



Oregon

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December 29, 2010

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Kristin May, Measure 49 Division Manager
Michael Morrissey, Policy Analyst

SUBJECT: **Agenda Item 14, January 12-13, 2011 LCDC Meeting**

MEASURE 49 FINAL REPORT

I. AGENDA ITEM SUMMARY

This item is an informational report to the commission. For additional information please contact Michael Morrissey at 503-373-0050 x320, or by e-mail at Michael.Morrissey@state.or.us.

II. BACKGROUND

The attached report has been written at the request of the director to document the final effects of Measure 49. Information related to claims resulting from House Bill 3225 and Senate Bill 1049 is also included. As of the date of presentation of this report, all Measure 49 and HB 3225 claims will have been resolved through the issuance of final orders, and only claims related to SB 1049 remain to be concluded, which is expected by the end of March 2011.

IV. RECOMMENDATION

The department recommends that the commission review the report and give comments to the department before the report is finalized.

V. ATTACHMENT

A. **Measure 49 Final Report**

Outline:

I. Introduction

II. Resolution and Impacts of Measure 49 Elections/Claims

A. Measure 37 and the Transition to Measure 49

B. Authorizations, Parcels and Dwellings

1. Characteristics of M49 Elections and Authorizations

2. Development Allowed Under Measure 49

**3. Measure 37 Development Potential and Measure 49
Authorized Development Comparison for Select Counties**

4. Additional maps of New Dwellings Authorized by Measure 49

C. Claims Denied Under Measure 49

D. Litigation

III. Historical Background: Measures 37 & Measure 49

A. Measure 37

B. Measure 49

C. HB 3225

IV. Ombudsman

V. New Claims

VI. SB 1049

VII. What's Next?

I. Introduction

A major source of friction in Oregon's land use system has been the treatment of rural landowners who acquired their property with expectations that they could someday develop it. These expectations were limited over time by the state land use program and its focus on conserving farm and forest lands, and limiting the spread of urban development. Measures 37 (2004) and 49 (2007) have addressed this continuing discord by allowing property owners (who could develop their land for additional residential uses at the time they acquired their property) limited residential development rights – balancing fairness goals with the desire for continued protection of farming and forestry and prevention of sprawl.

The completion of work to implement Measures 37 and 49 represents a significant milestone in Oregon's land use program – resolving the longstanding concerns about fairness and equity that stretch back to the adoption of the land use program in 1973. Over the past three years, the Department of Land Conservation & Development has completed the review of almost 5,000 claims to verify ownership and qualification for relief under Measures 37 and 49. The department completed this work on time, on budget, and consistent with projections about the numbers of residential dwellings that would be authorized. This report summarizes the impacts and outcomes known to-date from the implementation of Measure 37 and 49.

II. Resolution and Impacts of Measure 49 Elections/Claims

A. Measure 37 and the Transition to Measure 49

The effect that Measure 37 had on the land use program cannot be overstated. The measure itself was brief at 1 ½ pages, and contained many ambiguities. State and local government were faced with carrying out a voter-approved mandate with no clear procedures and virtually no legislative guidance. The potential consequences of a misstep were enormous in terms of liability – the measure gave property owners the ability to collect monetary compensation unless government acted within 180 days of the filing of a claim, and the total amount of claims exceeded \$10 billion.

Table 1: Original Measure 37 claims filed and Measure 49 elections, final orders and authorizations

County	Original Measure 37 Claims	Original M49 Elections Received*	Final Orders Issued For Valid M49 Elections*	M49 Elections Authorized*
Baker	139	80	89	66
Benton	127	80	69	56
Clackamas	1047	810	807	660
Clatsop	98	60	47	29
Columbia	136	77	65	47
Coos	239	125	124	95
Crook	62	33	32	20
Curry	104	64	59	47
Deschutes	170	111	106	85
Douglas	246	168	152	120
Gilliam	1	1	1	0
Grant	21	7	5	3
Harney	2	0	0	0
Hood River	221	148	148	114
Jackson	448	336	309	253
Jefferson	130	91	134	84
Josephine	187	117	111	75
Klamath	155	100	125	90
Lake	2	1	1	1
Lane	382	295	274	226
Lincoln	209	78	73	61
Linn	395	277	217	178
Malheur	31	19	15	11
Marion	464	327	279	207
Morrow	1	0	0	0
Multnomah	116	64	60	46
Polk	304	223	226	167
Sherman	1	0	0	0
Tillamook	88	49	57	35
Umatilla	57	30	30	25
Union	47	33	25	18
Wallowa	52	36	36	28
Wasco	43	26	29	26
Washington	691	477	429	349
Wheeler	2	2	1	0
Yamhill	439	318	269	225
State Total	6857	4664	4404	3447

* Includes HB 3225 claims but not SB 1049 claims. Numbers are not comparable between columns. The figures for Measure 37 claims and Measure 49 elections include all claims filed by claimants without adjustment for duplicate claims for the same property. Figures for final orders and authorizations reflect splitting and combining of claims as required by Measure 49. Many claimants submitted multiple claims for the same property under Measure 37; these claims were combined into a single claim under Measure 49. In addition, many claimants submitted separate Measure 37 claims for multiple contiguous tax lots. These claims were combined under Measure 49.

Over 7,000 M37 claims were filed with state and county governments. Of the state claims, over 98% were designated for processing by DLCD. The estimated value of compensation identified by claimants was in excess of \$19 billion, and although a government had the choice to pay compensation or waive regulation for valid claims, if a government did not complete processing of a claim within 180 days, the claimant could demand payment of the compensation.

By the time Measure 49 became effective, the state had met the 180-day deadline for about one half of all claims submitted. Measure 49 significantly amended Measure 37. As directed, DLCD quickly revamped its procedures to notify Measure 37 claimants of their ability to continue to seek compensation under the new provisions of Measure 49.

B. Authorizations, Parcels and Dwellings.

Measure 49 has provided compensation to thousands of primarily rural landowners across the state. Claimants are predominantly elderly, and mainly own land zoned for farm use. Sixty-six percent of claims were filed by people who had owned their property since 1975 or earlier and 71% of claims are currently in farm or farm/forest zoning. Many claimants stated an intent to divide property or add dwellings to supplement income for retirement or otherwise benefit family members. Measure 49 created some additional benefits to claimants not contained in Measure 37 including extending claimant rights to surviving spouses, allowing claimants to transfer homebuilding rights upon sale or transfer of the property, and authorizing future claims based on (future) regulation that restricts residential use of property or farm or forest practices. The scope and distribution of home site development authorized by Measure 49 and a comparison to Measure 37 development potential follow.

1. Characteristics of Measure 49 Elections and Authorizations

Of the 6857 claims filed with the state under Measure 37, 4664 were submitted, or “elected” for supplemental review under Measure 49 (see Table 1). After splitting and combining claims due to property configurations and eliminating invalid claims, the number of claims receiving final orders under Measure 49 and HB3225 was 4404. Of these valid claims, 3447 received home site authorizations and 957 were denied for a statewide approval rate of 78%.

Figures 1a and 1b show the numbers of elected claims that received authorizations and denials for each county. Although the highest numbers of home site authorizations were concentrated in the Willamette Valley, claimants from 31 counties across the state received authorizations for home sites. Only two counties with claimants that elected review of their claims under Measure 49 did not receive any authorizations to develop home sites: Gilliam County with one claim and Wheeler County with two. Two of these denied claims were eligible to elect under the Measure 49 amendments HB 3225 or SB 1049.

Figure 1a*: Measure 49 Authorizations and Denials: Counties with more than 100 claims.

