated DOR’s method for calculating tax expenditures for farm and forest land, and adjusted DOR’s method in four ways. As discussed below, *these adjustments substantially reduced ALI’s estimate of tax reduction for farm and forest lands*. These adjustments reflect ALI’s historic, multi-year task, as opposed to DOR’s purpose of getting a snapshot of a single biennium, comparable to the previous biennium.

Tax Rate Reduction and Maximum 5% Levy Increase. To estimate tax reduction, ALI calculated the reduction in the *tax rates* that likely would have resulted if farm and forest land had *not* been specially assessed, i.e., if counties levied taxes on RMV instead of SAV. If tax rates were applied to RMV, instead of SAV, county governments would have collected considerably more revenue. Either because of levy authority limits, county politics, or, after 1990, legal limits given Measure 5 and Measure 50 (see p. 35), it would be unreasonable to estimate tax reductions due to special assessment valuation based on

⁷⁵ As viewed retrospectively after the publication of later SAL reports.

⁷⁶ This decline in quality was noted at the state level, among DOR and LRO staff (Abhay Thatte, Greg Kramer, Gary Wright, and Lizbeth Martin-Hare) and by many staff in County Assessors offices.

the assumption that local governments would have simply held tax rates constant and collected all theoretically possible extra revenue.

Accordingly, ALI's analysis assumes local governments would have *reduced rates*, and would have sought additional levy authority, but only to the extent levies (total revenue collected) would have risen by a maximum of 5%, and, in any event, only when such additional levy authority would have been permitted by Measure 5 and Measure 50. Without this rate-reduction assumption, hypothetical revenue collection would have been higher, and ALI's \$4.8 billion tax reduction (**Table 3**) (p. 4) estimate would have been \$5.4 billion, or \$614 million, or 13%, higher.

Recapture for Disqualification. Counties do not adjust current year tax rates to reflect the increase in value due to disqualification. Nor should they. Tax recapture occurs one account at a time, so any effect of the disqualification on the tax base would be insignificant. Likewise, DOR biennial tax expenditure estimates do not reflect disqualification.

By contrast, this report considers the effect of the disqualification of special assessment on *all* specially assessed farm land over three decades. ALI reduced the estimated difference between taxes paid without special assessment by crediting additional taxes paid by landowners when their farm or forest land was disqualified from special assessment. These reductions totaled \$176.7 million for farmland, and \$26.1 million for forest land, including WOSTOT, in inflation-adjusted terms. ALI's county by county estimates of tax reductions reflect these totals.

Measure 50 Adjustment in Rates. After the passage of Measure 50, DOR's tax expenditure calculations assume that rates are fixed and unaffected by the hypothetical addition of exempt values.⁷⁷ ALI adjusted rates downward to reflect the *inclusion* of value exempted under special assessment. Given this adjustment, rates at the time Measure 50 was passed would have been lower, warranting a hypothetical rate reduction due to Measure 50 alone when determining the tax benefit.

Measure 50 Adjustment in Market Value. After the passage of Measure 50, DOR's tax expenditure calculations estimated exempt (untaxed) value of farm land based on its future value without special assessment.⁷⁸ DOR makes this calculation by multiplying market value by the Changed Property Ratio (CPR): The ratio of maximum assessed value under Measure 50 to Market value.⁷⁹

ALI also estimates prior years' assessed value without special assessment, but, instead of the DOR method, does so by estimating the 1995-96 farm land market value,

⁷⁷ DOR's formula used to calculate tax expenditure is being reconsidered, in part because the rates on a significant dollar value of general obligation bonds and local option levies are affected by the changes in the tax base, even under Measure 50. (Source: Greg Kramer, DOR).

⁷⁸ The *Tax Expenditure Report* is intended to advise the Legislature regarding continuation of existing tax benefit policies (ORS 291.201.fff).

⁷⁹ The ratio is based on county average assessed and market values, by land class. ORS 308.156. See also OAR 150-308.156.

then estimating the 1997-98 assessed value without special assessments: 90 percent of the 1995-96 value, as dictated by Measure 50, and each succeeding year as three percent higher than the previous year's assessed value.

The two methods lead to different estimates mainly because the farm land CPR relied on DOR incorporates non-farm land values that tend to raise the CPR, and to increase post-Measure 50 assessed values without special assessment.

3. Rural Tax Rates

ALI calculated the tax rates that would be paid under RMV in two steps. *First*, each county's average rural tax rate was estimated for each year of the study period.⁸⁰ *Second*, ALI allocated each county's average rural tax rate between (1) countywide districts (County Government, Education Service District, Community College, and county-wide special districts, e.g., library districts), and (2) rural-only districts. The allocation is necessary to determine the effect that increasing the rural tax base would have on taxes paid by farm land owners relative to other taxpayers.⁸¹ An example how ALI used these two steps to derive the rural rate for a single county (Crook) in a single year (1996-97) is presented in **Appendix C**, p. 5.

4. Exempt Values

With specially assessed value of farm and forest land by county by year known for each county, and with estimates of the *market value* of farm and forest land by county by year (see below), ALI was able to estimate the exempt value of farm and forest land by county and by year 1974 - 2004.

Appendix C sets forth estimates of exempt value of farm land, by county and by year, 1974-2004. **Appendix D** sets forth estimates of exempt value of forest land, by county, by year, 1977-2004. Based on these estimates, ALI was able to calculate cumulative property tax reduction for farm land and forest land, by county, shown in **Table 3** (p. 4).

5. Inflation Adjustment

The net tax expenditure each year was next adjusted to a common date: December 31, 2005. This adjustment shows the value of tax benefits in current dollars. The Consumer Price Index for all U.S. Urban Consumers (the annual average of the index recommended to ALI by an economist at the USDA Economic Research Service) rose from 49.3 to 195.3 between 1974 and 2005, or by 3.96 times.

⁸⁰ DOR reports average county tax rate in DOR's annual *OPTS* reports, but DOR published average urban and rural tax rates only from 1997-98 forward.

⁸¹ After Measure 50 established permanent tax rates, DOR no longer published the tax rates imposed as a result of Measure 5 rate limits in DOR's annual *OPTS* value and rate tables for incorporated cities. ALI uses DOR's last report (1996-97) of cities' shares of counties' tax revenue losses due to Measure 5 to allocate losses to cities for 1997-98 through 2003-04. From this reduction in city net levies, ALI estimated rural net levies and resulting rural 'imposed' tax rates. This step was necessary to avoid overstating city levies and understating rural levies. See **Appendix C** for additional discussion.

B. Farm Land Tax Reductions (1974-2004)

To estimate cumulative tax reduction for farm land in each county, 1974 - 2004, ALI first:

- Took the SAV acreage which each county reported in 2003-04, and used that figure for the study period;
- Used SAV valuation data from SAL reports to calculate SAV farm land value county-wide, by county, by year, 1974-1977;
- Used Department of Revenue data to determine the taxes owners of SAV farm land actually paid by county, by year; and
- Collected the rural and county-wide rates for each county that applied to farm land, so as to be able to calculate the taxes that would have been paid if rates applied to market value.

As noted, estimating market value by year and by county was the key task.

1. Market Value

ALI sought the best available data on farm land market value for key Western and Eastern Oregon counties, and built estimates for related counties from that base. For Willamette Valley counties, ALI sought market value by key “turning point” years when values broke higher or lower and interpolated between those years, county by county. For Eastern Oregon, each year market values were established.

In counties for which adequate real market value data were not available, ALI developed estimation methods based on the availability of other reliable data, as summarized below. **Appendix C** details the derivation of each estimation method, and includes ALI’s conclusions about both the adequacy of data sources and factors that limit the quality of property tax data generally. **Appendix C** also shows how ALI applied this method, county-by-county.

With RMV value, and the SAV acreage data already collected for each county, ALI was able to calculate the market value of each county’s farm land, 1974-2004. The difference between SAV value and market value, county-wide, is the “exempt value.” After making the adjustment described at p. 51, adjusting each county’s rates downward, ALI multiplied each county’s rural rates by each county’s exempt value to determine the county-wide farm land tax reduction.

In addition, “SAL” reports, described above, (p. 51), ALI obtained market value data quality for specially assessed farm land from three main sources: appraisal data from Baker, Harney and Malheur counties, appraisal data from Washington County, and data from County Assessors, considering consistency, reliability, and availability of assessor data. SAL reports provided ways to examine individual county reports, notably including: consistency of market value from year to year within and among neighboring counties; consistency with changes in acreage or assessed values; changes in “ramping up” of market value estimates over the six-year property appraisal cycle in response to the requirements of Measure 5; challenges of meeting the requirements of Measure 50

(e.g., producing the 1997-98 tax roll in the two months following enactment of its requirements).⁸²

Differences in availability of modern information technology affected county ability to record and report property tax data. Moreover, few County Assessors offices had employees with tenure long enough to fill gaps in the earlier part of the 30-year study period.

Baker, Harney and Malheur counties. To build on SAL data, ALI sought private sales information. Unfortunately, as with County Assessors and their adherence to five year public record retention requirements, ALI found Oregon's rural property appraisers generally do not retain historical (e.g., pre-1991) appraisal records. A senior Eastern Oregon appraiser, Elwood Wirth, of Durkee (Baker County) was the exception to this rule. Mr. Wirth's records included sales of 2,035 separate valuations of farm land over the study period in Baker, Harney, and Malheur counties. Importantly, Mr. Wirth's Malheur data were consistent with market values which the Malheur County Assessor, alone among Oregon counties, maintained over the period.

From 1979 on, Malheur County reported farm market values by subregion and property class, updated as part of the six-year property appraisal cycle. For the years 1974-78, ALI derived market value from values listed on folder jackets for individual properties in the Malheur County Assessor's Office. Malheur County was also exceptional in its retention of the jacket records far beyond the five years required under state law.

Based on the consistency between Malheur County's records with Mr. Wirth's 2,035 valuations, as well as on Mr. Wirth's 30-plus year career as a farm land appraiser, and his professional reputation among other rural appraisers, ALI also used Mr. Wirth's sales data values for Baker and Harney counties. Union and Baker counties had estimated market values per acre by soil class for at least *part* of the study period before 1991. Again, each county's recorded values and Mr. Wirth's sales data were consistent. Notably, the SAV farm land acreage in these three counties comprises 23.2% of the SAV farm land acreage statewide. As described in **Appendix C**, ALI used the findings in the three counties to test market value data in all the Eastern Oregon counties.

Washington County: Retired Washington County Chief Rural Appraiser, John Krautscheidt, was able to provide extensive detail regarding farm sales in his county over the study period. His estimates for five regions of Washington County (see **Appendix C**, and p. 9) were based on specifically recalled representative transactions, each including year, buyer and seller, location, parcel size, improvements, and distinguishing characteristics. The quality and extent of Mr. Krautscheidt's knowledge and expertise were vouched for by current Washington County Assessor's office employees, who affirmed his keen recollection of rural land sale details as far back as the 1960s. Mr. Krautscheidt supplied market value per acre estimates by each of the five regions, for 1974, 1979, 1982, and 1987, from which official Washington County farm land sales data were available through the county assessor's electronic data base.

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Telephone conversation with Klamath County Chief Appraiser Don Ringgold, October 13, 2006.

Other Data: Building on the above three data sources, ALI estimated market values for other counties using available reported county market value data, other County Assessor or professional appraiser information on market value trends over time, and trends in specially assessed value and acreage published in *SAL* reports.

For the other eight Willamette Valley counties, ALI took the first year a given county reported consistent market value data for farm land. If, for example, that year was 1997, ALI determined each earlier year by applying Washington County's rate of growth from 1974 to 1997 and applied that rate to that 1997 value, working back to 1974.

Counter-intuitively, estimating other counties' earlier market values based on Washington County's high growth rate over the period produces conservative estimates of those counties' market values. For example, \$554 grown at *three* percent for 20 years and \$377 grown at *five* percent for 20 years both produce \$1000. Estimating other counties' earlier market values simply reverses the process. Beginning with the \$1,000 end value and using a higher growth rate produces a lower earlier value.

In a few cases, like Deschutes and Jackson counties, market values were heavily determined by nonfarm development pressures. In these cases, trends in value growth were taken from other counties with similar rapid population growth, even if geographically remote or agriculturally unlike the county to be estimated. For further information on reported and estimated market value of a specific county, see the relevant table in **Appendix E**, and the notes for line 3.

As a check on overall process, ALI referred to USDA Census of Agriculture farm land market value data reported periodically since 1964.

The COA data represent the market value of farm land and buildings on farm land, not the market value of the land, which is the factor enjoying special assessment valuation under Oregon's property tax law.

ALI used trends indicated by COA data in individual counties to identify and adjust anomalies in our initial estimates of market value. After reviewing differences between growth trends in ALI's estimate, in market value per acre terms, and the COA dataset, we adjusted 24 percent, or 257 of the 1,080 market value estimates. ALI made relatively more adjustments in the earlier years of the study period, i.e., 70 in 1975-1979 and 29 in 1998 - 2004. The adjustments addressed both improbably high and improbably low growth rates in individual counties. The net result was an increase in the overall tax reduction of \$36 million, or less than one percent.

2. Farm Homesites

Special assessment of farm homesites -- the acre under the farm dwelling -- is a related but separate tax benefit listed in the *Tax Expenditure Report*.⁸³ Unfortunately, many counties do not separately report farm homesite data: In 2003-04, e.g., only 21 of the 31 counties that reported real market value of specially assessed farm land disaggregated

⁸³

Special assessment of farm home sites and forest home sites was separated from their specially assessed resource lands in by 1987 (codified at ORS 308A.253) and 1989 (codified at ORS 308A.256), respectively.

homesite value. To include homesite market value for non-reporting counties over time, ALI combined farm land and farm homesite values for all counties in all years.

C. Forest Land Tax Reductions (1977-2004)

The amount of taxes owners of 2.8 million acres of SAV forest land (**Table 7**)(p. 33) *actually have paid* since 1977 can be determined from consistently reported, official data. However, as in the case of farm land, most counties SAV during most of the study period did not report the market value of forest lands. Accordingly, determining the difference between taxes actually paid, 1977 - 2004, and taxes that would have been paid if rates had been assessed at RMV, required determining RMV, year by year, county by county. A detailed statement of the method for estimating forest land tax reduction, 1977-2004, is in **Appendix D**.

1. Reported Market Values

Reporting of market value data for designated forest land was not required before 1990. Until recently, reported market value data was often inaccurate, ranging from significant undervaluation (simply reporting the HBU value) to significant overvaluation (inclusion of improvements with land value data.) As with farm land, this misreporting resulted from a combination of causes (see pp. 54 -57). ALI estimated market value of designated forest land by county, based on market values reported by 28 counties for the acreage and 2003-04 fiscal year.⁸⁴ ALI estimated market values for 1995-2003 by applying the changes in DOR's annually reported forest use value per acre by productivity class, multiplying that figure by a given county's SAV acreage.⁸⁵ Going back in time, this DOR valuation data series stopped in 1995. For the period 1977 through 1994, ALI estimated forest land market value by multiplying each county's 1995-96 ratio of market value to assessed value⁸⁶ by actual assessed value for each year to be estimated. **Table 1** of **Appendix D** illustrates this formula by showing how ALI derived the market value of 213,1034 acres of designated forest land in Coos County for tax year 1981-82 as \$32,730,846.

2. Privilege Tax Recapture

ALI reduced its forest land tax reduction estimates, county by county, by the amount of privilege taxes forest landowners paid under HB 2438, passed in 1993 and implemented in 1995-96. HB 2438 reduced taxable value of forest land from 100 percent to 20 percent of its forest use value, and set privilege tax rates so owners paid taxes on the

⁸⁴ Five counties -- Coos, Crook, Jefferson, Linn, Wasco -- did not report market value in 2003-04. For these counties, market value was estimated using value data in similar counties or data before 2003-04. Three other counties, Sherman, Gilliam and Malheur, have no forest land. In Western Oregon, the 2.8 million acres included 166,000 WOSTOT acreage (see p. 29).

⁸⁵ Both acreage and market value of reported designated forest land were subject to significant reporting gaps in many counties, significant adjustments for reclassification between HBU and designated forest land, or both. DOR publishes one value for all Eastern Oregon forest land. Forest use values per acre peaked in 2000-01, and declined through 2003-04. The change in value per acre 1995-2004 was 13.6 percent in Western Oregon and 18.1 percent in Eastern Oregon.

⁸⁶ ALI multiplied reported 1995-96 assessed value by five, because at the time forest land was taxed (and values reported) at 20 percent of forest use value.

remaining 80 percent of forest use *land* value at harvest.⁸⁷

3. Western Oregon Small Tract Option

ALI's forest land tax reduction estimates take into account the Western Oregon Small Tract Option Tax (WOSTOT) program (see p. 29). Assessed value for WOSTOT land was reported separately by County Assessors only beginning in 1992-93.⁸⁸ The WOSTOT program operated from 1961 to 2002 when it was terminated. ALI includes WOSTOT market value as part of ALI's estimate of the market value of each county's designated forest land.

D. Population by Farm and Forest Area

To compare the percentage of Oregonians *receiving* tax reductions for farm and forest lands, and the percentage of Oregonians are *paying* higher property taxes to finance farm and forest land reductions, it is necessary to estimate the population of farm and forest areas.

Data permitting a calculation of the number of "paying" property taxpayers and "receiving" taxpayers by county are practically impossible to obtain. Hence, estimates of taxes paid *per taxpayer* to finance farm and forest tax reductions received *per taxpayer* are not feasible.

1. Farm Population

The U.S. Census Bureau categorizes population in each county as being in: "urbanized", "rural farm," or "rural nonfarm"⁸⁹ areas. The total of the three categories equals a county's total population. In 2000, the Census Bureau reported 64,128 people, or 1.9% of Oregon's population living in farm areas (**Table 9**):

⁸⁷ HB 2438 reduced taxes on forest land in non-harvest years, and delayed tax liability until harvest when owners were better able to afford the tax bill. This tax deferment was to be revenue neutral, but it did not include the interest value of the delay in imposing the tax. ALI did not estimate this interest benefit. HB 3575 (1999) phased out HB 2438 by 2003.

The Forest Products Harvest Tax on is harvested timber, not land. It does not affect the benefits of special assessment of forest land, and is not included in this analysis. *History of Timber Taxes*, *op cit.*, pp. 20-21.

⁸⁸ Beginning in 1992-93 the SAL report Table 2, Specially Assessed Farm and Forest Land, included a separate subtable for WOSTOT land.

⁸⁹ "Rural Nonfarm" includes the following kinds of land which generally do not receive SAV. *First*, places with populations less than 2,500, (e.g. incorporated cities, unincorporated rural communities, etc.), and census blocks with less than 500 persons per square mile. Oregon has 143 cities with populations of less than 2,500; these cities have a total population of 130,312. *Second*, all cities have urban growth boundaries which encompass *unincorporated* land, some with less than 500 people per square mile. *Third*, 859,000 acres of "exception areas," i.e., farm and forest land outside UGBs, partitioned and developed before LCDC's 1975 goals, and thus "precommitted" to nonfarm or nonforest use. Exception areas include rural centers and small-acreage rural residential areas. http://www.census.gov/geo/www/ua/ua_2k.html.

Table 9

Oregon Farm and Nonfarm Population, 2000

	Total	Urban	Rural Nonfarm	Rural Farm	Urban/ Total	Rural Nonfarm/ Total	Rural Farm/ Total
OREGON	3,421,399	2,692,680	664,591	64,128	78.7%	19.4%	1.9%
Baker	16,741	9,373	5,681	1,687	56.0%	33.9%	10.1%
Benton	78,153	63,222	13,421	1,510	80.9%	17.2%	1.9%
Clackamas	338,391	266,559	64,842	6,990	78.8%	19.2%	2.1%
Clatsop	35,630	20,994	14,250	386	58.9%	40.0%	1.1%
Columbia	43,560	22,907	19,442	1,211	52.6%	44.6%	2.8%
Coos	62,779	39,277	22,618	884	62.6%	36.0%	1.4%
Crook	19,182	10,245	7,770	1,167	53.4%	40.5%	6.1%
Curry	21,137	9,904	11,073	160	46.9%	52.4%	0.8%
Deschutes	115,367	72,550	41,056	1,761	62.9%	35.6%	1.5%
Douglas	100,399	58,341	39,052	3,006	58.1%	38.9%	3.0%
Gilliam	1,915	-	1,664	251	0.0%	86.9%	13.1%
Grant	7,935	-	7,220	715	0.0%	91.0%	9.0%
Harney	7,609	4,221	2,430	958	55.5%	31.9%	12.6%
Hood River	20,411	8,704	10,364	1,343	42.6%	50.8%	6.6%
Jackson	181,269	140,462	38,418	2,389	77.5%	21.2%	1.3%
Jefferson	19,009	7,075	10,876	1,058	37.2%	57.2%	5.6%
Josephine	75,726	39,267	35,738	721	51.9%	47.2%	1.0%
Klamath	63,775	41,119	20,691	1,965	64.5%	32.4%	3.1%
Lake	7,422	3,194	3,537	691	43.0%	47.7%	9.3%
Lane	322,959	260,248	59,075	3,636	80.6%	18.3%	1.1%
Lincoln	44,479	27,568	16,411	500	62.0%	36.9%	1.1%
Linn	103,069	65,424	34,081	3,564	63.5%	33.1%	3.5%
Malheur	31,615	18,799	9,910	2,906	59.5%	31.3%	9.2%
Marion	284,834	241,642	37,001	6,191	84.8%	13.0%	2.2%
Morrow	10,995	5,804	4,306	885	52.8%	39.2%	8.0%
Multnomah	660,486	648,829	10,859	798	98.2%	1.6%	0.1%
Polk	62,380	47,642	12,196	2,542	76.4%	19.6%	4.1%
Sherman	1,934	-	1,599	335	0.0%	82.7%	17.3%
Tillamook	24,262	5,760	17,749	753	23.7%	73.2%	3.1%
Umatilla	70,548	49,005	19,254	2,289	69.5%	27.3%	3.2%
Union	24,530	14,185	8,800	1,545	57.8%	35.9%	6.3%
Wallowa	7,226	-	6,435	791	0.0%	89.1%	10.9%
Wasco	23,791	15,740	7,364	687	66.2%	31.0%	2.9%
Washington	445,342	414,691	27,016	3,635	93.1%	6.1%	0.8%
Wheeler	1,547	-	1,311	236	0.0%	84.7%	15.3%
Yamhill							

U.S. Census Bureau, 2000 Census of Population and Housing, Summary File 3, Table P. 5, Urban and Rural Population.

2. Forest Population

The Oregon Department of Revenue reports 41,860 *owners* (not population) of private forest land in holdings less than 5,000 acres.⁹⁰ The Oregon Department of Revenue also reports 93,420 forest land tax accounts and 12,507 forest homesites on the 7.9 million acres assessed at forest use values. DOR has checked for double-counting of ownership only on parcels down to 100-acre parcel size.⁹¹ However, while parcels of 100-acre-*plus* include over 90% of total private *acres*, the 100-acre-plus owner class includes only 10% of *owners*. Over 46% of owners (17,349) own 1 - 9 acres, with only 1.1% of total acres.

The 41,860 owners and members of their households form part of the Census Bureau's 664,591 "rural nonfarm" category shown in **Table 8** (p. 34). If it is assumed (1) 20% (7,580) of the 37,901 owners with 0-99-acre holdings are double-counted, and (2) one other person lives in each DOR identified household, population associated with forest land would be 68,560 or 2.0% of Oregon's population: 37,901 1 - 99-acre owners, less 7,580 double counted equals 30,321 owners plus 3,959 owners of 100 - 4,999 acre holdings = 34,280 owners plus 34,280 additional residents per owners = 68,560.

This analysis estimates that 3.9% of Oregon's total population of 3.4 million lives on SAV farm and forest land:

- the 64,128 reported by the Census Bureau as "rural farm," or 1.9% of Oregon's total population, live on 15.6 million acres of SAV farm land; and
- 12,243, or 2.0% of Oregon's population, live on the 2.8 million acres of SAV forest land.

This analysis uses percentage of total state population by area is a proxy for percentage of total state property taxpayers by area. That is, 3.9% of property taxpayers statewide are attributable to SAV farm and forest land, 3.9% of the population, statewide, is attributable to farm and forest areas.

⁹⁰ Oregon Dept. Of Revenue, Oregon Private Forest Land Ownership by County size and Holding, 2001.

⁹¹ Telephone conversation, Norm Miller, Forest Specialist, Oregon Department of Revenue, September 22, 2006.

VII. PROPERTY TAX REDUCTION FINDINGS

In consideration of land use restrictions seeking to maintain farm land and forest land in productive use, from 1974 through 2004, 96% of Oregon taxpayers paid \$3.8 billion more in property taxes, and incurred \$986 million in local revenue losses and service cuts, in order to reduce farm and forest land taxes by \$4.8 billion for the 3.9% of taxpayers who own 18.4 million acres of specially assessed farm land and forest land.

The \$4.8 billion investment in rural land productivity is the largest public investment made in Oregon's history for any purpose -- 2 - 3 times bigger than other far more visible public investments commonly regarded as "major." (Table 10)

Table 10

Major Oregon Public Investments, by Date, Cost and Present Value

Project	Original Cost (in millions)	Date	Value in 2005 Dollars (in billions)
Bonneville Dam	\$83.6	1937	\$1.5
McNary Dam	\$295.0	1953	\$2.1
The Dalles Dam	\$247.0	1959	\$1.6
John Day Dam	\$448.0	1968	\$2.5
Interstate 5	\$300.0	1956 - 1966	\$1.4
Ten flood control/irrigation dams in the Willamette River Basin	\$408.2	1940 - 1968	\$2.6

A. Farm Land

Since 1974, given lower assessed farm land values, owners of 15.6 million acres of farm land -- over half the private land in Oregon -- have enjoyed \$3.8 billion in property tax reductions. The average cumulative tax reduction per acre statewide was \$242.69. **Appendix E** details tax reduction estimates for owners of farm land in each of Oregon's 36 counties. **Table 11** summarizes those findings, by county. **Appendices C** and **D** present per acre value of farm land and forest land, by county and by year.

1. Lower Assessed Values Produce Tax Cuts

The paragraph below replaces the VII.A.1. paragraph on page 61. The paragraph also includes a footnote following the last period: "All figures include any homesite value that qualifies for special assessment. For 2003-05, DOR listed homesite values that were 2.7 percent of the farm total and 7.3 percent of the forest total."}

The legislature reduced taxes by reducing assessed values. Assessed Value (AV) is a valuation based on uses allowed by zoning. The statewide \$10.4 billion AV figure from 2003-04, shown in Table 11 reflects the value of uses allowed by Exclusive Farm Use (EFU) zoning. That \$10.4 billion figure also reflects taxable value limitations imposed by Measure 50 (1997). Without Measure 50, AV in 2003-04 would have equaled the Real Market Value (RMV), about \$16.0 billion. In 2003, the statewide Specially Assessed (SA) value of farm land mandated by the legislature was \$2.4 billion. Thus, even after the

Measure 50 reduction from RMV down to an AV of \$10.4 billion, the \$2.4 billion SA figure represents a 76.1% reduction from assessed valuation.⁹²

During the period 1974-2004, when both land use policies and property tax laws providing \$3.8 billion in tax reductions for farm land were in effect:

- Oregon's farm land base stabilized (**Table 2**);
- Farm efficiency, farm size, and farm sales increased (**Tables 14 and 15**); and
- Farm land values, as restricted by zoning, increased faster than the stock market in four of the five regions of the state (**Table 16**).

ALI's comparison of its market value estimates with market value estimates reported by the USDA Census of Agriculture showed similar basic trends, with COA's 20-30% higher values reflecting, among other differences, the value of structures, not just bare land.

Growth in Oregon Counties' Market Value Per Acre, 1974 - 2002

Oregon Regional Farmland Value Growth - ALI

	1974	1978	1982	1987	1992	1997	2002
Willamette Valley	626	1,450	1,791	1,636	2,372	3,524	5,000
Eastern Oregon	115	207	321	202	258	300	392
Central Oregon	109	126	217	178	212	396	806
Oregon Coast	509	959	1,290	1,095	1,760	2,017	3,064
Southern Oregon	160	337	445	484	631	1,537	2,102
Oregon	179	341	188	375	509	715	987

Oregon Regional Farmland Value Growth -- COA

	1974	1978	1982	1987	1992	1997	2002
Willamette Valley	945	1,864	2,635	1,977	2,743	4,073	5,441
Eastern Oregon	218	394	612	481	545	707	748
Central Oregon	141	252	467	355	405	530	904
Oregon Coast	527	1,094	4,532	1,230	1,631	2,455	3,271
Southern Oregon	385	858	1,247	1,174	1,535	1,923	2,448
Oregon	250	504	705	542	663	980	1,202

⁹² All figures include any homesite value that qualifies for special assessment. For 2003-05, DOR listed homesite values to be 2.7 percent of the farm total of and 7.3 percent of the forest total.