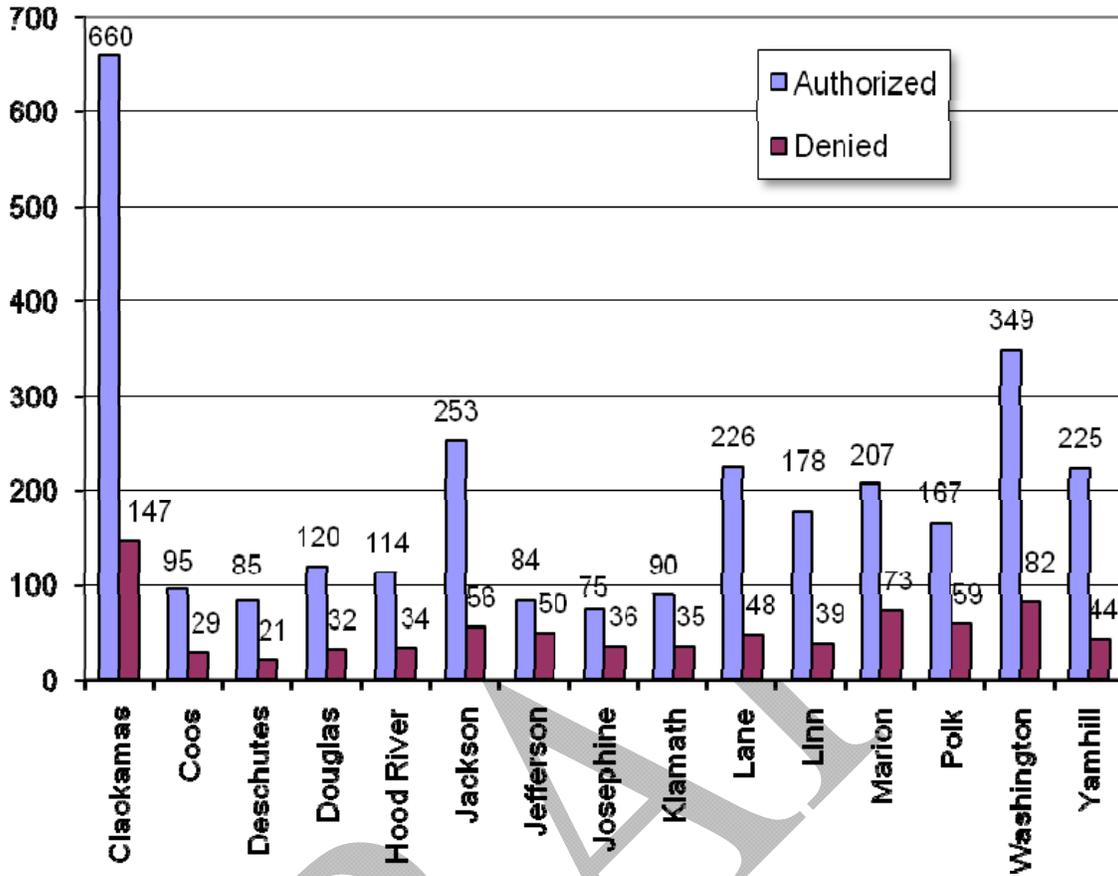
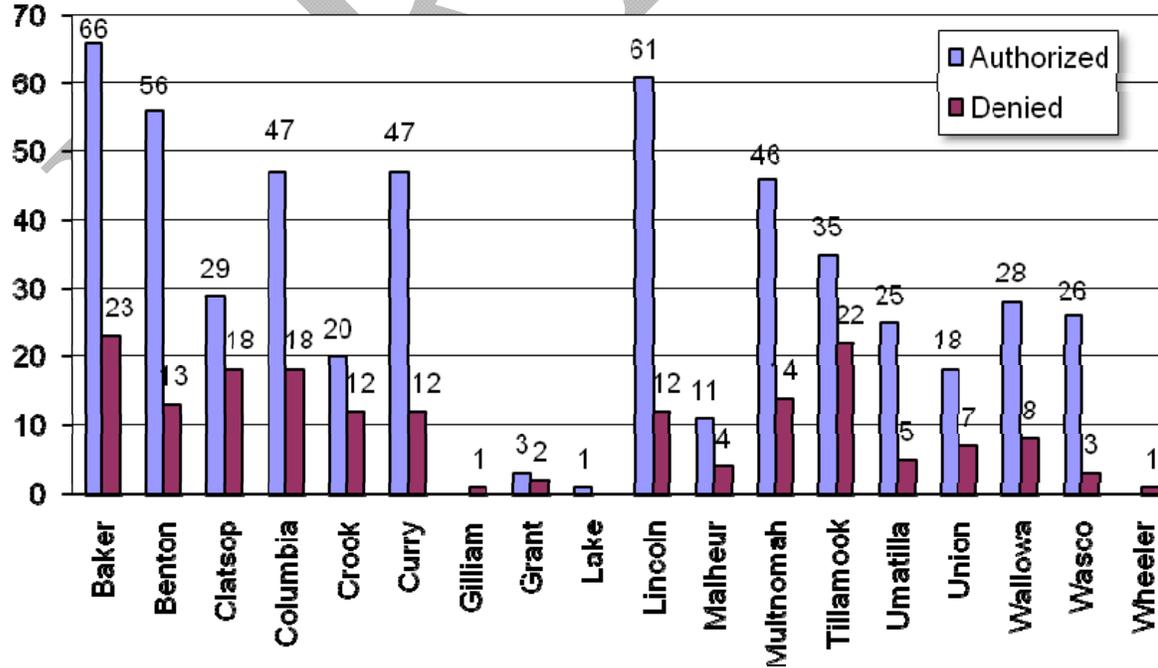


Figure 1b*: Measure 49 Authorizations and Denials: Counties with less than 100 claims.



* Note the scales of graphs a and b differ.

Measure 49 claims were almost exclusively located on farm and forestlands (see Figure 2). Statewide, 90% of authorized claims were for property located on lands zoned for farm or forest use. Sixty percent of authorized claims were located on exclusive farm use zones, 18% on forest use and 12% on split or mixed-farm/forest zones. Ten percent of claims were on lands zoned rural residential. Ten percent of claims were on lands zoned rural residential.