Table 11

Property Tax Reductions to Farm Land Owners, 1974-2004

County	2000		Acres	2003-04		1974-2004	
	Farm	County		Assessed Value without Special Assessment	Assessed Value with Special Assessment	Tax Benefit	Tax Benefit Per Acre
1 Baker	1,687	16,741	861,994	\$245,935,749	\$54,371,574	\$88,086,233	\$102.19
2 Benton	1,510	78,153	105,079	236,328,975	68,551,836	89,734,842	853.98
3 Clackamas	6,990	338,391	132,135	980,022,289	86,321,190	397,287,476	3,006.69
4 Clatsop	386	35,630	16,347	49,607,113	4,218,528	21,638,246	1,323.64
5 Columbia	1,211	43,560	44,188	74,410,669	10,515,260	27,705,547	626.99
6 Coos	884	62,779	74,054	66,106,617	26,871,690	22,179,053	299.50
7 Crook	1,167	19,182	763,804	152,714,673	37,697,814	33,539,045	43.91
8 Curry	160	21,137	43,143	94,293,937	18,437,604	31,072,262	720.21
9 Deschutes	1,761	115,367	166,572	175,722,679	15,869,390	59,311,292	356.07
10 Douglas	3,006	100,399	297,194	287,735,538	47,942,280	42,971,616	144.59
11 Gilliam	251	1,915	693,371	126,127,897	69,564,241	26,306,963	37.94
12 Grant	715	7,935	894,672	169,287,836	25,406,861	45,517,274	50.88
13 Harney	958	7,609	1,457,614	185,330,764	61,975,737	78,191,953	53.64
14 Hood River	1,343	20,411	23,506	115,448,043	46,712,582	35,630,212	1,515.82
15 Jackson	2,389	181,269	207,505	299,184,713	25,718,338	112,459,644	541.96
16 Jefferson	1,058	19,009	437,653	141,809,704	39,006,643	61,713,232	141.01
17 Josephine	721	75,726	23,194	98,271,892	12,409,277	31,789,821	1,370.63
18 Klamath	1,965	63,775	593,888	307,351,200	117,083,565	154,155,993	259.57
19 Lake	691	7,422	760,819	259,967,690	68,433,615	55,870,729	73.44
20 Lane	3,636	322,959	167,300	228,096,945	76,159,978	153,440,602	917.16
21 Lincoln	500	44,479	14,107	63,045,303	4,203,026	23,939,744	1,697.04
22 Linn	3,564	103,069	356,284	644,864,460	172,510,700	223,708,235	627.89
23 Malheur	2,906	31,615	1,306,165	440,866,051	127,742,471	138,061,644	105.70
24 Marion	6,191	284,834	292,719	1,116,183,801	218,934,049	439,052,219	1,499.91
25 Morrow	885	10,995	996,988	286,166,798	83,832,217	114,482,331	114.83
26 Multnomah	798	660,486	28,697	176,007,016	90,673,470	69,346,574	2,416.48
27 Polk	2,542	62,380	173,890	385,968,740	99,781,565	134,792,262	775.16
28 Sherman	335	1,934	454,219	122,683,151	58,905,410	21,939,640	48.30
29 Tillamook	753	24,262	31,791	95,898,265	25,589,483	27,191,182	855.32
30 Umatilla	2,289	70,548	1,325,832	665,558,020	240,969,117	242,666,270	183.03
31 Union	1,545	24,530	494,843	202,696,591	56,468,852	83,353,788	168.45
32 Wallowa	791	7,226	657,544	268,303,520	34,183,858	60,422,939	91.89
33 Wasco	687	23,791	768,636	200,027,967	99,795,806	86,316,984	112.30
34 Washington	3,635	445,342	121,719	888,571,344	75,211,336	419,720,634	3,448.28
35 Wheeler	236	1,547	655,370	86,020,143	22,174,185	13,290,931	20.28
36 Yamhill	<u>3,982</u>	<u>84,992</u>	<u>154,012</u>	<u>429,681,697</u>	<u>66,914,989</u>	<u>158,422,183</u>	<u>1,028.63</u>
Total	64,128	3,421,399	15,596,848	\$10,366,297,790	\$2,391,158,537	\$3,825,309,596	\$245.26

Notes:

1. Population Figures from 2000 Census. County Total is the sum of Farm and Nonfarm.

2. Acres and Assessed Value under Special Assessment data from 2003-04 Oregon Property Tax Statistics, published by DOR. Assessed Value without Special Assessment derived by ALI from reported and estimated 1995 market value of specially assessed farm land.

3. Dollar figures inflation adjusted to December 31, 2005.

2. Willamette Valley Farm Land Tax Reductions

The 1.5 million acres in the nine Willamette Valley counties comprise only 9.8%, of the state's 15.6 million total of specially assessed farm land. However, in 2005, with 80% of Oregon's roughly 3 million acres of "high value" farm land, the nine Willamette Valley counties generated \$2.1 billion in farm sales, or 49%, of Oregon's \$4.3 billion in farm sales.

Since 1974, the owners of those 1.5 million acres have received over \$2 billion, or 54.7%, of the \$3.8 billion total of tax reductions received by farm land owners statewide. The cumulative average tax reduction per acre in the nine Willamette Valley counties was \$1,361 (Table 12).

Table 12

Farm Land Tax Reductions, Willamette Valley Counties, 1974 - 2004

County	Acres	2003-04			1974-2004	
		AV without Special Assessment	AV with Special Assessment	% Valuation Reduction	Tax Reduction	Tax Reduction per Acre
1 Benton	105,079	\$236,328,975	\$68,551,836	71.0	\$89,734,842	\$853.98
2 Clackamas	132,135	980,022,289	86,321,190	91.2	397,287,476	3,006.69
3 Lane	167,300	228,096,945	76,159,978	66.6	153,440,602	917.16
4 Linn	356,284	644,864,460	172,510,700	73.2	223,708,235	627.89
5 Marion	292,719	1,116,183,801	218,934,049	80.4	439,052,219	1,499.91
6 Multnomah	28,697	176,007,016	90,673,470	48.5	69,346,574	2,416.83
7 Polk	173,890	385,968,740	99,781,565	74.1	134,792,262	775.16
8 Washington	121,719	888,571,344	75,211,336	91.5	419,720,634	3,448.28
9 Yamhill	<u>154,012</u>	<u>429,681,697</u>	<u>66,914,989</u>	<u>84.4</u>	<u>158,422,183</u>	<u>1,028.63</u>
Total	1,531,835	\$5,085,725,267	\$955,059,113	81.2	\$2,085,505,027	\$1,361.44

Notes: 1. Acres and Assessed Value under Special Assessment data from 2003-04 Oregon Property Tax Statistics, published by DOR. Assessed Value without Special Assessment derived by ALI from reported and estimated 1995 market value of specially assessed farm land.

2. Dollar figures inflation adjusted to December 31, 2005.

3. Growth in Operating Efficiencies, Sales and Land Value

From 1974 to 2002, farm zoning halted the rapid loss of land in farms in the prior 24 years (1950-1974), and contributed to an 18,000-acre increase in land in farms 1974 to 2002 (Table 2). It is beyond the scope of the paper to determine the extent to which farm zoning and farm land tax reductions, independently of other factors, caused greater farm efficiencies, growth in farm sales, and increases in land values. Still, Census of Agriculture data and other published official data show that during 1974 - 2005, when tax reductions and farm zoning took hold in the Willamette Valley, farm size and farm sales increased, and the value of farm land restricted by farm zoning rose faster than stock market investments.

Scale and efficiency. From 1978-2002, acreage in farms 25 acres and larger increased from 624,000 acres to 765,000 acres, or half the land in farms Valley-wide (Table 12). During the same period, Willamette Valley farms grossing \$100,000 or more increased from 2,863 to 4,287 -- from 71% of total sales to 89% (Table 13).

Table 13

**Acreage, Large Farms, Willamette Valley, Oregon, 1978-2002
(200+ acres in 1978 and 1982, 260+ acres thereafter)**

	1,978		1982		1987		1992		1997		2002	
	Acres	Farms	Acres	Farms	Acres	Farms	Acres	Farms	Acres	Farms	Acres	Farms
Benton												
Acres	53,445		55,506		54,151		61,743		62,397		69,500	
Farms	74		68		91		82		88		75	
Clackamas												
Acres	16,763		22,534		23,081		25,078		30,103		37,544	
Farms	52		69		84		82		96		117	
Lane												
Acres	56,188		59,477		53,909		49,417		55,630		57,388	
Farms	84		88		179		147		135		137	
Linn												
Acres	176,528		195,952		221,699		221,454		238,950		204,518	
Farms	242		245		317		285		289		247	
Marion												
Acres	124,604		139,361		129,059		154,312		167,664		169,267	
Farms	269		271		279		292		273		288	
Multnomah												
Acres	4,342		6,727		11,077		10,275		12,462		9,644	
Farms	11		16		25		19		23		21	
Polk												
Acres	81,952		80,586		73,117		72,440		87,195		85,231	
Farms	149		140		156		129		130		105	
Washington												
Acres	48,189		50,102		56,861		56,839		54,891		53,558	
Farms	112		106		126		110		107		106	
Yamhill												
Acres	62,278		74,358		64,444		67,605		69,716		78,768	
Farms	135		154		179		156		140		138	
Total	624,289	1,128	684,603	1,157	687,398	1,436	719,163	1,302	779,008	1,281	765,418	1,234

Source: Census Bureau, *Census of Agriculture*, Table 7, Harvested Cropland. **Note:** Includes interpolation of acreage for farm size category data suppressed by the Census Bureau to maintain confidentiality. Suppressed data interpolated as the minimum acreage X number of farms.

Table 14

Farms with Gross Sales over \$100,000 per Year, 1978 - 2002

Region	1978		1982		1987		1992		1997		2002	
	Farms	% of Farm Sales	Farms	% of Farm Sales	Farms	% of Farm Sales	Farms	% of Farm Sales	Farms	% of Farm Sales	Farms	% of Farm Sales
Benton	41	65%	63	79%	62	85%	65	86%	82	92%	79	93%
Clackamas	134	66%	167	74%	208	80%	226	83%	314	88%	310	89%
Lane	101	69%	125	76%	118	78%	128	80%	142	83%	128	81%
Linn	178	74%	222	81%	254	86%	264	88%	286	91%	242	90%
Marion	306	73%	390	85%	424	86%	493	92%	506	94%	473	93%
Multnomah	60	78%	56	83%	54	85%	64	86%	59	89%	72	90%
Polk	81	64%	105	72%	103	77%	115	84%	132	89%	123	89%
Washington	112	67%	159	77%	163	83%	182	89%	213	92%	217	92%
Yamhill	102	66%	158	79%	143	84%	162	87%	202	91%	178	91%
Willamette Valley	1,115	70%	1,445	80%	1,529	83%	1,699	88%	1,936	91%	1,822	91%
Oregon	2,863	71%	3,792	79%	3,845	82%	4,175	86%	4,568	88%	4,187	89%
Willamette Valley/ Oregon	39%		38%		40%		41%		42%		44%	

Source: *Census of Agriculture* (Census Bureau: 1978, 1982, 1987, 1992; Department of Agriculture: 1997, 2002)

Sales. From 1976 to 2005, farm sales in the Willamette Valley increased by a factor of 5.2, from \$409 million to \$2.1 billion (**Table 15**).

Table 15

Farm and Ranch Sales, Willamette Valley Counties, 1976, 2005
(in thousands of dollars)

	1976	2005
Benton	21,335	105,378
Clackamas	57,177	361,918
Lane	37,168	117,239
Linn	60,231	248,812
Marion	97,499	539,629
Multnomah	19,470	77,744
Polk	33,642	130,052
Washington	43,581	274,885
Yamhill	<u>38,554</u>	<u>264,038</u>
Total	408,657	2,119,695

Source: Oregon Agricultural Statistics Services, Oregon State University Extension Service, "Oregon Agriculture: Facts and Figures." (May 2006)

4. Farm Land Value Appreciation

Better-than-stock-market average rise in value of farm land, as limited by zoning, refutes the longstanding and widely-held notion that state-required land use restrictions on farm land have hurt farmers financially.

Many farm land owners who have filed Measure 37 claims against LCDC's 1975 land use goals acquired title in the mid-1960s, or before. From 1964 to 2002, in every region except Eastern Oregon, a \$50,000 investment in farm land would have increased more than a \$50,000 investment in the 500 largest publically-held American companies (**Table 16**). And while Eastern Oregon farm land value growth performed less well than this index of large company growth, it still exceeded inflation by 42% (**Table 16**). The farm land values in **Table 16** are based on U.S. Census of Agriculture (COA) surveys conducted in the years shown, and are based on statistically strong samples of farmer-reported farm land values, reported as county-wide averages.⁹³

ALI's market value estimates for 1974 - 2004 do not extend to 1969 and 1964, but in the years 1974 - 2002 (p. 55), when ALI and COA estimates overlap, the two sets of estimates show similar trends (p. 62). By determining the rate of increase in the COA numbers in 1964 - 1969 and 1969 - 1974, by region, and applying that rate to ALI's 1974 estimates, and extending back in time, a comparison of the two sets of estimates for the entire 1964 - 2002 time period can be made. In the comparison, ALI's estimates, though based on lower absolute values per acre (p. 62), show a 14% higher rate of growth than the COA-based estimates shown in **Table 16**.

⁹³

For the past four census, the national response rate for farmers has averaged 87%; Oregon response rates have been higher, according to Sheryl Ito and Chris Mertz, Oregon Agricultural Statistics Service, telephone conversation, May 8, 2006.

Table 16

Farmland Value Growth, by Region, Oregon, 1964 - 2002
(1964 = 50,000)

	1964	1969	1974	1978	1982	1987	1992	1997	2002	Percent Change 1964 - 2002
Willamette Valley	50,000	72,030	120,926	238,610	337,252	253,014	351,168	521,311	696,445	1393%
Eastern Oregon	50,000	64,941	120,282	216,841	336,949	254,196	300,215	389,397	411,948	824%
Central Oregon	50,000	72,064	112,306	200,813	371,732	282,633	322,536	422,269	719,553	1439%
Oregon Coast	50,000	68,667	115,585	240,204	336,230	270,000	358,091	538,927	718,012	1436%
Southern Oregon	50,000	67,203	111,175	261,157	379,699	357,641	467,365	585,620	744,929	1490%
Oregon	50,000	65,217	108,696	219,130	306,522	235,652	288,261	417,391	522,609	1045%
S&P500 Index	50,000	59,805	52,639	58,471	67,089	186,071	249,810	541,768	605,839	1212%
CPI	31.0	36.7	49.3	65.2	96.5	113.6	140.3	160.5	179.9	580%

Source: USDA Census of Agriculture, Table 8.

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

2. Forest Land

Oregon has 7.95 million acres of private forest land zoned for forest use, with slightly over 5.9 million acres in Western Oregon, and slightly over 2 million in Eastern Oregon (**Table 4**) (p. 17).

1. Statewide Forest Land Tax Reductions

Only 2,789,040 acres have market value greater than “forest use” (**Table 7**), and thus enjoy tax reduction when assessed on the basis of “forest use.” These tax reductions total slightly over \$1 billion, 1977-2004 (**Table 17**). Of these 2.8 million acres, 2,198,171 acres, or 78.8%, are in Western Oregon, and 590,869 acres, or 21.2%, in Eastern Oregon.

Statewide, 1,855,524 acres of the 2.8 million acres enjoying tax reductions are owned by 41,886 owners with holdings 5,000 acres *or less*. Another 933,516 acres in holdings 5,000 acres *or more* -- about 15% of all 5,000-acre-plus holdings -- have market value higher than forest use.

Four counties -- Clackamas, Jackson, Lane and Washington -- received \$663 million, or 63.5% of the \$1.05 billion in forest use tax reduction statewide.

The 15 Eastern Oregon counties with 21.2% SAV forest land received \$57.9 million, or 5.5% of the \$1.05 billion in cumulative forest land tax reductions, the 18 Western Oregon counties, with 78.8% SAV forest land, received \$986.3 million, or 94.5%.