Figure 2: Measure 49 Authorized Claims by Land Use Zone

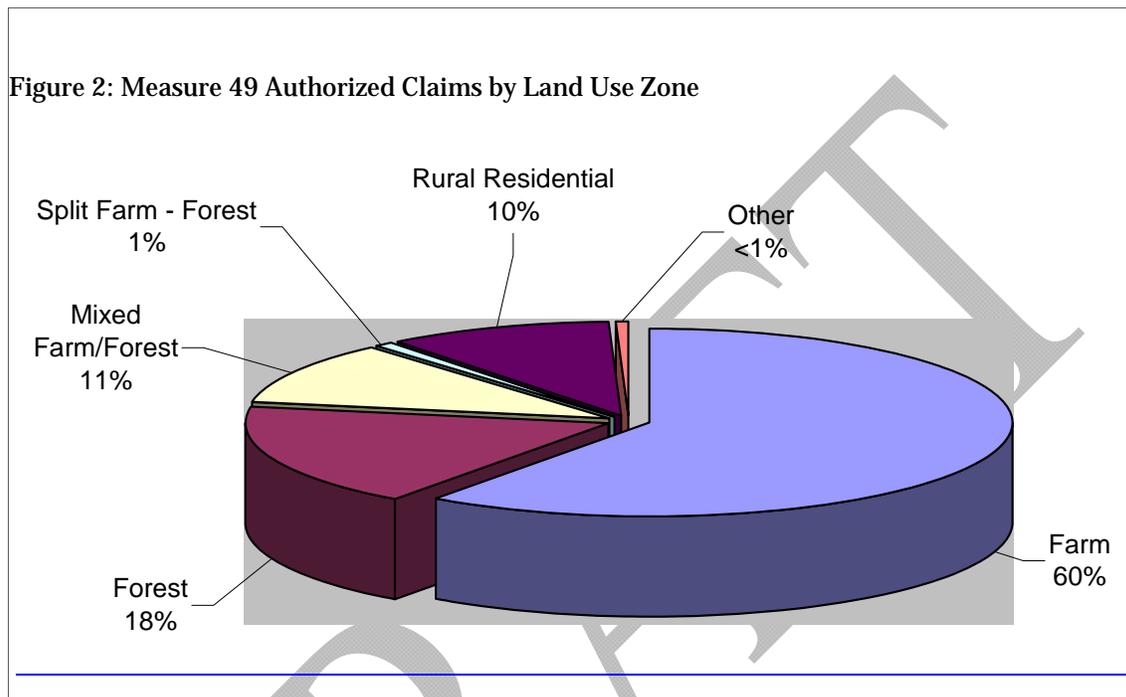


Figure 3: Number of New Dwellings Authorized by Measure 49 by Land Use Zone

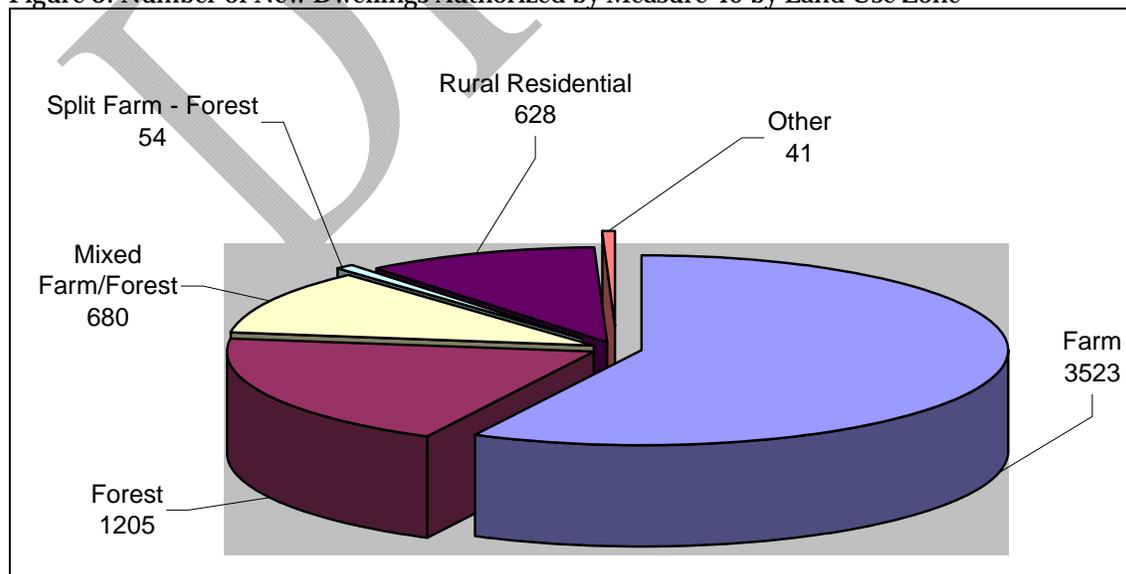
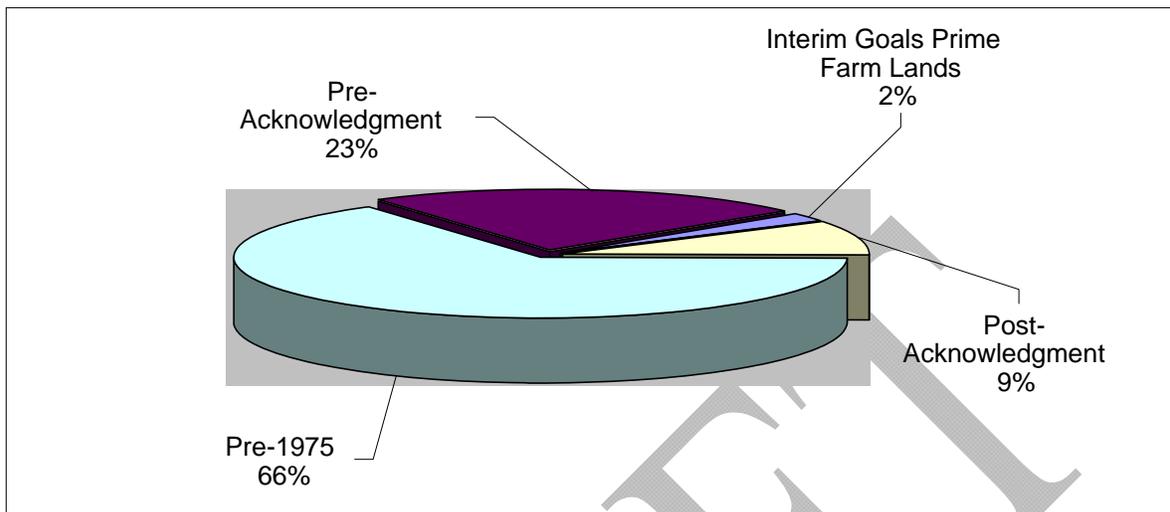


Figure 4: Measure 49 Authorized Claims by Property Acquisition Date



The majority (66%) of authorized claims were for properties acquired in the so-called “pre-1975” period, before the state land use goals became effective in January of 1975 (see Figure 4). During that period regulations applying to property, if any, were predominantly enacted by counties. Fully 95% of “pre-1975” claims received home site authorizations. In addition, at least 1% of pre-1975 claims were determined to be “vested.” This number will increase as more vested determinations are made. Another 23% of claims were authorized for properties acquired in the “pre-acknowledgement” period when most county comprehensive plans had not been completed and when the state land use goals applied directly. Approximately 80% of claims for properties acquired in the pre-acknowledgment period received home site authorizations. Only 9% of claims were for properties acquired in the “post-acknowledgement” period, when state approval (acknowledgement) of comprehensive plans had taken place, but additional statutes or rules restricting land use had been enacted. Approximately 50% of these claims received home site authorizations. The “interim goals prime farmlands” period, a subset of the “pre-1975” period, accounted for 2% of authorized claims.

2. Development Allowed Under Measure 49

Statewide, there were 8681 total “home sites” authorized under Measure 49 and HB 3225 (see Table 2). A “home site authorization” is an authorization to allow dwellings *or* parcels *or* a combination of both in a greater density than permitted under the property’s current zoning. Authorizations can result in new dwellings and parcels or in the authorization of existing noncompliant dwellings or parcels. The number of home sites authorized per claim ranged from 1 to 10 and averaged 2.5. The number of new parcels authorized statewide was 3878 with an average of 1.1 per claim. The number of new dwellings authorized statewide was 6131 and averaged 1.8 per claim.

Measure 49 authorized 6131 new dwellings across the state as of December 16, 2010. Most dwellings were authorized under Section 6 of Measure 49, which allowed up to 3 home sites for a Measure 49 election. More new dwellings will be authorized as the SB 1049 claims are processed. As Figures 4a and 4b illustrate, Measure 49 authorized more than 100 new dwellings for each of seventeen counties. These counties range across much of the state from Baker, Jefferson, Deschutes, and Klamath in the east, Jackson, Josephine and Douglas in the southwest, Coos and Lincoln along the coast, most of the Willamette Valley and Hood River in the north. Four counties received authorizations for more than 400 new dwellings: Clackamas, Washington, Lane and Jackson Counties. Clackamas County's sum of 1145 new dwellings is almost double the next highest, Washington County, with 593.

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Table 2: Measure 49 Authorization Statistics by County

COUNTY	HOME SITE AUTHORIZATIONS	NEW DWELLINGS	AVERAGE NEW DWELLINGS PER CLAIM	NEW PARCELS
Baker	145	112	1.7	54
Benton	125	90	1.6	53
Clackamas	1687	1145	1.7	802
Clatsop	74	51	1.8	33
Columbia	123	87	1.9	60
Coos	246	180	1.9	103
Crook	57	42	2.1	26
Curry	123	96	2.0	46
Deschutes	210	135	1.6	96
Douglas	306	201	1.7	142
Grant	9	5	1.7	5
Hood River	287	163	1.4	112
Jackson	650	434	1.7	298
Jefferson	215	182	2.2	111
Josephine	183	132	1.8	98
Klamath	234	193	2.1	76
Lake	3	1	1.0	1
Lane	630	450	2.0	279
Lincoln	142	109	1.8	49
Linn	463	327	1.8	214
Malheur	25	17	1.5	10
Marion	504	356	1.7	221
Multnomah	105	79	1.7	36
Polk	424	305	1.8	184
Tillamook	90	70	2.0	41
Umatilla	68	55	2.2	30
Union	41	27	1.5	19
Wallowa	76	61	2.2	37
Wasco	59	44	1.7	21
Washington	826	593	1.7	383
Yamhill	551	389	1.7	238
State Total	8681	6131	1.8	3878

Figure 5a: New Dwellings Authorized by Measure 49 – Counties with more than 100 Claims

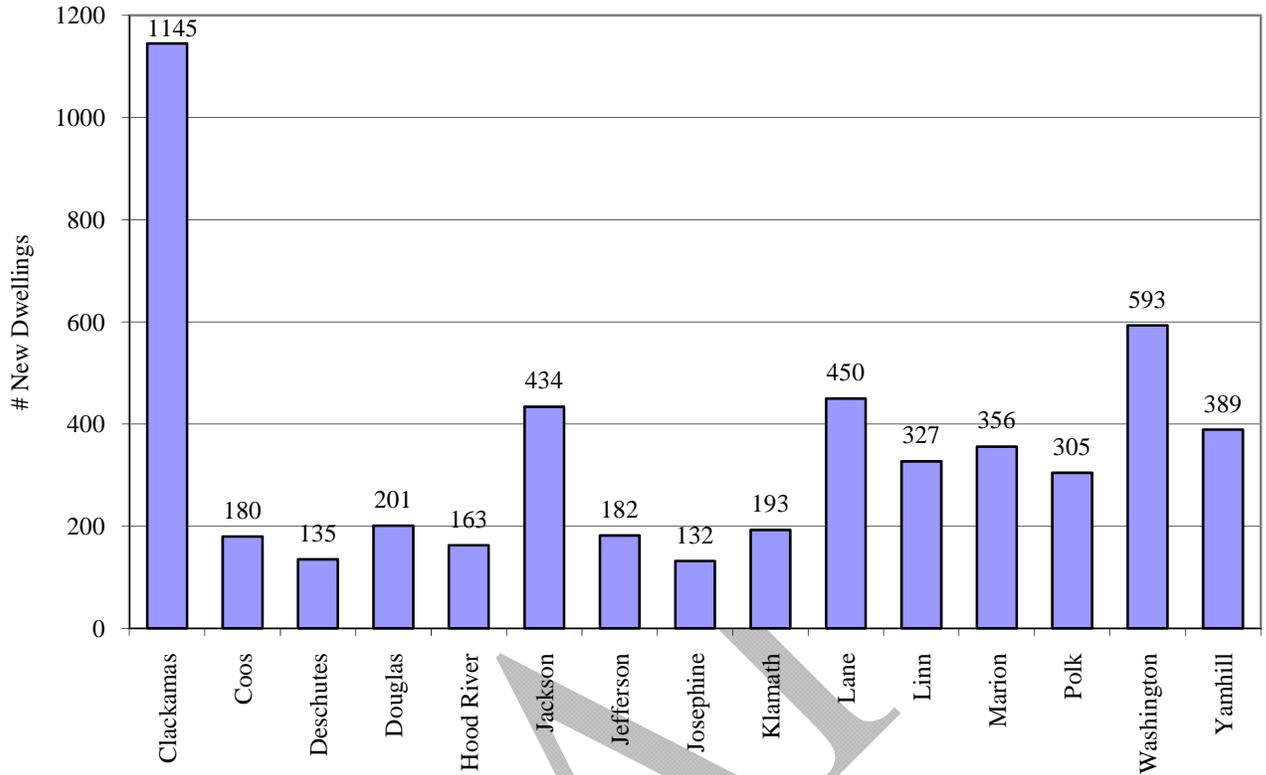
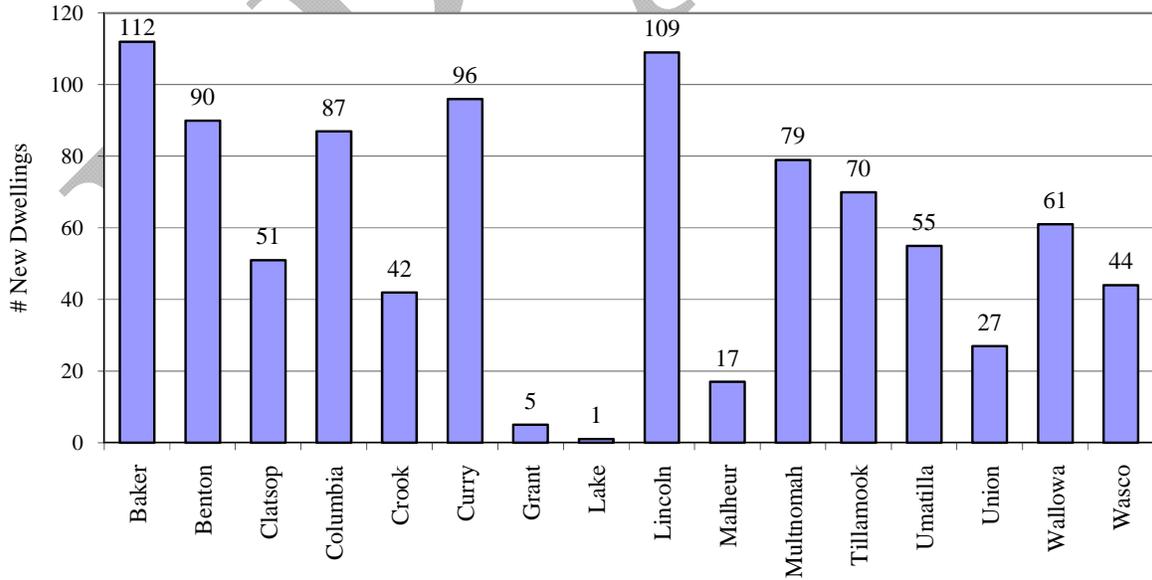
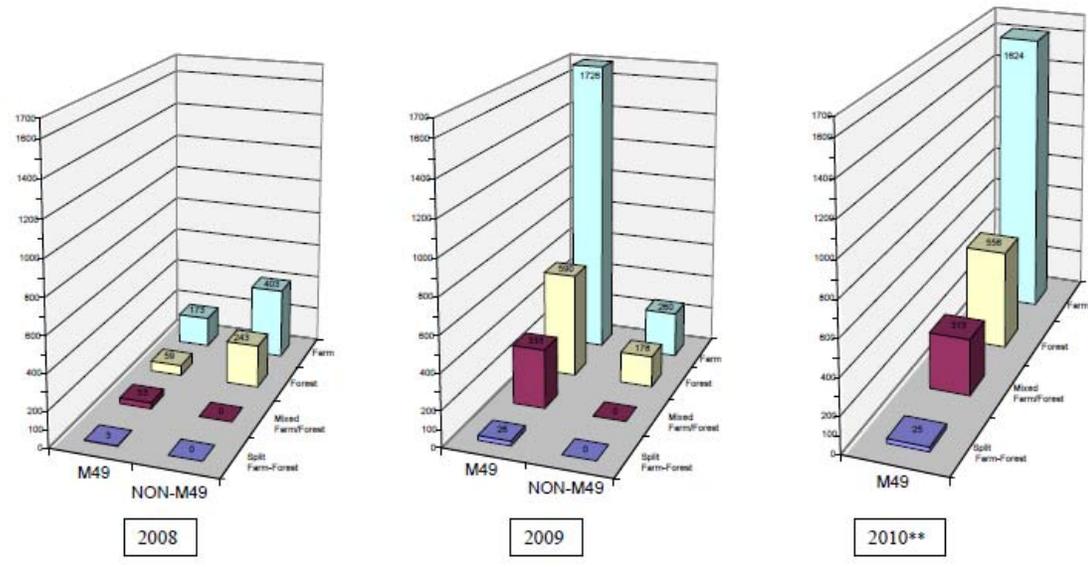


Figure 5b: New Dwellings Authorized by Measure 49 – Counties with fewer than 100 Claims



The 6,100 new dwellings authorized under Measures 37 and 49 represents about six to ten times the number of new dwellings authorized through "regular" means on farm and forest lands in Oregon in a one-year period. The Measure 37/49 authorizations will be carried out over a long period, likely ten to twenty years. In short, the Measures represent a significant increase in the supply of rural homes in Oregon, but one that is not altogether inconsistent with the purposes of the state's land use program to maintain working forest and farm operations.

MEASURE 49 AUTHORIZATIONS AND NON-MEASURE 49 APPROVALS:
COMPARISON OF PERMANENT NEW DWELLINGS BY LAND USE ZONE AND YEAR*



*These graphs compare new dwellings authorized by the state via Measure 49 and new dwelling permits approved by counties. The Measure 49 numbers by zone and year are estimates based on analysis of approximately 75% of all claims. Non-M49 new dwellings in "mixed farm/forest" and "split farm-forest" categories are included in the "Farm" and "Forest" categories, based on the type of dwelling approval.
**Non-M49 new dwellings for 2010 are not currently available.



The maps in the following section illustrate the distribution of new dwellings for a sample of seven counties with the greatest numbers authorized by Measure 49. Although the density of new dwellings is predictably greater near urban growth boundaries and highways, the maps also show occurrences of new dwellings spread across all private ownerships.

3. Measure 37 Development Potential and Measure 49 Authorized Development Comparison for Select Counties

Measure 49 authorized home sites for thousands of rural landowners across Oregon. Relative to the potential for development under Measure 37, the primary effect of Measure 49 was to prevent large-scale subdivision, commercial and industrial developments in prime farm lands, forest lands, and wilderness areas.

In fact, it is not possible to know for certain what the development effects of Measure 37 would have been, had Measure 49 not been passed. This is because approximately half of the 6,857 claims submitted to the state under Measure 37 were not fully processed when Measure 49 became effective. Nor is it clear that all Measure 37 claimants intended to fully develop their property to the extent their claims indicated. However, one can get a conservative view of the difference in the effect of the two measures by analyzing those Measure 37 claims that received home site authorizations under Measure 49. This group consists of 4404 valid claims, or “elections.” A valid Measure 49 claim is one that met the minimum requirements for filing a Measure 49 election, did not have a “vested” determination for Measure 37 development, and was not located mostly or entirely within an Urban Growth Boundary or a city. This group of claims includes elections made under the original Measure 49 criteria as well as elections that were processed under HB 3225. It does not include elections being processed under SB 1049.

To compare the development potential under Measure 37 to the actual development authorized under Measure 49, this report focuses on “new dwellings.” Under Measure 49, the specific numbers of new dwellings were explicitly “authorized” in final orders. Under Measure 37, development “approvals” were not consistently explicit; therefore the comparison is not perfect.

County-Specific M37-M49 Discussion

The following eight maps display the numbers of new dwellings under Measures 37 and 49 for four counties: Clackamas, Washington, Jackson and Hood River. These counties were selected because the numbers of new dwellings potentially developable under Measure 37 and the number authorized under Measure 49 are the most significant, either as total numbers (i.e. Clackamas, Washington and Jackson) or as a percentage of a county’s private land base (i.e. Hood River).

a. Clackamas County—First in number of claims.