Table 17

Property Tax Reductions to Forest Land Owners, 1977-2004

County	2000		2003-04			1974-2004	
	Population Forest	County	Acres	AV without Special Assessment	AV with Special Assessment	Tax Benefit	Tax Benefit
1 Baker	516	16,741	2,367	\$5,761,030	\$24,242	\$1,514,185	\$639.77
2 Benton	2,261	78,153	70,074	131,623,646	15,488,704	29,660,297	423.27
3 Clackamas	8,576	338,391	147,696	948,280,067	30,099,058	332,618,657	2,252.06
4 Clatsop	1,138	35,630	30,929	73,645,075	7,046,877	14,065,121	454.76
5 Columbia	4,160	43,560	120,111	146,148,005	33,538,369	16,185,928	134.76
6 Coos	4,116	62,779	213,104	195,698,353	53,886,347	23,432,485	109.96
7 Crook	235	19,182	90,770	12,387,514	4,389,156	3,957,372	43.60
8 Curry	1,243	21,137	105,961	86,153,880	23,707,395	8,250,962	77.87
9 Deschutes	305	115,367	29,259	24,796,135	1,154,290	23,153,444	791.33
10 Douglas	5,641	100,399	440,582	178,922,425	69,121,593	13,761,279	31.23
11 Gilliam	-	1,915	-	-	-	-	n/a
12 Grant	600	7,935	58,810	21,392,021	1,730,966	8,655,386	147.18
13 Harney	32	7,609	5,439	2,504,561	135,587	273,840	50.35
14 Hood River	915	20,411	10,060	23,128,133	237,476	4,775,729	1,024.32
15 Jackson	4,690	181,269	72,333	191,019,466	1,584,343	82,998,111	1,147.44
16 Jefferson	24	19,009	1,203	136,854	11,883	15,483	12.87
17 Josephine	6,566	75,726	70,183	87,738,394	2,311,515	17,483,380	249.11
18 Klamath	130	63,775	288,122	28,665,460	10,574,628	5,774,385	20.04
19 Lake	89	7,422	26,936	3,763,346	276,272	694,316	25.78
20 Lane	6,586	322,959	145,062	448,959,859	18,227,146	112,557,294	775.92
21 Lincoln	2,123	44,479	244,356	261,818,023	79,816,530	25,429,259	104.07
22 Linn	2,473	103,069	180,309	191,646,936	41,338,747	43,966,941	243.84
23 Malheur	2	31,615	-	-	-	-	n/a
24 Marion	1,641	284,834	70,959	198,900,423	15,873,820	45,777,161	645.12
25 Morrow	220	10,995	2,863	3,307,290	29,170	1,286,936	449.48
26 Multnomah	1,467	660,486	19,667	17,582,076	1,367,130	2,242,842	114.04
27 Polk	2,555	62,380	42,733	136,782,376	3,250,342	28,869,850	675.59
28 Sherman	-	1,934	-	-	-	-	n/a
29 Tillamook	1,212	24,262	49,039	26,152,981	14,436,447	2,741,565	55.91
30 Umatilla	300	70,548	28,844	2,624,285	621,436	939,416	32.57
31 Union	766	24,530	10,166	18,220,979	117,586	5,254,800	516.91
32 Wallowa	224	7,226	12,625	2,117,654	195,638	525,594	41.63
33 Wasco	660	23,791	23,183	2,109,239	577,928	1,080,264	46.60
34 Washington	3,489	445,342	126,833	520,706,309	28,874,780	134,615,648	1,061.36
35 Wheeler	167	1,547	222	89,223	16,541	16,482	74.29
36 Yamhill	<u>3,121</u>	<u>84,992</u>	<u>48,241</u>	<u>229,824,056</u>	<u>9,784,428</u>	<u>51,652,863</u>	<u>1,070.72</u>
Total	68,243	3,421,399	2,789,040	\$4,222,606,074	\$469,846,370	1,044,227,276	374.40

Notes: 1. Population Figures from 2000 Census. 2. Acres, RMV, and SAV data from 2003-04 *Oregon Property Tax Statistics*, published by DOR. 3. Acres, RMV and SAV adjusted for estimation purposes. See Appendix I.4. Dollar figures inflation adjusted to December 31, 2005.

2. Willamette Valley Forest Land Tax Reductions

Owners of 851,575 acres of forest land in the Willamette Valley, or 30.5% of the total specially assessed forest land acres statewide, and 10.7% of all private forest land, received \$782 million, or 74.5% of the statewide total of \$1 billion in forest land tax reductions. The cumulative average forest land tax reduction per acre statewide was \$376 (Table 17), but \$918 in the Willamette Valley. (Table 18)

Landowners in two counties, Clackamas and Washington, with a total of 274,529 acres, or 9.8% of specially assessed acres statewide, received \$469 million in forest land tax reductions, or 44.5% of forest land tax reductions statewide. The cumulative per acre reduction was \$2,252 in Clackamas County, and \$1,061 in Washington County.⁹⁴ Clackamas County's high total of forest land tax reduction likely is explained by the 67,000 acres of ownerships less than 50 acres in size, compared to 20,000 acres in Washington County.

Table 18

Forest Land Tax Reductions, Willamette Valley Counties, 1977-2004

County	Acres	2003-04		1977-2004	
		AV without Special Assessment	AV with Special Assessment	Tax Benefits	Tax Benefit per Acre
1 Benton	70,074	\$131,623,646	\$15,488,704	\$29,660,297	\$423.27
2 Clackamas	147,696	948,280,067	30,099,058	332,618,657	2,252.06
3 Lane	145,062	448,959,859	18,227,146	112,557,294	775.92
4 Linn	180,309	191,646,936	41,338,747	43,966,941	243.84
5 Marion	70,959	198,900,423	15,873,820	45,777,161	645.12
6 Multnomah	19,667	17,582,076	1,367,130	2,242,842	114.04
7 Polk	42,733	136,782,376	3,250,342	28,869,850	675.59
8 Washington	126,833	520,706,309	28,874,780	134,615,648	1,061.36
9 Yamhill	<u>48,241</u>	<u>229,824,056</u>	<u>9,784,428</u>	<u>51,652,863</u>	<u>1,070.72</u>
Total	851,575	\$2,824,305,750	\$164,304,155	\$781,961,555	\$918.25

Notes:

1. Acres, RMV, and SAV data from 2003-04 *Oregon Property Tax Statistics*, published by DOR.
2. Dollar figures inflation adjusted to December 31, 2005.

3. Forest Land Tax Reductions by Region

The nine Willamette Valley counties had somewhat more (31%) of SAV forest acreage than the five coastal counties (26%), the other four Western Oregon counties (17%), and the 18 Eastern Oregon counties (31%). However, landowners in the nine Willamette Valley counties had 10.6, 6.0, and 13.5 times more total forest land tax reductions, respectively, than forest land owners in those other three regions (**Table 19**).

⁹⁴

Clackamas County classification of designated acres is only 57% (see pp. 31-32). If it were comparable (73.5%) to Washington and Marion county classifications, Clackamas County's per acre value would be \$1,774.

Table 19

Forest Land Tax Reductions, by Region, 1977 - 2004

	Willamette Valley			Coast			Western Oregon			Eastern Oregon		
	Acres	Tax Red'n		Acres	Tax Red'n		Acres	Tax Red'n		Acres	Tax Red'n	
1 Benton	70,074	29,660,297	Clatsop	30,929	14,065,121	Columbia	120,111	16,185,928	Baker	2,367	\$1,514,185	
2 Clackamas	147,696	332,618,657	Coos	213,104	23,432,485	Douglas	440,582	13,761,279	Crook	90,770	3,957,372	
3 Lane	145,062	112,557,294	Curry	105,961	8,250,962	Jackson	72,333	82,998,111	Deschutes	29,259	23,153,444	
4 Linn	180,309	43,966,941	Lincoln	244,356	25,429,259	Josephine	70,183	17,483,380	Gilliam	-	-	
5 Marion	70,959	45,777,161	Tillamook	49,039	2,741,565				Grant	58,810	8,655,386	
6 Multnomah	19,667	2,242,842							Harney	5,439	273,840	
7 Polk	42,733	28,869,850							Hood River	10,060	4,775,729	
8 Washington	126,833	134,615,648							Jefferson	1,203	15,483	
9 Yamhill	48,241	51,652,863							Klamath	288,122	5,774,385	
10									Lake	26,936	694,316	
11									Malheur	-	-	
12									Morrow	2,863	1,286,936	
13									Sherman	-	-	
14									Umatilla	28,844	939,416	
15									Union	10,166	5,254,800	
16									Wallowa	12,625	525,594	
17									Wasco	23,183	1,080,264	
18									Wheeler	222	16,482	
Total	851,575	\$781,961,555		643,389	\$73,919,392		703,208	\$130,428,697		590,869	\$57,917,632	

Source of acreage data: County Assessor *Summary of Assessments and Levies* reports to DOR, for fiscal year 2003-04.

3. Willamette Valley Counties -- Farm and Forest Land Combined

The nine Willamette Valley counties received 56.3% of combined farm and forest tax reductions statewide; the five north Willamette Valley counties received 42.4%.

1. Nine Counties

The nine Willamette Valley counties have 9.1% of Oregon's SAV farm land and 30.5% of Oregon's SAV forest land. Looking at these nine counties, with farm and forest land reductions combined, owners received \$2.8 billion, or 58.9% of farm and forest tax reductions statewide. The average cumulative per acre farm land benefit was \$1,361, and corresponding forest land benefit was \$918 (**Table 20**).

Table 20

Farm and Forest Land Tax Reductions Willamette Valley Counties, 1974 - 2004 Total, Per Acre

	Farm 1974 - 2004			Forest 1977 - 2004			Total		
	Acres	Tax Reduction	Tax Red'n per Acre	Acres	Tax Reduction	Tax Red'n per Acre	Acres	Tax Reduction	Tax Red'n per Acre
Benton	105,079	\$89,734,842	\$854	70,074	\$29,660,297	\$423	175,153	\$119,395,140	\$682
Clackamas	132,135	397,287,476	3,007	147,696	332,618,657	2,252	279,830	729,906,133	2,608
Lane	167,300	153,440,602	917	145,062	112,557,294	776	312,363	265,997,896	852
Linn	356,284	223,708,235	628	180,309	43,966,941	244	536,593	267,675,176	499
Marion	292,719	439,052,219	1,500	70,959	45,777,161	645	363,678	484,829,381	1,333
Multnomah	28,697	69,346,574	2,416	19,667	2,242,842	114	48,365	71,589,416	1,480
Polk	173,890	134,792,262	775	42,733	28,869,850	676	216,623	163,662,112	756
Washington	121,719	419,720,634	3,448	126,833	134,615,648	1,061	248,552	554,336,282	2,230
Yamhill	<u>154,012</u>	<u>158,422,183</u>	<u>1,029</u>	<u>48,241</u>	<u>51,652,863</u>	<u>1,071</u>	<u>202,253</u>	<u>210,075,046</u>	<u>1,039</u>
Total	1,531,835	\$2,085,505,027		851,575	\$781,961,555		2,383,410	\$2,867,466,582	
Average			\$1,361			\$918			\$1,203

2. Five North Willamette Valley Counties

The five North Willamette Valley counties have 874,475, or 5.6% of Oregon's SA *farm* land and 436,466 acres, or 15.6%, of Oregon's SA *forest* land. Landowners in these five counties have received a cumulative \$2.1 billion, or 44.0%, of the \$4.8 billion total of farm and forest land tax reductions combined (**Table 21**).

Table 21

**Farm Land and Forest Land Tax Reduction
Five North Willamette Valley Counties
1974 - 2004**

	Farm Land	Forest Land	Total
Marion	\$439,052,219	\$45,777,161	\$484,829,381
Polk	134,792,262	28,869,850	163,662,112
Yamhill	158,422,183	51,652,863	210,075,046
Washington	419,720,634	134,615,648	554,336,282
Clackamas	<u>397,287,476</u>	<u>332,618,657</u>	<u>729,906,133</u>
Total	1,549,274,774	593,534,180	2,142,808,954
Oregon	\$3,825,309,596	\$1,044,227,276	\$4,869,536,872
% of Oregon Total	40.5%	56.8%	44.0%

4. Financing Rural Tax Reductions: The Mechanism for Fairness

Since 1974, state property tax laws for farm and forest land have caused the “many” urbanites and suburbanites who benefit from farm and forest land zoning to compensate the “few” rural landowners supposedly burdened by farm and forest zoning. This has been done, year by year, by tax reductions worth \$4.8 billion.

These tax reductions did not come from Heaven. Rather, Oregon taxpayers who do not own farm and forest land have financed this \$4.8 billion in rural tax reductions in the form of higher urban and suburban taxes and service cuts. The intra-county impacts of this financing mechanism vary, county by county, based mainly on the size of urban/suburban taxable wealth and population in a given county, not the absolute size of rural tax reductions in a given county. In most cases amounts “paid” by urban and suburban property owners to finance substantial farm and forest land tax reductions, either cumulatively since 1974, or in tax year 2003-04, were essentially imperceptible.

1. Tax Shift and Tax Loss

If a county levy is \$10 million, and a significant portion of the taxable real property receives lower valuations, the tax rates must rise for the \$10 million levy to be realized. When rates rise on property in the county that is not specially assessed, the reduced farm land and forest land valuations produce a 100%, dollar-for-dollar, *tax shift* from rural to urban and suburban property owners *within* the same county. That happened in all Oregon counties 1974 - 1990.

However, beginning in 1991 property tax limitations combined with lower farm and forest valuations to increasingly cause revenue losses, not tax shifts. With rates cut by Measure 5 and values capped by Measure 50, revenue that could not come from farm and forest lands no longer could be obtained by slight increases in either tax rates or valuations from the much greater number of urban and suburban taxpayers within a given county. When counties experience such constitutional limits, revenue losses are the result.

After Measure 5 (1990), and even more so after Measure 50 (1996), losses as a percent of farm land and forest land tax reductions statewide *in a single tax year* gradually increased from an average of 8% in 1991-92 to 81% in 2003-04 (**Table 22**). By 2004, \$3.8 billion, or 80%, of the *cumulative* \$4.8 billion farm and forest land tax reduction had been financed by intra-county tax shifts, and 20% by local revenue loss and service cuts (**Table 23**).⁹⁵

Measure 5's (1990) cap on rates caused property tax revenue losses to local governments, 1991 - 2004, totaling \$6.9 billion. Measure 50 (1997) reversed a 20-year trend of rising values, reducing assessed value of property in the 1997-98 tax year from the prior tax year by 22.9% statewide, or \$43 billion.

The \$970 million in property tax revenue losses 1991-2004 estimated in **Table 23**, are attributable solely to the interaction of property tax limitations and reduced assessed values of farm and forest lands, distinct from any effect of Measure 5 or Measure 50.

⁹⁵

All dollar figures are to January 1, 2005. This and all tables reflect the effects of Measures 5 and 50 and associated legislation affecting farm land and forest land. For a fuller discussion of tax shift and loss, see the *State of Oregon 2005-2007 Tax Expenditure Report*, Chapter 2.

Table 22, p. 1

Tax Loss from Special Assessment of Farm Land and Forest Land: Amount, Percent of Tax Benefit (1991 - 1998)

	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	
1 Baker	\$325	8%	\$580	17%	\$653	33%	\$1,630	85%
2 Benton	542	10%	714	22%	1,314	40%	2,165	85%
3 Clackamas	2,052	6%	6,499	20%	8,991	39%	18,201	85%
4 Clatsop	62	5%	246	14%	393	33%	941	85%
5 Columbia	181	11%	391	23%	722	47%	1,267	85%
6 Coos	252	17%	230	33%	1,133	56%	1,598	85%
7 Crook	1	0%	47	3%	347	21%	1,344	85%
8 Curry	-	0%	17	2%	400	37%	883	85%
9 Deschutes	0	0%	82	3%	441	25%	1,803	85%
10 Douglas	149	8%	464	26%	1,506	48%	2,507	85%
11 Gilliam	181	19%	189	22%	255	44%	365	85%
12 Grant	9	0%	26	1%	245	17%	1,302	85%
13 Harney	540	24%	577	37%	492	47%	859	85%
14 Hood River	24	1%	410	24%	489	51%	784	85%
15 Jackson	73	1%	1,934	21%	2,045	43%	3,982	85%
16 Jefferson	184	9%	229	16%	406	32%	1,009	85%
17 Josephine	-	0%	100	5%	470	39%	866	85%
18 Klamath	878	11%	1,032	27%	1,097	55%	1,696	85%
19 Lake	150	6%	290	16%	461	29%	1,180	85%
20 Lane	1,425	13%	3,872	30%	2,856	49%	4,672	85%
21 Lincoln	0	0%	0	0%	300	10%	2,405	85%
22 Linn	1,439	14%	2,439	25%	2,760	41%	5,766	85%
23 Malheur	931	23%	1,101	35%	1,135	44%	2,089	85%
24 Marion	1,621	9%	2,280	14%	3,601	27%	9,554	85%
25 Morrow	87	2%	676	16%	1,032	34%	2,261	85%
26 Multnomah	428	12%	628	26%	492	39%	179	85%
27 Polk	664	11%	1,118	21%	1,489	33%	3,465	85%
28 Sherman	134	18%	205	29%	206	36%	508	85%
29 Tillamook	47	4%	113	12%	200	26%	591	85%
30 Umatilla	1,761	20%	2,277	33%	2,090	43%	4,183	85%
31 Union	537	21%	642	30%	646	41%	1,354	85%
32 Wallowa	202	8%	338	14%	443	26%	1,402	85%
33 Wasco	871	23%	1,044	32%	717	44%	1,130	85%
34 Washington	639	3%	4,427	19%	5,695	39%	11,611	85%
35 Wheeler	42	8%	71	17%	88	31%	302	85%
36 Yamhill	318	3%	1,132	15%	1,960	31%	5,130	85%
37 Total	16,751	8%	36,421	20%	47,570	37%	100,984	85%

Tax Loss from Special Assessment of Farm Land and Forest Land: Amount, Percent of Tax Benefit (1998 - 2004)

	1998-99		1999-00		2000-01		2001-02		2002-03		2003-04	
1 Baker	\$1,679	85%	\$1,700	82%	\$1,733	82%	\$1,705	81%	\$1,745	81%	\$1,726	81%
2 Benton	2,152	85%	2,204	82%	2,112	82%	2,384	81%	2,499	81%	2,985	81%
3 Clackamas	19,139	85%	19,645	82%	19,567	82%	20,033	81%	20,026	81%	20,287	81%
4 Clatsop	959	85%	935	82%	964	82%	993	81%	930	81%	1,030	81%
5 Columbia	1,353	85%	1,416	82%	1,175	82%	1,315	81%	1,350	81%	1,566	81%
6 Coos	1,675	85%	1,434	82%	1,083	82%	1,306	81%	1,468	81%	1,738	81%
7 Crook	1,299	85%	1,275	82%	1,175	82%	1,238	81%	1,200	81%	1,202	81%
8 Curry	876	85%	805	82%	779	82%	817	81%	854	81%	879	81%
9 Deschutes	1,680	85%	1,467	82%	1,570	82%	1,689	81%	1,700	81%	1,837	81%
10 Douglas	2,703	85%	2,599	82%	2,616	82%	2,306	81%	2,400	81%	2,502	81%
11 Gilliam	359	85%	349	82%	346	82%	442	81%	426	81%	418	81%
12 Grant	1,340	85%	1,323	82%	1,279	82%	1,418	81%	1,450	81%	1,433	81%
13 Harney	863	85%	875	82%	889	82%	884	81%	878	81%	852	81%
14 Hood River	921	85%	784	82%	775	82%	913	81%	871	81%	841	81%
15 Jackson	4,133	85%	4,013	82%	4,196	82%	4,423	81%	4,418	81%	4,483	81%
16 Jefferson	1,066	85%	1,095	82%	1,107	82%	1,177	81%	1,300	81%	1,288	81%
17 Josephine	833	85%	882	82%	948	82%	949	81%	988	81%	967	81%
18 Klamath	1,613	85%	1,683	82%	1,650	82%	1,746	81%	1,608	81%	1,634	81%
19 Lake	1,110	85%	1,194	82%	1,233	82%	1,279	81%	1,360	81%	1,342	81%
20 Lane	4,877	85%	4,959	82%	5,066	82%	4,620	81%	4,732	81%	4,916	81%
21 Lincoln	2,446	85%	2,470	82%	1,735	82%	1,699	81%	1,837	81%	2,209	81%
22 Linn	5,497	85%	5,462	82%	6,311	82%	5,634	81%	5,766	81%	6,080	81%
23 Malheur	2,071	85%	1,926	82%	1,856	82%	1,981	81%	2,071	81%	2,440	81%
24 Marion	10,360	85%	10,711	82%	10,728	82%	10,660	81%	11,067	81%	10,257	81%
25 Morrow	2,265	85%	2,240	82%	2,183	82%	2,240	81%	2,232	81%	2,410	81%
26 Multnomah	1,636	85%	1,186	82%	817	82%	1,727	81%	1,730	81%	999	81%
27 Polk	3,493	85%	3,732	82%	3,454	82%	3,615	81%	3,343	81%	3,578	81%
28 Sherman	519	85%	498	82%	492	82%	517	81%	458	81%	639	81%
29 Tillamook	698	85%	620	82%	523	82%	541	81%	582	81%	656	81%
30 Umatilla	4,259	85%	4,474	82%	4,480	82%	4,347	81%	4,395	81%	4,413	81%
31 Union	1,359	85%	1,342	82%	1,347	82%	1,330	81%	1,313	81%	1,314	81%
32 Wallowa	1,434	85%	1,397	82%	1,421	82%	1,487	81%	1,564	81%	1,642	81%
33 Wasco	1,251	85%	1,281	82%	1,284	82%	1,283	81%	1,341	81%	1,127	81%
34 Washington	12,354	85%	12,163	82%	11,782	82%	13,123	81%	14,315	81%	14,778	81%
35 Wheeler	352	85%	376	82%	378	82%	384	81%	397	81%	360	81%
36 Yamhill	5,303	85%	5,057	82%	5,006	82%	5,090	81%	5,252	81%	5,921	81%
37 Total	105,929	85%	105,574	82%	104,060	82%	107,294	81%	109,867	81%	112,748	81%

Table 23

**Tax Loss from Special Assessment of Farm Land and Forest Land:
Amount, Percent of Tax Benefit**

	Farm	Forest	Total, Farm and Forest	Shifted to Non-Farm, Non-Forest	Loss of Revenue	Shift pctg. of Total
1 Baker	\$88,086,233	\$1,514,185	\$89,600,418	\$74,372,189	\$15,228,229	83%
2 Benton	89,734,842	29,660,297	119,395,140	97,023,573	22,371,567	81%
3 Clackamas	397,287,476	332,618,657	729,906,133	554,167,114	175,739,019	76%
4 Clatsop	21,638,246	14,065,121	35,703,367	27,328,794	8,374,573	77%
5 Columbia	27,705,547	16,185,928	43,891,475	31,549,075	12,342,400	72%
6 Coos	22,179,053	23,432,485	45,611,538	31,654,701	13,956,837	69%
7 Crook	33,539,045	3,957,372	37,496,416	27,790,103	9,706,313	74%
8 Curry	31,072,262	8,250,962	39,323,224	32,406,977	6,916,247	82%
9 Deschutes	59,311,292	23,153,444	82,464,736	69,107,757	13,356,979	84%
10 Douglas	42,971,616	13,761,279	56,732,895	33,481,205	23,251,689	59%
11 Gilliam	26,306,963	-	26,306,963	22,213,551	4,093,412	84%
12 Grant	45,517,274	8,655,386	54,172,660	43,966,377	10,206,283	81%
13 Harney	78,191,953	273,840	78,465,793	69,084,608	9,381,185	88%
14 Hood River	35,630,212	4,775,729	40,405,941	32,253,058	8,152,883	80%
15 Jackson	112,459,644	82,998,111	195,457,755	155,877,484	39,580,272	80%
16 Jefferson	61,713,232	15,483	61,728,715	51,950,601	9,778,114	84%
17 Josephine	31,789,821	17,483,380	49,273,201	41,337,455	7,935,746	84%
18 Klamath	154,155,993	5,774,385	159,930,378	141,704,057	18,226,321	89%
19 Lake	55,870,729	694,316	56,565,045	45,867,627	10,697,418	81%
20 Lane	153,440,602	112,557,294	265,997,896	213,745,405	52,252,491	80%
21 Lincoln	23,939,744	25,429,259	49,369,003	34,008,838	15,360,165	69%
22 Linn	223,708,235	43,966,941	267,675,176	213,218,104	54,457,072	80%
23 Malheur	138,061,644	-	138,061,644	117,113,444	20,948,200	85%
24 Marion	439,052,219	45,777,161	484,829,381	395,456,615	89,372,766	82%
25 Morrow	114,482,331	1,286,936	115,769,267	95,692,994	20,076,273	83%
26 Multnomah	69,346,574	2,242,842	71,589,416	60,105,237	11,484,179	84%
27 Polk	134,792,262	28,869,850	163,662,112	131,874,864	31,787,249	81%
28 Sherman	21,939,640	-	21,939,640	17,139,913	4,799,727	78%
29 Tillamook	27,191,182	2,741,565	29,932,747	24,995,750	4,936,997	84%
30 Umatilla	242,666,270	939,416	243,605,686	200,481,785	43,123,901	82%
31 Union	83,353,788	5,254,800	88,608,588	75,379,241	13,229,347	85%
32 Wallowa	60,422,939	525,594	60,948,533	48,489,132	12,459,401	80%
33 Wasco	86,316,984	1,080,264	87,397,248	73,444,078	13,953,170	84%
34 Washington	419,720,634	134,615,648	554,336,282	439,195,846	115,140,436	79%
35 Wheeler	13,290,931	16,482	13,307,412	10,329,748	2,977,664	78%
36 Yamhill	<u>158,422,183</u>	<u>51,652,863</u>	<u>210,075,046</u>	<u>165,213,589</u>	<u>44,861,456</u>	<u>79%</u>
37 Total	\$3,825,596	\$1,044,227,276	\$4,869,536,872	\$3,899,020,888	\$970,515,984	80%

2. Tax Shifts per Capita

Table 11 (p. 63) and **Table 17** (p. 70) show cumulative per acre farm land and forest land property tax reductions, by county, 1974-2004.

ALI uses *populations* of paying and receiving *areas* as a proxy for taxpayers. That is, ALI estimated *per capita* “payment” and “receipt” as though each person in those two areas paid taxes and received tax reductions. The per capita estimates are based on the farm area and forest area population estimates in **Table 11** and **Table 17**.

Tax shifts per capita for the nine Willamette Valley counties attributable to special assessment of farm and forest land are presented in **Table 24** and **Table 25**, respectively, both cumulatively (1974 - 2004), and for a single tax year (2003-04). For all other counties, these estimates are presented in attachments to **Appendices F** and **G**.

On the farm side, in the Willamette Valley, 1974-2004:

- Each of the 32,848 people living in farm areas totaling 1.5 million acres received the equivalent of \$63,490;
- Each of the 2.4 million people *not* living on SAV farm land in Willamette Valley counties paid \$888 (**Table 24**).

On a single year basis, in 2003-04:

- Each of the 32,848 people living in SAV farm areas received the equivalent of \$1,541;
- Each of the 2.4 million people *not* living in SAV farm areas paid \$22 (**Table 24**).

On the forest side, in the Willamette Valley, 1977-2004:

- Each of the 32,169 people living in forest areas totaling 2.4 million acres received the equivalent of \$24,308;
- Each of the 2.4 million people *not* living on SAV forest land paid \$333.

On a single year basis, in 2003-04:

- Each of the 32,169 people in forest areas received \$1,135;
- Each of the 2.4 million people *not* living in forest zones paid \$16 (**Table 25**).

Table 24

**Per Capita Shift of Farm Land Tax Burden,
Willamette Valley Counties
1974-2004**

County	Farm Population (2000)	Nonfarm Population (2000)	1974-2004			2003-2004		
			Tax Reduction	Reduction Received per capita (Farm Population)	Reduction Paid per capita (Nonfarm Population)	Tax Reduction	Reduction Received per capita (Farm Population)	Reduction Paid per capita (Nonfarm Population)
1 Benton	1,510	76,643	\$89,734,842	\$59,427	\$1,171	\$2,127,618	\$1,409	\$27
2 Clackamas	6,990	331,401	397,287,476	56,837	1,199	12,006,313	1,718	35
3 Lane	3,636	319,323	153,440,602	42,200	481	1,352,474	372	4
4 Linn	3,564	99,505	223,708,235	62,769	2,248	5,614,345	1,575	54
5 Marion	6,191	278,643	439,052,219	70,918	1,576	10,415,116	1,682	37
6 Multnomah	798	659,688	69,346,574	86,900	105	1,036,838	1,299	2
7 Polk	2,542	59,838	134,792,262	53,026	2,253	2,952,592	1,162	47
8 Washington	3,635	441,707	419,720,634	115,466	950	10,724,759	2950	24
9 Yamhill	3,982	81,010	158,422,183	39,785	1,956	4,394,784	1,101	52
Total	32,848	2,347,758	\$2,085,505,027	\$63,490	\$888	\$50,624,839	\$1,541	\$22
Average								

Notes:

1. Population Figures from 2000 Census.
2. Dollar figures inflation adjusted to December 31, 2005.

**Per Capita Shift of Forest Land Tax Burden
Willamette Valley Counties,
1977-2004**

County	2000		1977-2004		2003-2004			
	Forest Population	Nonforest Population	Tax Reduction Received	Reduction Received per capita, (Forest Population)	Reduction Paid per capita, (Nonforest Population)	Tax Reduction	Reduction Received per capita, (Forest Population)	Reduction Paid per capita (Nonforest Population)
1 Benton	2,261	75,892	\$29,660,297	\$13,118	\$391	\$1,557,161	\$689	\$21
2 Clackamas	8,576	329,815	332,618,657	38,785	1,009	13,039,575	1,520	40
3 Lane	6,586	316,373	112,557,294	17,090	356	4,717,159	716	15
4 Linn	2,473	100,596	43,966,941	17,779	437	1,891,999	765	19
5 Marion	1,641	283,193	45,777,161	27,896	162	2,248,064	1,370	8
6 Multnomah	1,467	659,019	2,242,842	1,529	3	196,974	134	0
7 Polk	2,555	59,825	28,869,850	11,299	483	1,464,943	573	24
8 Washington	3,489	441,853	134,615,648	38,583	305	7,520,092	2,155	17
9 Yamhill	3,121	81,871	51,652,863	16,550	631	2,914,904	934	36
Total	32,169	2,348,437	\$781,961,555			\$35,550,870	\$1,105	\$15
Average				\$24,308	\$333			

Notes:

1. Forest Population figures from Oregon Department of Revenue; Nonforest Population Figures from 2000 Census
2. Dollar figures inflation adjusted to December 31, 2005.
3. Nonforest population estimated by ALI.