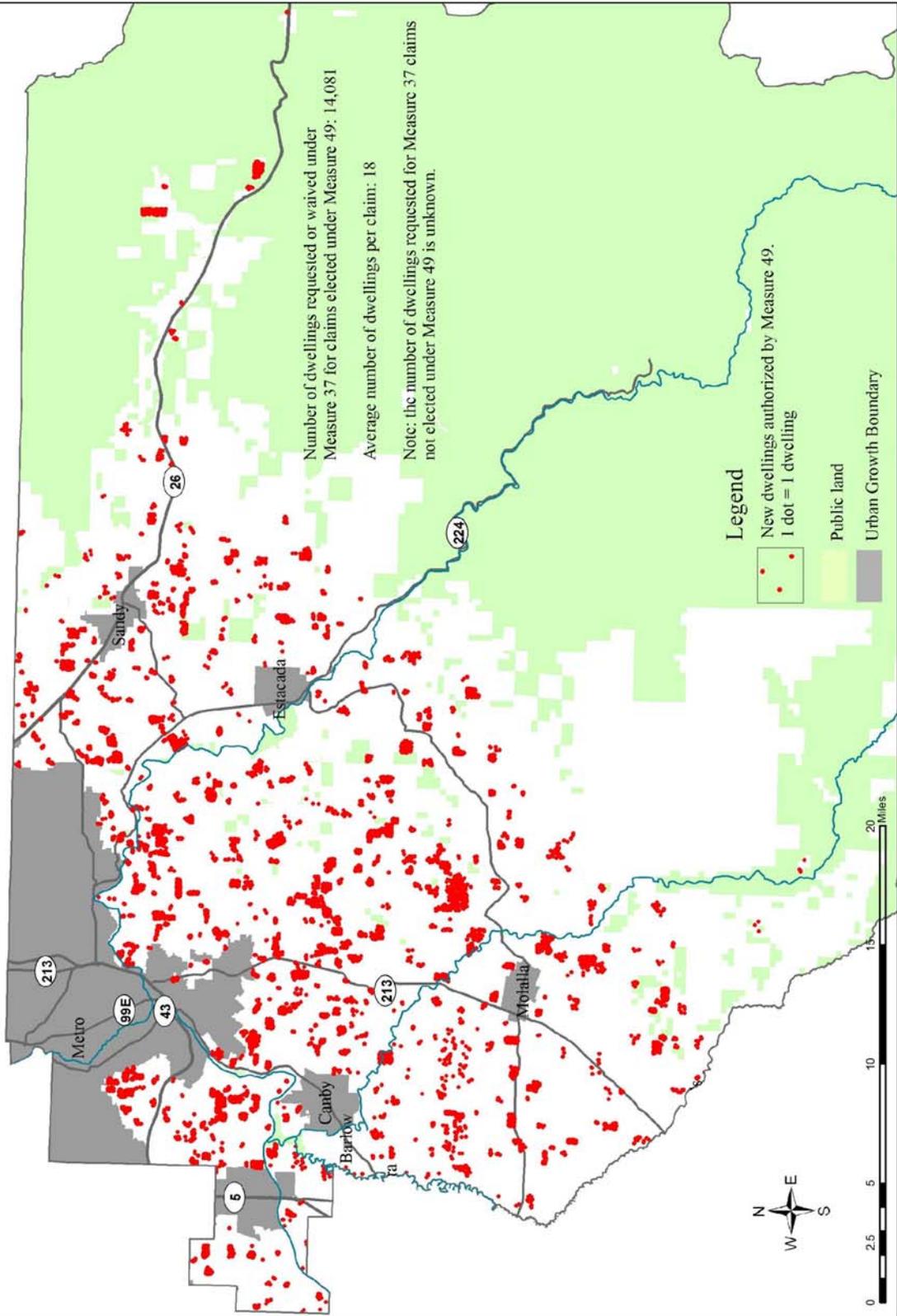
At least 77% of Clackamas County's Measure 37 claims were submitted for election under Measure 49. Clackamas County's 807 valid Measure 49 elections reveal a fragmented land base, with properties ranging from less than 1 acre to a maximum of 904 acres. The median claim property size is approximately 20 acres, the smallest of the four study counties. The majority of Clackamas County claim properties are distributed throughout the outskirts of suburban communities and the Metro Urban Growth Boundary (see Map, Clackamas County: New Dwellings Authorized by Measure 49). Because so many Clackamas County Measure 37 claims were elected for Measure 49, virtually the only difference between Measures 37 and 49 outcomes is the size and density of the clusters of new dwellings. Under Measure 49, the state authorized 1145 new dwellings, the highest number of any county in the state. This same group of claims requested or received approval for 14,081 new dwellings under Measure 37. The average number of new dwellings authorized per valid claim under Measure 49 is 1.7; under Measure 37 the average number of new dwellings requested or approved for these same claims was 18.

There is no single landowner in Clackamas County that dominated the development scenario under Measure 37. This is in contrast to other areas, such as neighboring Washington County (see below). Clackamas County has far more claimants, generally requesting more development than their neighboring counties. Under Measure 37, Clackamas County was slated for a wide range of development from single dwellings to a 2100-lot subdivision. Of Measure 37 claims going forward under Measure 49, 180 claims were for subdivisions of 20 or more dwellings; five were for subdivisions of more than 200 dwellings.

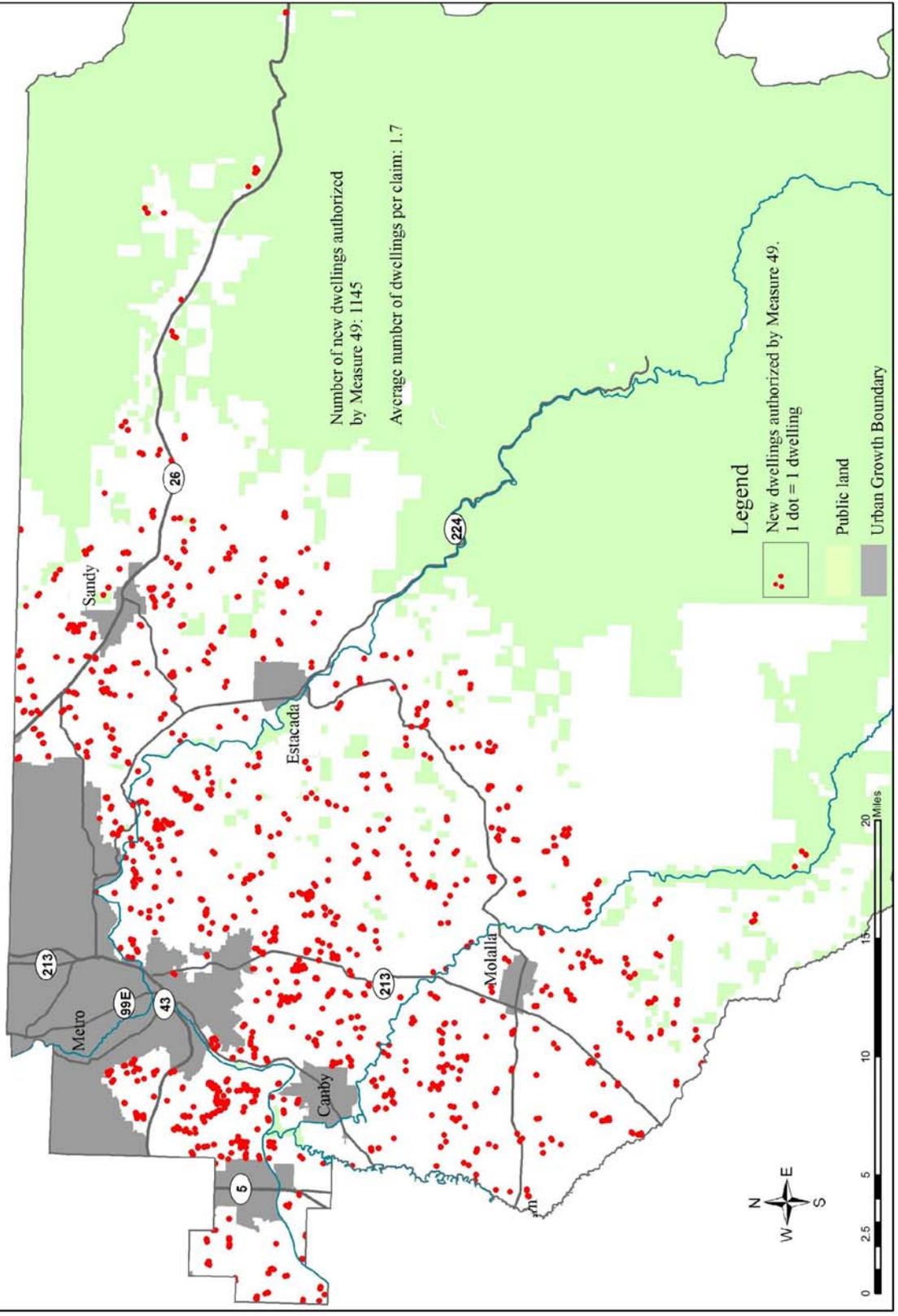
Of the four study counties, Clackamas County was second for the highest proportion of claimants requesting ten or more new dwellings under Measure 37, with 41%. Of the remaining claimants, 31% requested or received waivers for 4-9 new dwellings and 29% for 1-3 under Measure 37. This equates to a median of seven new dwellings requested per claim under Measure 37, the second highest, again, after Hood River County. While 70% of Clackamas County claimants filed Measure 37 claims for subdivisions (four or more home sites), only 2% of those were for subdivisions of 100 or more home sites (compared to Washington with 4%, Hood River with 20% and Jackson with 6%).