3. Tax Shift: From Farm to Urban/Suburban

Urban and suburban property wealth and population, not large absolute amounts of farm land tax reductions in a given county, determined the size of tax burdens borne by urban and suburban taxpayers as a result of reduced taxes on farm and forest land in the same county.

The five counties with the greatest farm land tax reductions 2003-04 were Marion, Washington, Clackamas, Umatilla and Linn. The nonfarm population of these counties averaged over 243,000 in 2000, and total assessed values averaged \$16.4 billion. In those counties farm land tax reductions averaged 6.4% of the total county levy, tax reductions per capita *received* by farm area resident averaged \$1,949 (based on year 2000 farm population), and tax reductions *paid* per capita by urban/suburban resident averaged \$36. (Table 26)

On the other hand, in eight Eastern Oregon counties with average nonfarm populations of 7,540 -- Sherman, Wheeler, Wallowa, Gilliam, Malheur, Lake, Grant, and Harney -- farm land tax reductions averaged 23.7% of the total county levy in 2003-04. Average per capita payments *received* by farm residents in these eight counties at \$1,580, not significantly less (\$369) than the \$1,949 average of the five counties with the largest tax reductions. However, average per capita payments by urban and suburban residents in those eight counties were five times greater (\$180 vs. \$36) (Table 27) (Appendices F and G).

Table 26

Counties with Most Farm Land Tax Reductions, 2003/04

	County	Non-Farm Population	Farm Population	Exempt Value (millions)	Total Market Value (millions)	% Exempt Value to Total Value	Farm Land tax Reduction (millions)	% Tax Reduction to Levy	Tax Reduction Rec'd/ Capita	Tax Reduction Paid/ Capita
1	Clackamas	331,401	6,990	842	25,127	3.4%	12	3.2%	1,717.64	36.23
2	Washington	441,707	3,635	766	33,842	2.3%	11	1.9%	2,950.42	24.28
3	Marion	278,643	6,191	845	13,851	6.1%	10	4.6%	1,682.30	37.38
4	Linn	99,505	3,564	445	5,584	8.0%	6	6.8%	1,575.29	56.42
5	Umatilla	68,259	2,289	400	3,374	11.9%	5	10.1%	2,368.20	79.42
	Total	1,219,515	22,669	\$3,299	\$81,778		\$44			
	Average	243,903	4,534	\$660	\$16,356	4.0%	\$9	3.4%	\$1,948.98	\$36.23

Table 27

Counties with Highest Percentage of Farm Land Tax Reduction to Levy, 2003/04

	County	Non-Farm Population	Farm Population	Exempt Value (millions)	Total Market Value (millions)	% Exempt Value to Total Value	Farm Land tax Reduction (millions)	% Tax Reduction to Levy	Tax Reduction Rec'd/ Capita	Tax Reduction Paid/ Capita
1	Wheeler	1,311	236	60	77	78.2%	0.4	34.9%	1,877.97	338.06
2	Wallowa	6,435	791	221	481	45.8%	2.0	31.2%	2,531.69	311.20
3	Lake	6,731	691	180	402	44.9%	1.6	28.3%	2,329.13	239.11
4	Grant	7,220	715	136	344	39.4%	1.5	27.8%	2,070.11	205.00
5	Harney	6,651	958	116	338	34.4%	1.0	21.9%	1,068.03	153.84
6	Sherman	1,599	335	60	209	28.7%	0.8	21.7%	2,353.77	493.13
7	Malheur	28,709	2,906	295	1,259	23.4%	3.0	18.9%	1,036.47	104.91
8	Gilliam	1,664	251	53	219	24.3%	0.5	17.6%	2,058.08	310.44
	Total	60,320	6,883	\$1,121	\$3,329		\$10.9			
	Average	7,540	860	\$140	\$416	33.7%	\$1.4	23.7%	\$1,580.06	\$180.30

VIII. MEASURE 37 AND FARM LAND PRODUCTIVITY

Over 84% of the 7,000 Measure 37 claims statewide have been filed against farm and forest land which has received property tax reductions. Over 66% of claims statewide have been filed in Willamette Valley counties which have received over 56% of \$4.8 billion in farm and forest land tax reductions. Many claims demand “monopoly value” subdivisions in the middle of “large blocks” of commercial farm areas. These claims threaten the climate for investment in Oregon’s most productive farming areas. Substantial property tax reductions, and strongly rising farmland values, show zoning has caused no *general* unfairness to farm land owners that would justify a change of land use and property tax laws that would threaten commercial agriculture in any county. More important, no one has pointed to any evidence that either Oregon voters or the sponsors of Measure 37 intended that Measure 37 threaten commercial agriculture. Measure 37’s threat to commercial agriculture could be prevented if compensation under Measure 37 were administered to compensate loss on reduction in value, not demand for monopoly value, which likely is what Oregon voters understood to be Measure 37’s purpose.

This study’s findings do not counter arguments made to support Measure 37 with respect to a broad range of past or future land use regulations unrelated to the regulation of farm and forest land, or with respect to claims relating to farm land, but when the landowner seeks a single dwelling, not a subdivision.

A. Climate for Farm Investment at Risk

Agriculture is a mainstay of Oregon’s economy. In 2005, agriculture generated \$4.3 billion in sales of crops and livestock in 2005, and billions more through the manufacture and sale of finished food products. Agriculture’s continued contribution to Oregon’s economic well-being depends on a delicately-balanced risk factor: the willingness of thousands of entrepreneurial farmers to continue to borrow against their land in order to finance long-term investments in planting, harvesting and loading equipment, irrigation systems, storage facilities, and trucks. Such investments are indispensable to efficient, profitable farming. Such investments are also costly and must be amortized over time. With rising farm sales contributing to rising farm land values, farmers have had the balance sheet strength needed to borrow and invest long-term. However, the willingness of farmers to use their borrowing power to invest in their farms depends on the continued viability of farm zoning.

Since 1973, the Oregon Legislature has sought to achieve its goal of productive use of farm land by requiring county zoning to keep “large blocks” of agricultural land free of land uses that would conflict with farm practices (p. 8). The objective of such large blocks is farmers confident that they will be able to carry out farm practices essential to earning the money needed to pay off long-term loans and to amortize investments. Measure 37 threatens the investment climate of Oregon agriculture by threatening to allow large “monopoly value” subdivisions in the middle of large blocks of commercial farming areas.

The maps of Measure 37 claims in Washington, Jefferson and Hood River counties (following p. 87) show claims scattered randomly throughout rich farm areas. These maps show why a subdivision on 100 acres in a commercial farm area can affect farm operations on 300-500 additional acres on surrounding farms. These maps also show why it is no comfort to the farmer deciding whether to borrow and invest to hear a neighboring

Measure 37 claimant say, “Shucks, I’m not planning to subdivide anytime soon. I’m just protecting my options.” A legally-enforceable subdivision “option” suddenly authorized across the fence *itself* shakes a farmer’s confidence that he or she can engage in farm practices ten years in the future.

Moreover, *potential* claims are almost as much of a threat to investor confidence as *filed* or approved claims. Measure 37 goes on forever. Claims were easier and cheaper to file before the first “deadline,” December 2, 2006. But the same tenure-of-title rules of eligibility apply after December 2, 2006, as before; later claims simply must be accompanied with an application for a specific land use approval -- something all claimants must provide at some point. Farmers know that a landowner who is *eligible* to file a claim has the same incentive to “protect options” as a landowner who has filed, and that claims filed in the future will create the same kind of conflicts that an already-filed claim creates.

B. Measure 37 Claims Threaten the Most Productive Farm Land

The majority of the 6,350 claims filed as of January 23, 2007 threaten the investment climate for agriculture in areas where agricultural production is greatest, and where landowners have received the greatest amount of compensation property tax reductions.

1. Measure 37 is Barely Relevant in Eastern Oregon

Fourteen Eastern Oregon counties⁹⁶ have 11.9 million acres, or 76.4%, of Oregon’s farm land, but only 374, or 5.9% of the 6,350 claims filed statewide. In four counties -- Harney, Morrow, Sherman and Wheeler, with 3.6 million acres, or 23% of the state’s total -- *zero* claims have been filed. In each of another five counties -- Gilliam, Grant, Lake, Malheur, and Umatilla -- with another 32% of the state’s total farm land, ten or fewer claims have been filed. Of the 374 claims in these 14 counties, 242, or 65%, are in Baker and Klamath.

The few claims filed in Eastern Oregon is mainly because (1) limitations on dwellings and partitioning are less restrictive in Eastern Oregon compared to Western Oregon, and (2) slower population growth.

2. Claims are Concentrated on Oregon’s Best Farm Land

Of the 6,350 claims filed statewide, 4,209, or 66.3%, are in the nine Willamette Valley counties. These counties have only 9.7% of the state’s farm land. However, they have over half the state’s “prime” and “high value” soils, and, in 2005, accounted for \$2.1 billion, or 49% of the state’s \$4.3 billion in farm sales.

Claims are particularly concentrated in Oregon’s top producing counties in the North Willamette Valley. Of the 6,350 claims filed statewide, 2,977, or 46.9% are in the five North Willamette counties, including Polk. Four of these counties -- Marion, Clackamas,

⁹⁶ Baker, Gilliam, Grant, Harney, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler

Washington and Yamhill -- ranked 1, 2, 3, and 5, respectively, among all 36 counties in sales in 2004 and 2005.

3. Most Claims are on Resource Lands and Demand Subdivisions

Statewide, of the 4,585 claims which specify land type by current zoning, 3,860, or 84.2%, are on farm or forest land. (Table 28).

Table 28

Measure 37 Claims by Land Type

	Claims	% of Claims Specified by Land Type
Farm	2,314	50.5
Forest	813	17.7
Farm/Forest	733	16.0
Rural Residential	512	11.2
Other	213	4.6
Total	4,585	100

Source: Portland State University, Center for Population Research and Census, Measure 37 data base, January 2007, <http://www.pdx.edu/ims/m37database.html>

Statewide, of the 2,331 resource land claims which specify demanded use, 69.2% demand subdivisions, 28.3% demand partitions, and 2.5% demand other types of nonconforming uses in a resource zone.

Table 29

Measure 37 Claims by Specified Use

	Total	Subdivisions	Partitions	Other
Farm	1,431	1,036 72.4%	360 28.2%	35 2.4%
Forest	446	310 69.5%	122 27.4%	14 3.1%
Farm/Forest	454	266 58.6%	178 39.2%	10 2.2%
Total	2,331	1,612	660	59
Average		69.2%	28.3%	2.5%

Source: Portland State University, Center for Population Research and Census, Measure 37 data base, January 2007, <http://www.pdx.edu/ims/m37database.html>

4. Claims Concentrated Where Farm and Forest Land Tax Reductions Have Been the Greatest

Owners of farm and forest land in the nine Willamette Valley counties -- with only 9.7% of the state's farm land, but where 66.3% of claims statewide have been filed -- have received \$2.7 billion, or 56.3%, of the \$4.8 billion in farm and forest land tax reductions

statewide, 1974-2004 (**Table 20**, p. 67).

Landowners in five North Willamette Valley counties, with only 5.6 % of farm land, and 15.1% of SAV forest land statewide, have received \$2.1 billion, or 43.9%, of the \$4.8 billion in farm and forest land tax reductions statewide (**Table 21**, p. 68), and have filed 2,977, or 46.9% of the 6,350 Measure 37 claims filed statewide (**Table 30**).

Table 30

**Farm and Forest Land Tax Reductions and Measure 37 Claims
Five North Willamette Valley Counties⁹⁷**

	Farm and Forest Tax Reductions	% State Total	Measure 37 Claims	% State Total
Clackamas	\$706,127,474	14.6	1,052	16.6
Washington	554,336,282	11.4	894	14.1
Yamhill	210,075,046	4.4	455	7.2
Marion	472,205,511	9.8	442	7.0
Polk (partial)	178,037,818	3.7	134	2.1
Total	\$2,120,782,131	43.9	2,977	46.9

Source: Portland State University, Center for Population Research and Census, Measure 37 data base, January 2007, <http://www.pdx.edu/ims/m37database.html>; farm forest tax reduction data from Table 3.

Measure 37 claims and farm land and forest land tax reductions are particularly concentrated in Clackamas and Washington counties. In those two counties, farm and forest land owners have:

- Filed 1,946, or 30.7%, of Measure 37 claims filed statewide (**Table 30**); and
- Received \$1.26 billion, or 26.1%, of tax reductions received by landowners statewide (**Table 21**).

5. Key Counties Already at Tipping Point

The problem is not mainly that most of the claims are in highly productive farm counties. Rather, as indicated by the three maps following page 87, the main problem is that claims are scattered throughout “large blocks” of farm land which the Legislature, via land use and property tax laws, has sought for 33 years to keep free of uses which interfere with farming. Three counties are summarized below; Clackamas, Yamhill and Jackson counties could be similarly summarized.

Hood River County. Farm sales totaled \$67.4 million in 2005. That amount is not huge compared to counties, 5 - 20 times bigger. However, at \$2,851 per acre, coming from only 23,506 acres, Hood River County’s farm sales are second only to Tillamook

⁹⁷ *Ibid.*

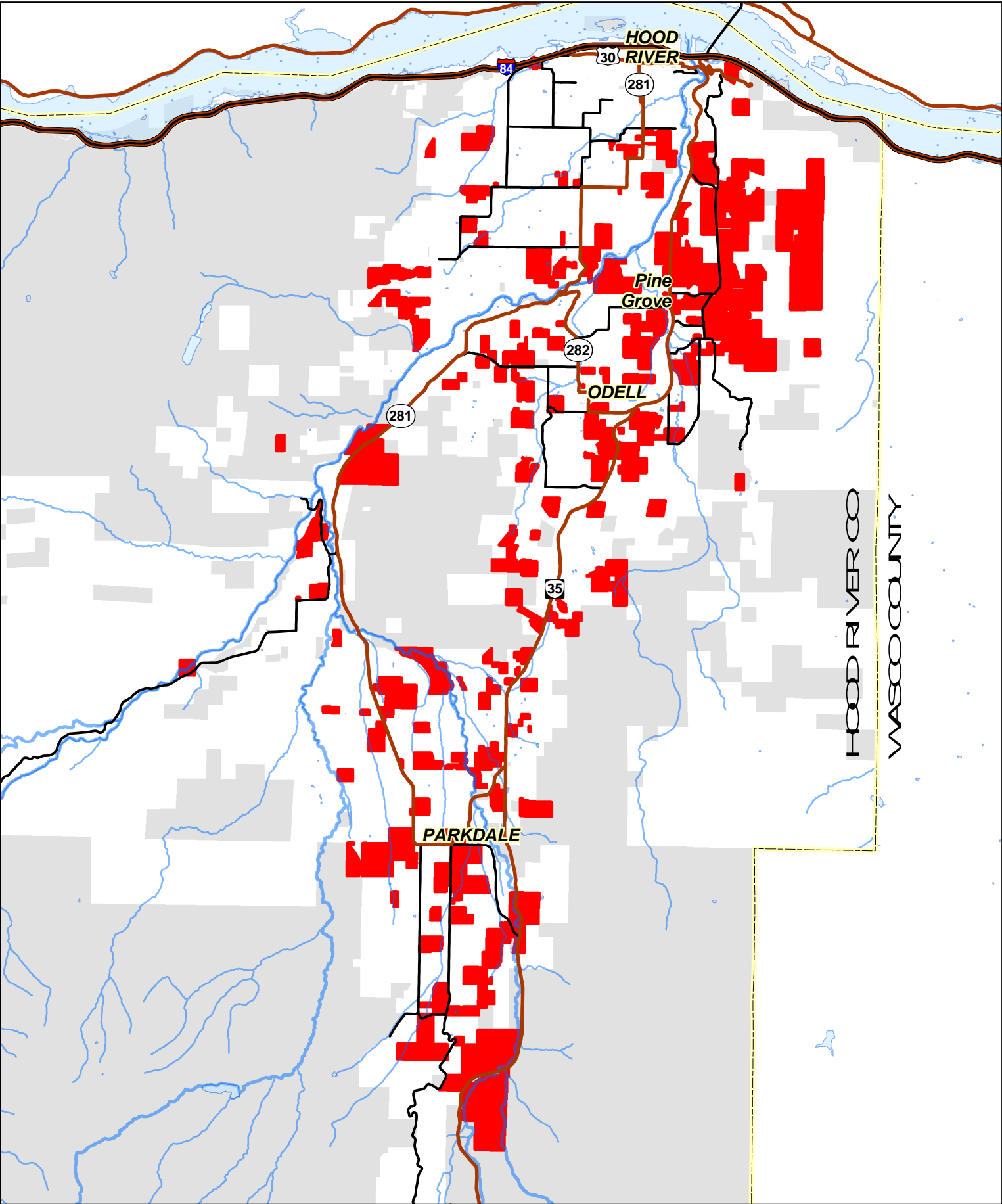
County in productivity per acre. Tillamook County averaged \$3,388 per acre, on 31,791 acres in 2005. To those who understand the business, it's no surprise to see the third generation of Hood River Valley farm families now buying land and planting new orchards.

Both new and old Hood River County orchard investments are threatened by Measure 37 claims on 2,993, or 13%, acres of the county's 23,506 acres of farm land. Given that a subdivision conflicts with farm practices on all farms surrounding the claim acres, Measure 37 is now a threat to productive use of roughly half of Hood River County's farm land.

Washington County. Oregon's number three farm producer. As of January 2007, claims have been filed on 24,216, or 20%, of the county's 121,719 acres of farm land. The map on the following page, prepared by Washington County, shows the scattered pattern of claims. Without another claim filed in Washington County's commercial farming area, operations on roughly 80% of the county's farm land, calling into question the climate for farm investment throughout Washington County.

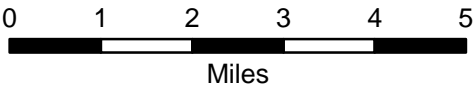
Jefferson County. Leads the nation in the production of hybrid carrot seed, bluegrass, mint tea leaf, and garlic seed. The federal North Unit Irrigation District waters 59,000 acres. Stinging bees are an example of conflicts between farm practices and subdivisions in farm areas. In 2007, farmers will spend \$780,000 on 13,000 beehives to pollinate vegetable seed fields. As Jefferson County rancher Gary Harris asked legislators, "Will bees and subdivisions co-exist?"⁹⁸

⁹⁸ Written testimony to Joint Committee on Fairness, 2007 Oregon Legislative Assembly, February 8, 2007