CLACKAMAS COUNTY

Development Potential Under Measure 37



CLACKAMAS COUNTY New Dwellings Authorized by Measure 49



b. Washington County—Large subdivisions avoided

Almost 70% of Washington County's Measure 37 claims were submitted for election under Measure 49. This was the lowest election rate of the four study counties, largely due to a single claimant with well over 100 Measure 37 claims electing only a subset to continue under Measure 49. Washington County's 429 valid Measure 49 elections are characterized by a wide range of property sizes, from less than 1 acre to 8916 acres. The median claim property size is approximately 30 acres. In terms of number of claims, the majority of claim properties are distributed throughout the outskirts of suburban communities and the Metro Urban Growth Boundary (see Map, Washington County: New Dwellings Authorized by Measure 49). A major difference between Measures 37 and 49 outcomes is clearly visible in the size and density of the clusters of new dwellings. Under Measure 49, the state authorized 593 new dwellings. This same group of claims requested or received approval for 5,934 new dwellings under Measure 37. The average number of new dwellings authorized per claim under Measure 49 is 1.7; under Measure 37 the average number of new dwellings requested or approved for these same claims was 14.

However, a bigger Measure 49 story in Washington County may be the avoidance of sprawling rural residential subdivisions in the western hills, evident on the accompanying Measure 37 map. A single timber company with large, contiguous landholdings (over 200 parcels) in the western forests of Washington County had multiple claims, each for hundreds of new home sites under Measure 37. Due to the restrictions written into Measure 49, namely allowing up to three home sites (ten under Section 7) on contiguous tracts of land under a single ownership, these Measure 37 rural-residential subdivisions were reduced to a handful of 3-lot partitions under Measure 49. For example, the clusters of dwellings near the western county boundary below Highway 6 on the Measure 37 map were a proposed development for 121 home sites under Measure 37. The corresponding parcel on the Measure 49 map shows just three dwellings. Another subdivision for over 450 dwellings was to be located in the forestlands west of Forest Grove, now also reduced to three dwellings. The Measure 37 map also shows another 500+-lot subdivision that did not translate into any Measure 49 dwellings, because the landowner was restricted by a provision of Measure 49 restricting total, statewide, home site authorizations to 20 per claimant. The Measure 37 map for Washington County is the only one in this study that also shows approved and pending Measure 37 claims that did not get elected under Measure 49. The number of dwellings requested in these claims has not been determined.

Compared to the three other counties in this snapshot analysis, the majority of Washington County claimants requested modest levels of development under Measure 37, thus the restrictions on the number of home sites authorized under Measure 49 did not have as great an impact on these claimants. For example, 45% of Measure 49 claimants in Washington County requested or received waivers for 1-3 new dwellings under Measure 37. This is the highest percentage of modest claims of the four study counties. Of the remaining Washington County Measure 49 claimants, 28% requested or received waivers for 4-9 new dwellings and 27% for ten or more

new dwellings under Measure 37. Only 4% of Washington County Measure 49 claimants had requested subdivision of 100 or more home sites. This distribution equates to a median of four new dwellings requested per claim under Measure 37, the lowest of the four study counties. Yet, due to the large number of landowners in Washington County, it has the second highest number of new dwellings authorized under Measure 49.

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WASHINGTON COUNTY

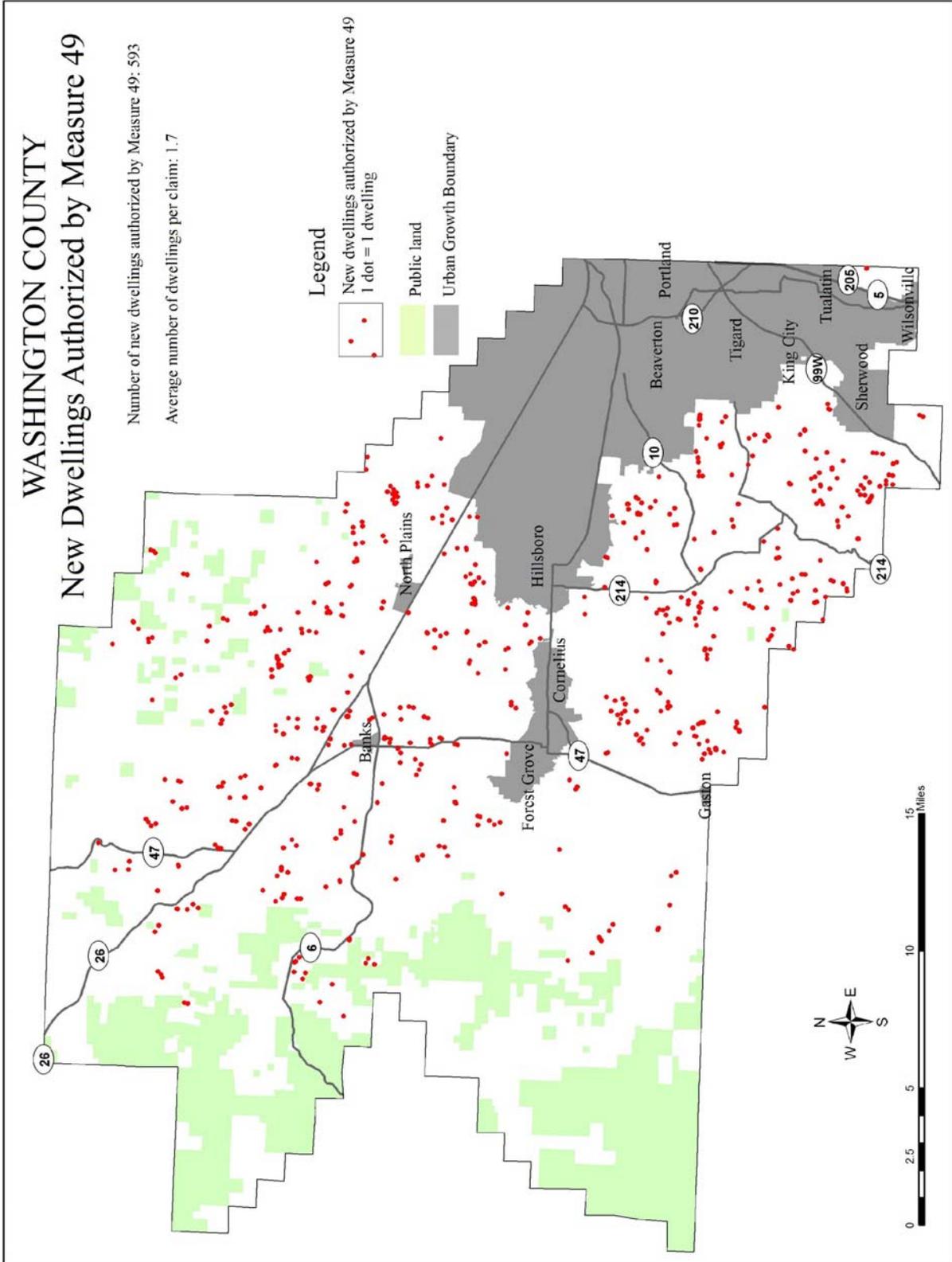
New Dwellings Authorized by Measure 49

Number of new dwellings authorized by Measure 49: 593

Average number of dwellings per claim: 1.7

Legend

-  New dwellings authorized by Measure 49
1 dot = 1 dwelling
-  Public land
-  Urban Growth Boundary



c. Hood River County—Upper valley and orchard lands

Approximately 67% of Hood River County's Measure 37 claims were submitted for election under Measure 49. The median claim size of these 148 claims is 26 acres and the largest claim property elected under Measure 49 totals 364 acres. There were several claims under Measure 37 with larger tracts, but these did not become Measure 49 elections. Although there is a slight concentration of claims in the rural communities nearest the City of Hood River, most Measure 49 claim properties are spread throughout the farming region of the Hood River valley and south along Highway 35 to the boundary of Mount Hood National Forest.

Unlike Washington and Clackamas Counties, Hood River County is not located near a major metropolitan area and the associated intense pressures driving residential development. Yet, before Measure 49 was passed, Hood River County appeared to be on its way to having one-third of its private land base divided up into Measure 37, urban-density subdivisions. The map of Measure 37 claims (representing only claims that were elected under Measure 49) follows the farms featured along the famous Hood River Fruit Loop. In contrast to Washington County, Hood River County has far fewer claims, yet almost double the number of new dwellings requested or waived under Measure 37. For Measure 37 claims subsequently elected under Measure 49, claimants requested or received waivers for 9,734 new dwellings, or an average of 64 per claim, the highest of the four study counties. Under Measure 49, the scale of development was vastly reduced, with claimants receiving authorizations for a total of 163 new dwellings, or 1.4 per claim.

Relative to the other three counties in this study, the majority of Hood River County claimants requested the most significant levels of development under Measure 37, thus the restrictions on the number of home sites authorized under Measure 49 could be the most noticeable for this county. For example, 55% of Measure 49 claimants in Hood River County requested or received waivers for ten or more new dwellings under Measure 37. More than 20% of claimants requested 100 or more new dwellings, far more than any of the comparison counties. However, it is not known how many of these claims would have been developed to their full potential under Measure 37. Of the remaining Hood River County Measure 49 claims, 25% requested or received waivers for 4-9 new dwellings. This equates to a median of ten new dwellings requested per claim under Measure 37. As with all of the counties, the median is smaller than the average number of new dwellings requested under Measure 37. However, this difference is greatest in Hood River County, illustrating the intense levels of development requested by claimants in the upper 50th percentile.