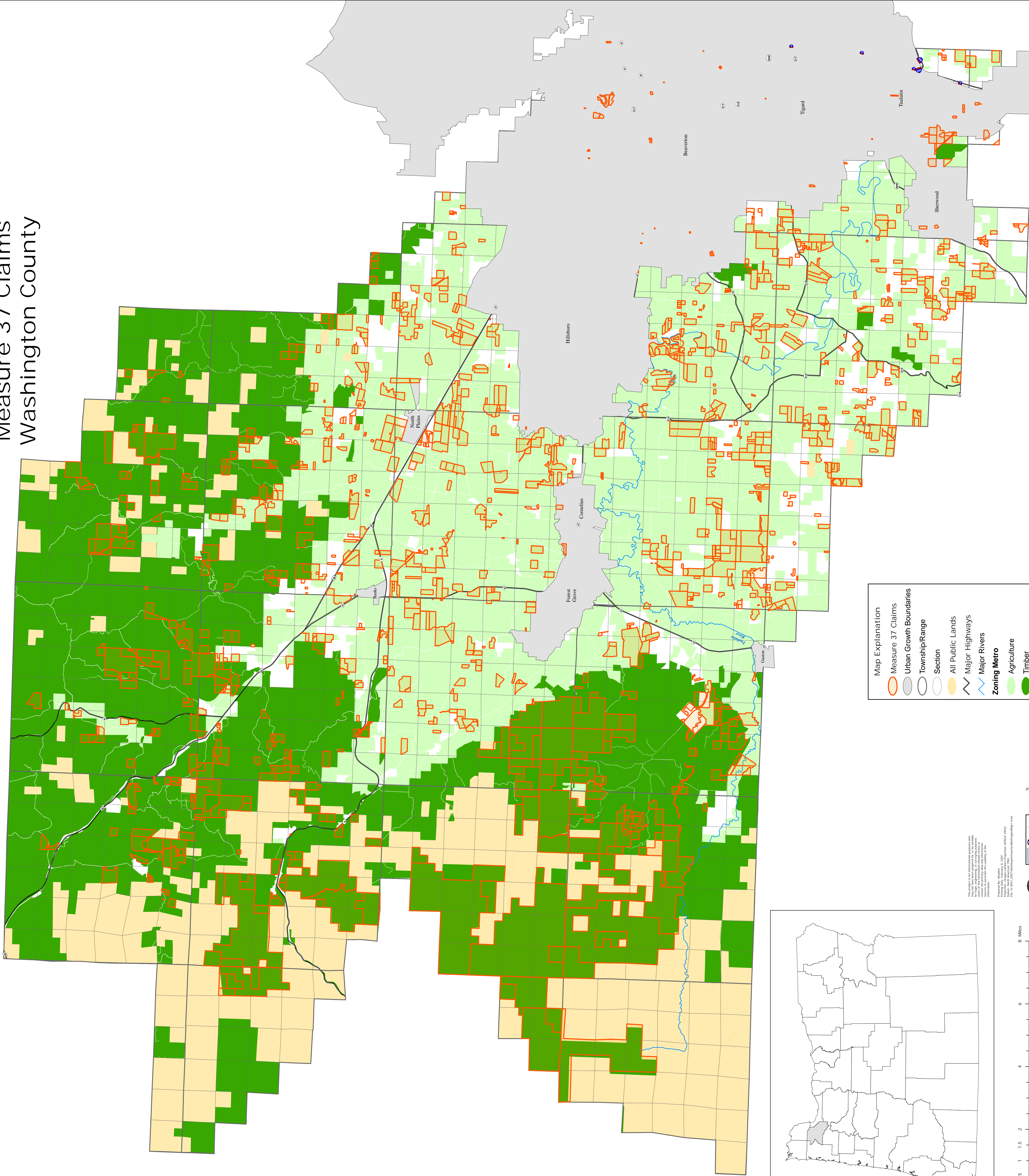


Legend

- Measure 37 Claim
- Public Lands

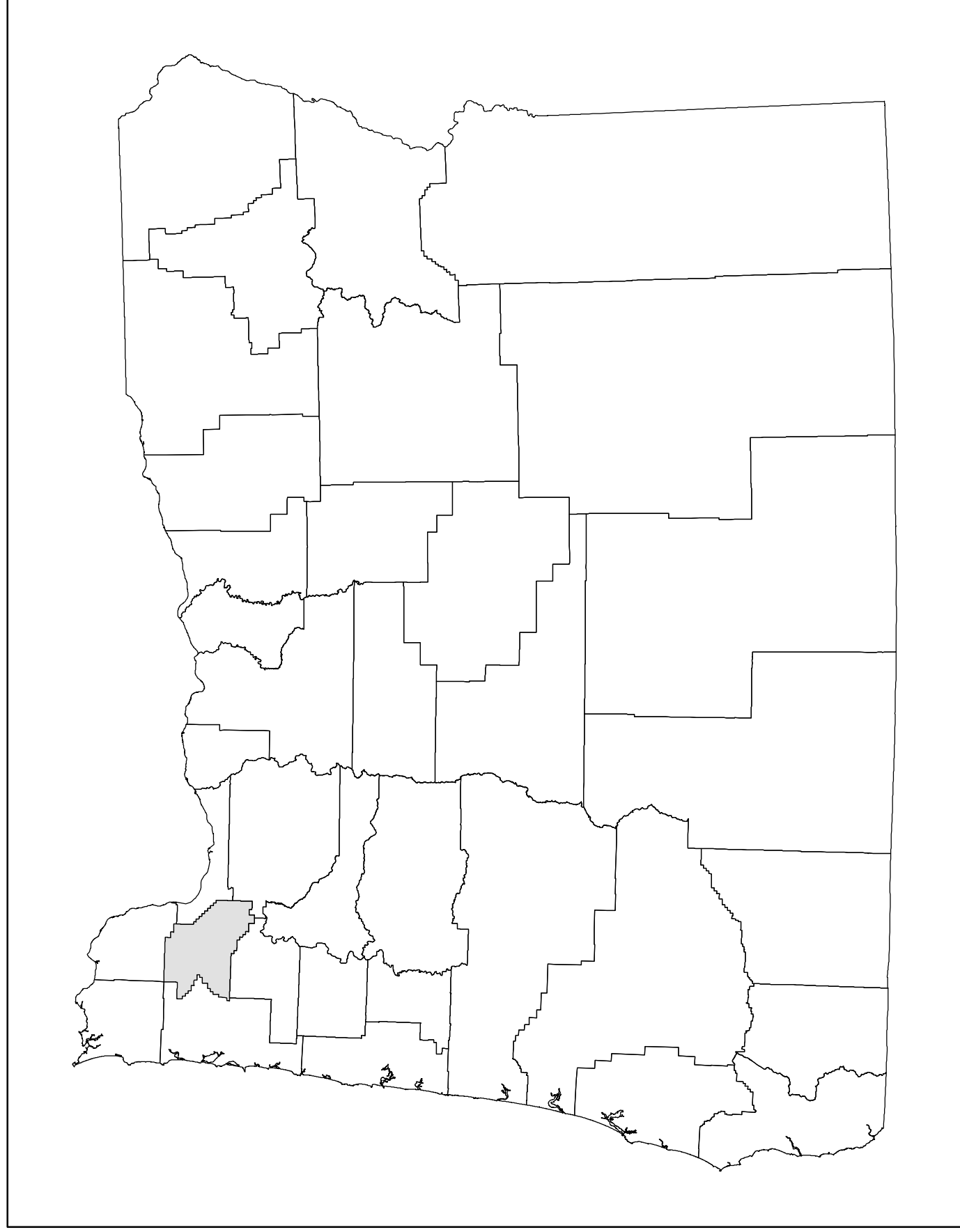


Measure 37 Claims Washington County

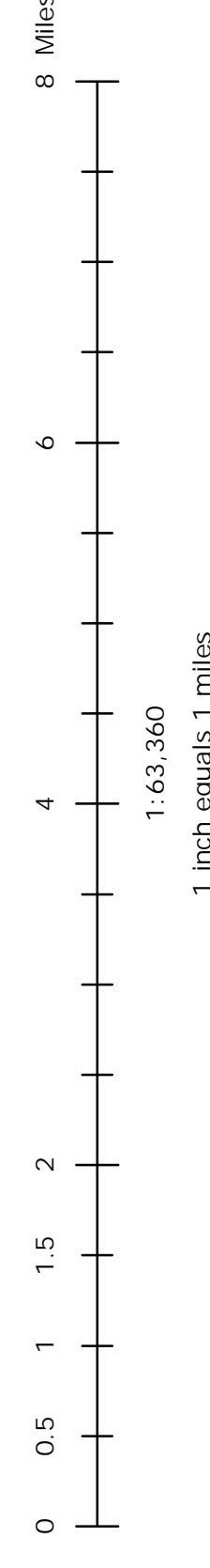


Map Explanation

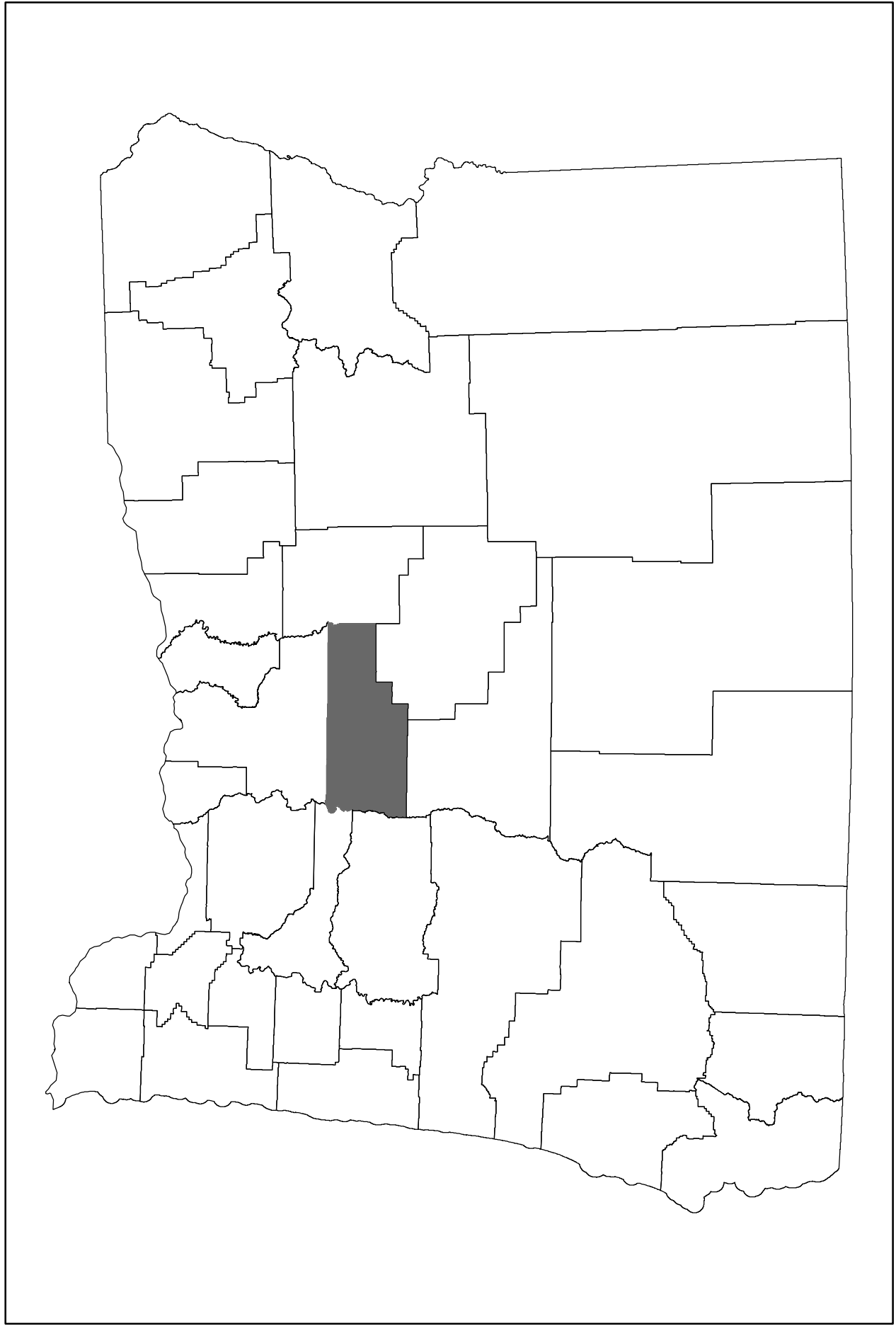
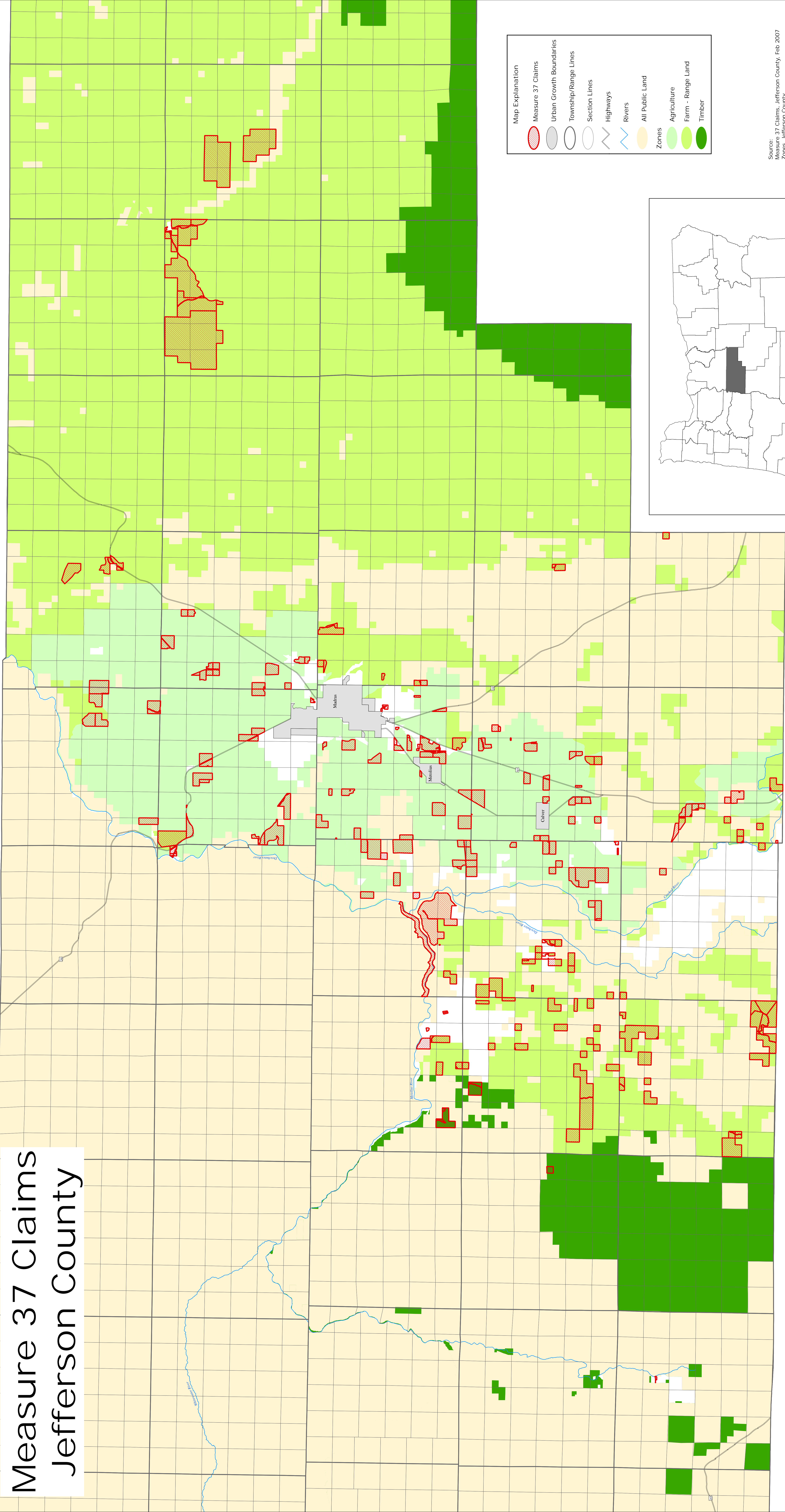
- Measure 37 Claims
- Urban Growth Boundaries
- Township/Range
- Section
- All Public Lands
- Major Highways
- Major Rivers
- Zoning Metro**
- Agriculture
- Timber



This map is for informational purposes only. It is not intended to be used for legal or financial purposes. The Oregon Department of Transportation (ODOT) is not responsible for any errors or omissions on this map. The Oregon Department of Transportation (ODOT) is not responsible for any errors or omissions on this map.



Measure 37 Claims Jefferson County



Map Explanation

Measure 37 Claims

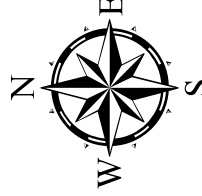
Urban Growth Boundaries

Zones

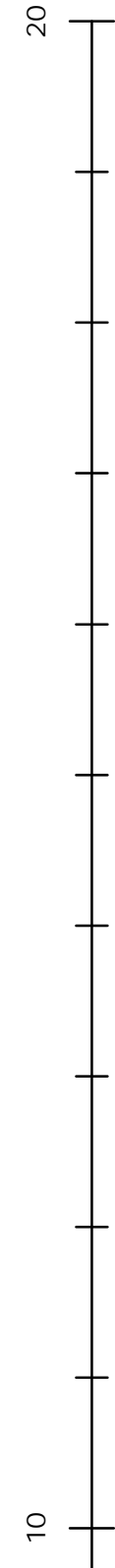
Source:
Measure 37 Claims, Jefferson County, Feb 2007
Zones, Jefferson County
Public Ownership, GEO, 24K, 2003
Urban Growth Boundaries, GEO, 24K, 2005
Township/Range/Section, GEO 100K
Highways, GEO, 24K
Rivers, GEO, 24K

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Prepared by: dswalker
Date: 11/11/2007
Project: Oregon Land Use Project (EPSG: 2992)
File: D:\M37_2007\JeffersonCounty\JeffersonMap1.mxd



1:79,200
1 inch equals 1.25 miles



Measure 37 allows claims to be filed in the future. Measure 37 thus eventually is likely to worsen conflicts in Hood River, Washington, and Jefferson counties, and similarly threaten farm operations in other Willamette Valley counties and Jackson County.

C. Measure 37's Threat to Commercial Agriculture is Unjustified

This study's finding of \$3.8 billion in farm land property tax reductions for farm land, and farm land value growth faster than the stock market, show that farm zoning has not resulted in broad unfairness to farm land owners that would justify changes in land use law that would threaten commercial agriculture. Rather, the study's findings show that farm zoning corresponds to a history of economic success and evenhandedness, not deprivation and unfairness. While farm zoning has been in effect in the Willamette Valley, farm sales increased from \$409 million in 1976 to \$2.1 billion in 2005 (**Table 15**), and urban and suburban taxpayers financed a \$2 billion, \$1,359-per acre, farmland tax reduction (**Table 20**). Moreover, from 1964 - 2004, the market value of farm land increased faster than the stock market (**Table 16**). Far from justifying the undoing of the land use and property tax laws which have contributed to this success story, this study's findings show it would be irrationally self-destructive for Oregonians to knowingly undermine these laws.

The "Yes" on 37 campaign used three broad arguments to attack Oregon's farm land protection laws as unfair. To the extent they support undoing Oregon's farm land protection laws and thereby to commercial agriculture, this study's findings refute that argument.

Broken Promises. Measure 37 proponents argued Gov. McCall wanted compensation to be part of Senate Bill 100, but legislators failed to follow through on McCall's wish. Legislative history shows otherwise. Legislators recognized that SB 100 would widely limit the use of farm land, and thus raised the issue of fairness. In June 1973, a month after enacting SB 100, the Legislature addressed the fairness issue by enacting Senate Bill 101, the companion bill to Senate Bill 100. By strengthening existing farm land tax cuts, SB 101 provided landowners a financial benefit -- a "goodie," as Sen. Victor Atiyeh (R., Beaverton) put it on the Senate floor (p. 24). Tax reductions also boosted productivity, in that lowering fixed costs raises profits and investment feasibility. The 1975 Legislature did much the same for forest land.

No Sharing of Burden. Measure 37's proponents also argued the 1973 land use laws have been unfair because a few rural land owners have borne the regulatory burden of zoning while a much larger number of urbanites and suburbanites have enjoyed the benefits. In fairness, the argument goes, urban and suburban citizens who benefit from rural land use laws should compensate rural landowners who are burdened. However, the 1973 Legislature mandated such a burden-sharing process, and that process has worked well for 33 years. The 96% of Oregonians who live in cities and suburbs -- and who indeed have benefitted economically and environmentally from farm and forest zoning -- have shared in the burden of that zoning by paying \$3.8 billion more in taxes, and by receiving \$987 million less in services. That is how the \$4.8 billion tax reduction enjoyed by the 4% of Oregonians who own farm and forest land was financed.

Zoning Cut Land Values. Finally, the critics' most basic assumption -- that zoning has reduced farm land values -- is invalid. As an investment vehicle, farmland has performed superbly for forty years. True, zoning foreclosed some nonfarm uses. However, these were often of little market significance (p. 40), and \$4.8 billion in tax reductions substantially addressed those limitations. More fundamentally, from 1964 to 2004, the overall market value of farm land, *as regulated*, in the Willamette Valley, Southern Oregon, Central Oregon and the Coast, increased faster than the S&P 500, i.e., faster than shares of the nation's 500 largest publically traded companies. (**Table 16**).

D. Tax Reductions and Land Value Increases Do Not Refute Other Arguments Made to Support Measure 37

This study's findings refute arguments that would conceivably justify Measure 37 threatening commercial agriculture. A result the measure's sponsors disclaim and polls show Oregon voters have never supported. However, many other arguments made to support Measure 37 are not refuted by the fact that farm and forest land owners received tax reductions, and that farm land values have increased impressively. To respect the decision of Oregon voters to enact Measure 37 means respecting these and other arguments.

For example, arguments made to support Measure 37 were about specific *existing* regulations, relief from which would allow a single additional dwelling on a parcel -- not a 50-lot subdivision. LCD's 1994 \$80,000 gross income test, and the 1994 80-acre and 160-acre minimum lot sizes, fall in this category. One reason for respecting these arguments, and for modifying, not repealing Measure 37, is that claims seeking waivers, for example, from LCD's 1994 \$80,000 income test for a single dwelling, or claims seeking 2 - 3 dwellings on non high-value farm land, can be compatible with commercial agriculture.

Other arguments that fueled Measure 37 enactment had little to do with development of farm or forest land, let alone tax reductions on farm or forest land. These arguments relate to limits on the type and height of urban buildings, to various regulations deemed said to unfairly limit development to protect the public's interest in scenic, cultural, recreational, geologic or ecologic values. For example, many voters supported Measure 37 because they objected to Multnomah County's regulation of Dorothy English's land to accomplish a park objective. Others objected to the City of Prineville's prohibition of a dwelling near the rim of the Crooked River Rimrock, on aesthetic grounds. Others objected to uncompensated county restrictions on development on the moraine next to Wallowa Lake to protect cultural values. Measure 37 proponents did not argue development on these resources was desirable. Rather, they argued it was unfair to severely restrict development to achieve a public benefit without compensating the owner.

Still other voters supported Measure 37 because it is a shield against *future* regulations, such as forest practice regulations, on restrictions on stream-side development, and environmental overlay zones, etc., in the Portland Metro area.

Finally, compensation for reduction in value is the basic principle that voters approved. Claims for compensation greater than a single dwelling on any class of land should not be ruled out, because making determinations about reduction in value can be as "complex" as DLCD has complained, but should be allowed if the claimant can prove actual reduction in value, not spurious monopoly value the claimant never owned or lost.

Given the long-term trend of rising farm land values, the flexibility of the 1975 land use regulations and the limited 1994 restrictions, proof of reduction in value for anything greater than one dwelling would be unusual, especially if property tax reductions are taken into account in calculating "just compensation." However, in claims where reduction in value greater than the one dwelling is proved, and a waiver of farm zoning which harms agricultural productivity, the government should pay the claimant money, not grant the waiver.

IX. RECOMMENDATIONS

1. Governance

The role that farm and forest land tax reductions -- a \$4.8 billion investment -- plays in rural land protection, municipal finance, and land conservation should be better understood by all Oregonians. To that end, counties and the Oregon Department of Revenue should improve data collection for specially assessed farm and forest land sufficient to enable ODOR to:

- Calculate and separately publish reliable annual estimates of the amount and effect of farm and forest land tax reductions, and
- Clarify the role special assessment valuation of farm and forest land plays to support farm and forest land productivity and Oregon's economic well-being.

In developing this material, ODOR should draw upon economic expertise in the Oregon Department of Forestry and the Oregon Department of Agriculture, as well as resource economists at Oregon State University.

2. Measure 37

In administering Measure 37 claims, state and local officials determine "just compensation" due landowners. In making determinations about "just compensation" on land zoned for farm and forest use, officials should:

- Approve compensation only if information submitted by the claimant proves a land use regulation has caused an actual reduction in the market value of claimant's property.
- Take into account the average cumulative property tax reductions per acre which Oregon taxpayers have financed for farm or forest land in a given county.
- Take into account the strong general appreciation of farm land values over the past 40 years, especially in Western and Central Oregon, where, as of January 23, 2007, 94% of claims have been filed.