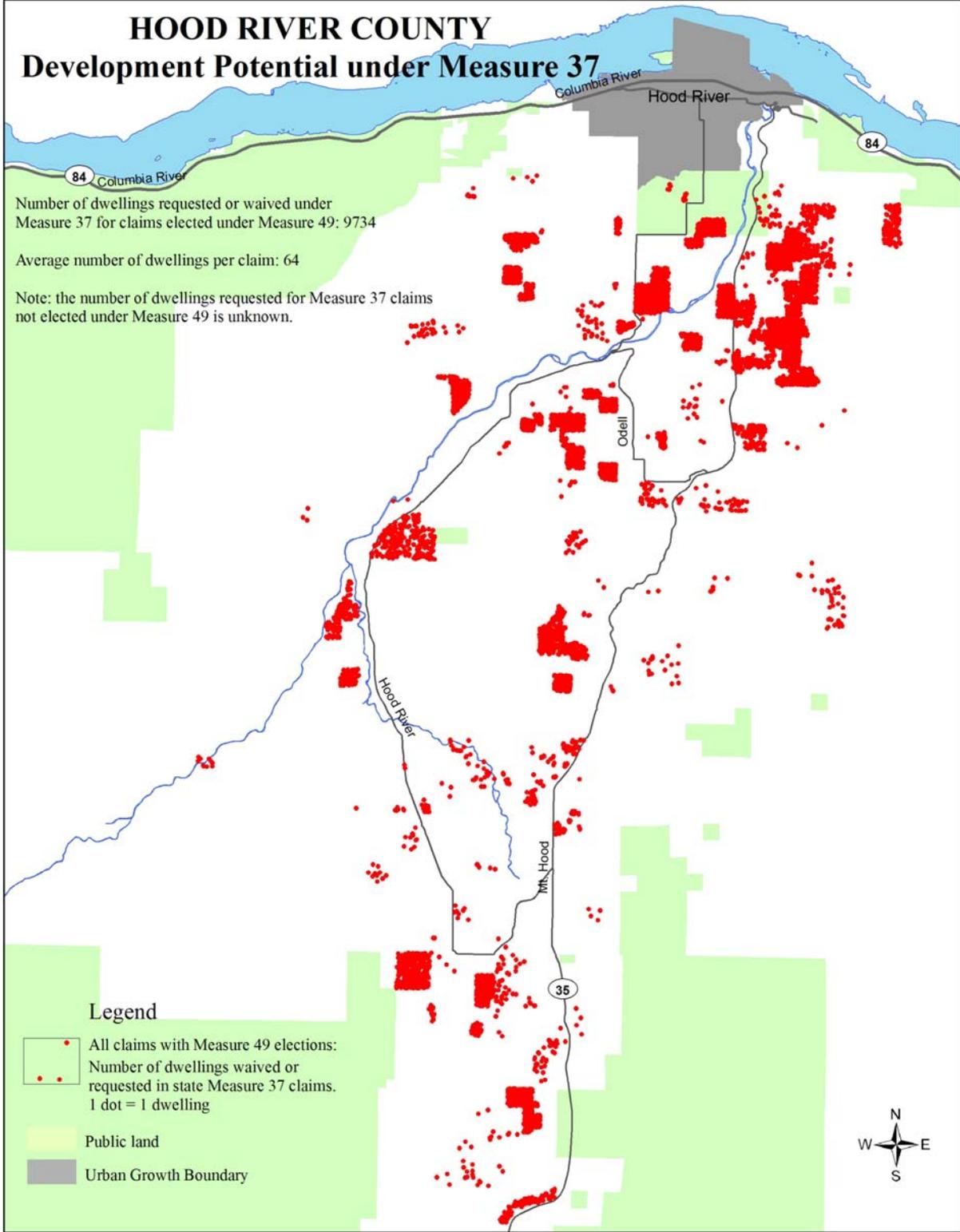
HOOD RIVER COUNTY

Development Potential under Measure 37

Number of dwellings requested or waived under Measure 37 for claims elected under Measure 49: 9734

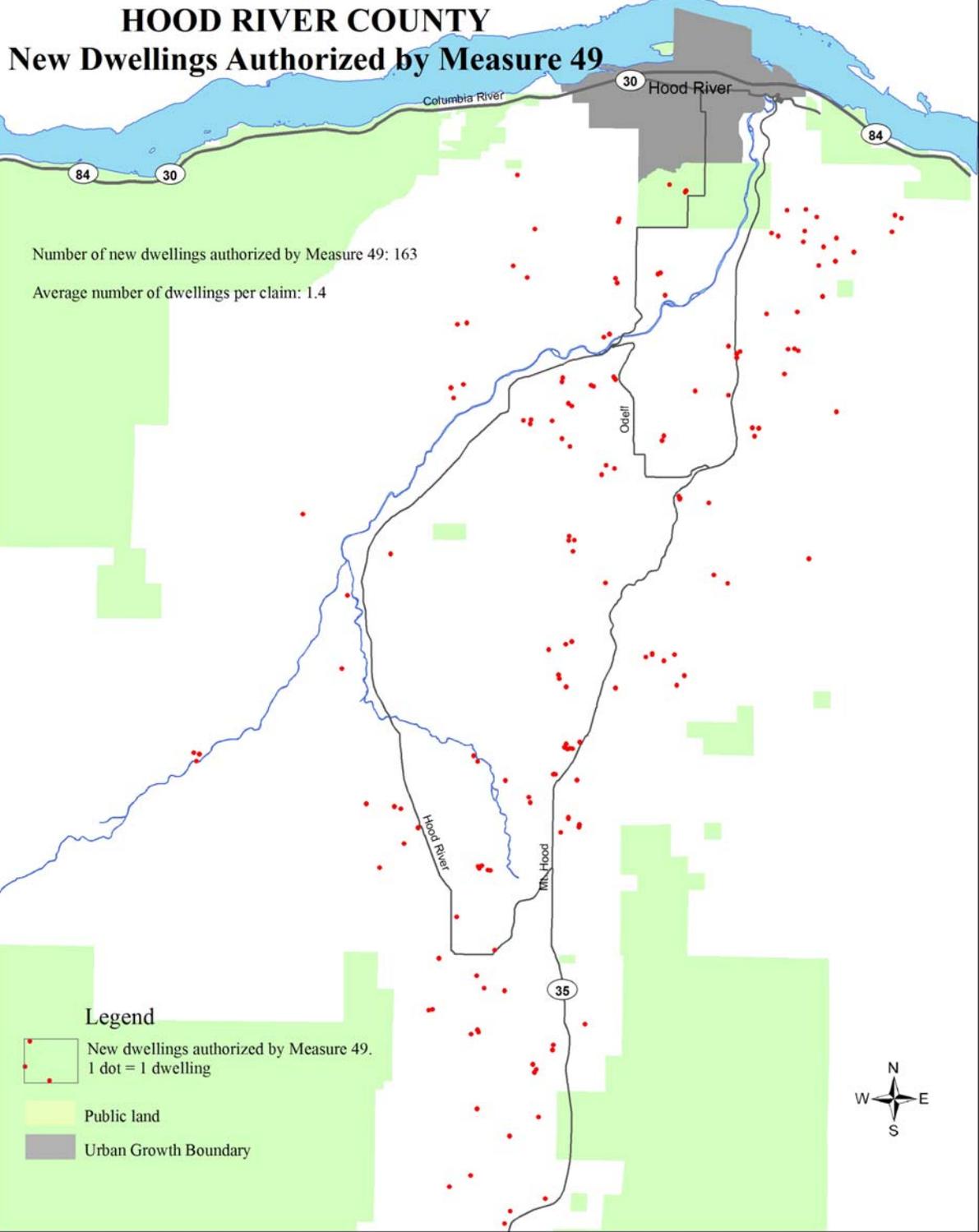
Average number of dwellings per claim: 64

Note: the number of dwellings requested for Measure 37 claims not elected under Measure 49 is unknown.



- Legend**
- All claims with Measure 49 elections: Number of dwellings waived or requested in state Measure 37 claims. 1 dot = 1 dwelling
 - Public land
 - Urban Growth Boundary





d. Jackson County – Development in the south

Approximately 75% of Jackson County's Measure 37 claims were submitted for election under Measure 49. The median claim size of the 309 valid claims is 33 acres, the largest of the four study counties, and the largest claim property elected under Measure 49 is 7,432 acres. As with all of the counties in this study, there were several claims under Measure 37 with larger tracts, but these did not become Measure 49 elections. Although there is some concentration along the I-5 corridor, the majority of Jackson County Measure 49 claim properties are widely distributed across both farm and forestlands. Of the four study counties, Jackson County has the most far-flung and remote Measure 49 claims.

Under Measure 49, the state authorized 434 new dwellings in Jackson County. This same group of claims requested or received approval for 9818 new dwellings under Measure 37. The average number of new dwellings authorized per claim under Measure 49 is 1.7; under Measure 37 the average number of new dwellings requested or approved for these same claims was 31, the second highest per claim after Hood River County. Jackson County is similar to both Clackamas and Hood River Counties in that a primary difference in development on the landscape between Measures 37 and 49 is the size and density of the clusters of new dwellings. However, like Washington County, there were several large Measure 37 claims that were not elected under Measure 49 and, therefore, are not represented on the map of potential development under Measure 37. Several claimants of large-scale claims did not elect under Measure 49 because they could already get up to three new home sites under current land use regulations. The map does illustrate three, large, fairly remote sites east of Ashland that were slated for urban densities of development under Measure 37. Under Measure 49, these potential developments were scaled back to 1-3 new dwellings per claim.

Of the Measure 37 claims that were elected under Measure 49, 31% were for ten or more new dwellings; 37% were for 4-9 new dwellings; and 32% were for 1-3 new dwellings. Like Hood River County, Jackson County's upper 50th percentile of Measure 37 claims were skewed towards extremely large subdivisions, hence the average of 31 home sites per claim compared to a median of only 5. Therefore, judging by medians, the majority of Jackson County claimants who elected their claims under Measure 49 were fairly comparable to Washington County claimants, moderate in their Measure 37 development requests. However, 6% of these Jackson County claimants filed claims for subdivisions of 100 or more home sites, including one claim for 3000 new home sites. More significantly, many of the largest Measure 37 claims were not elected for review under Measure 49.

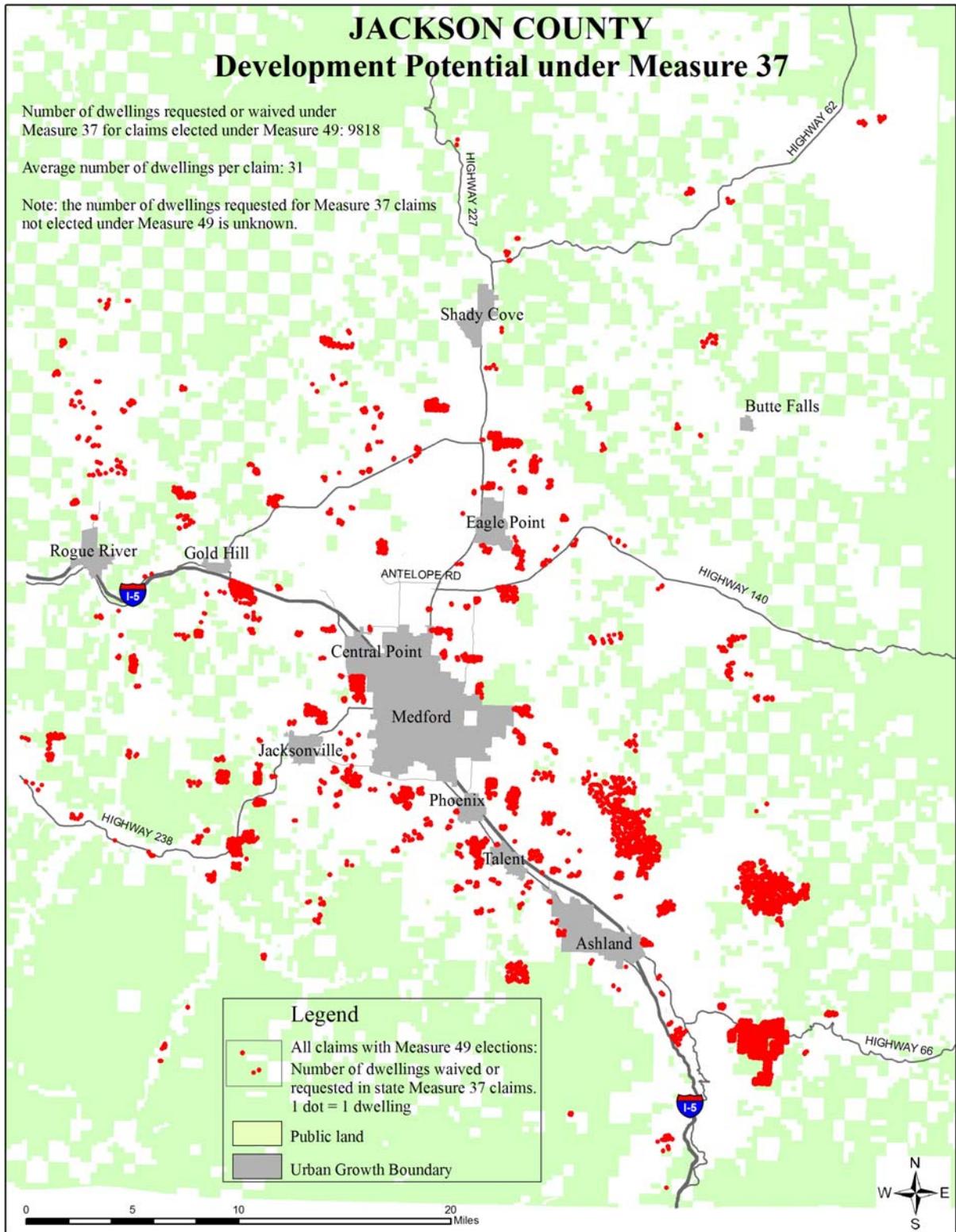
JACKSON COUNTY

Development Potential under Measure 37

Number of dwellings requested or waived under Measure 37 for claims elected under Measure 49: 9818

Average number of dwellings per claim: 31

Note: the number of dwellings requested for Measure 37 claims not elected under Measure 49 is unknown.

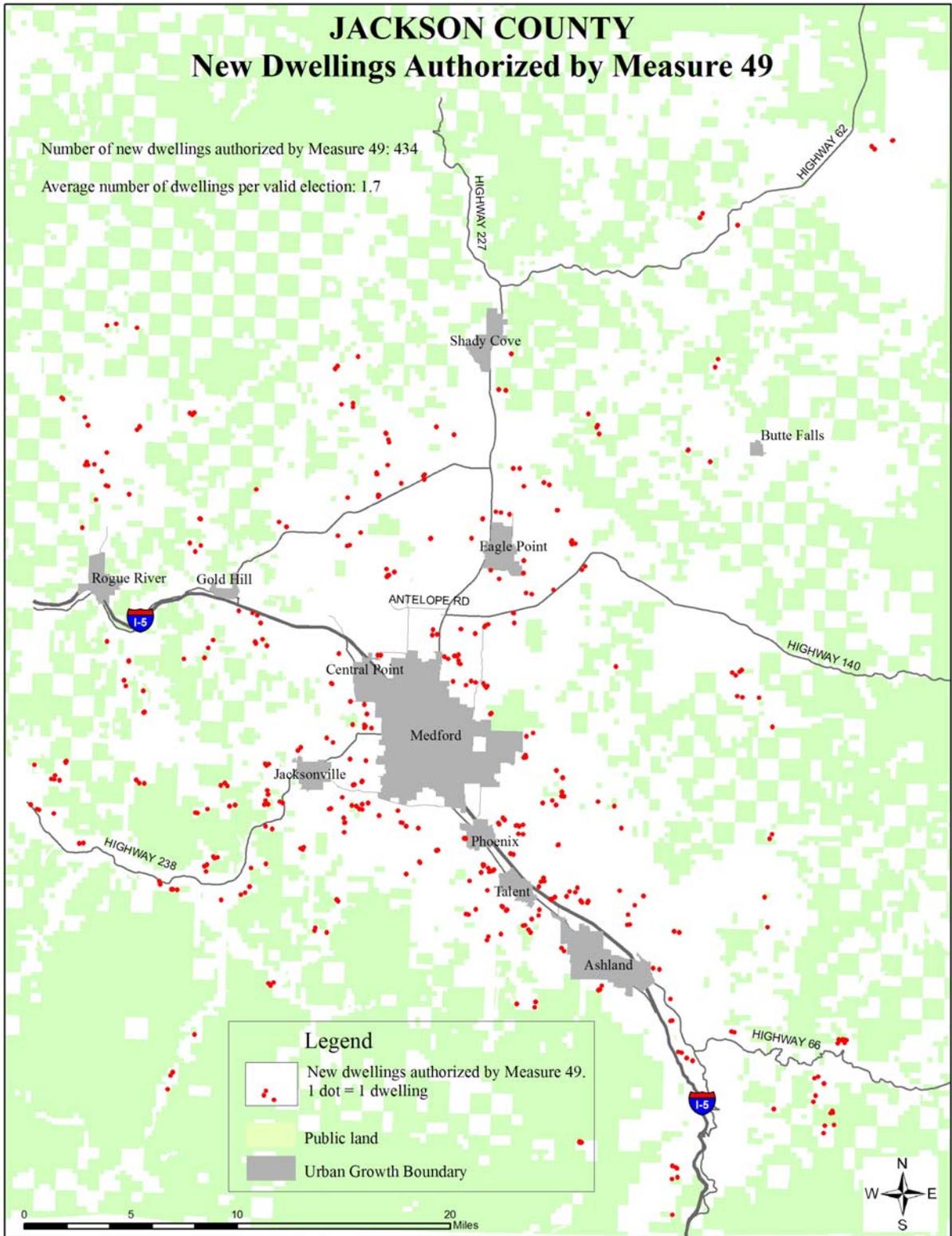


JACKSON COUNTY

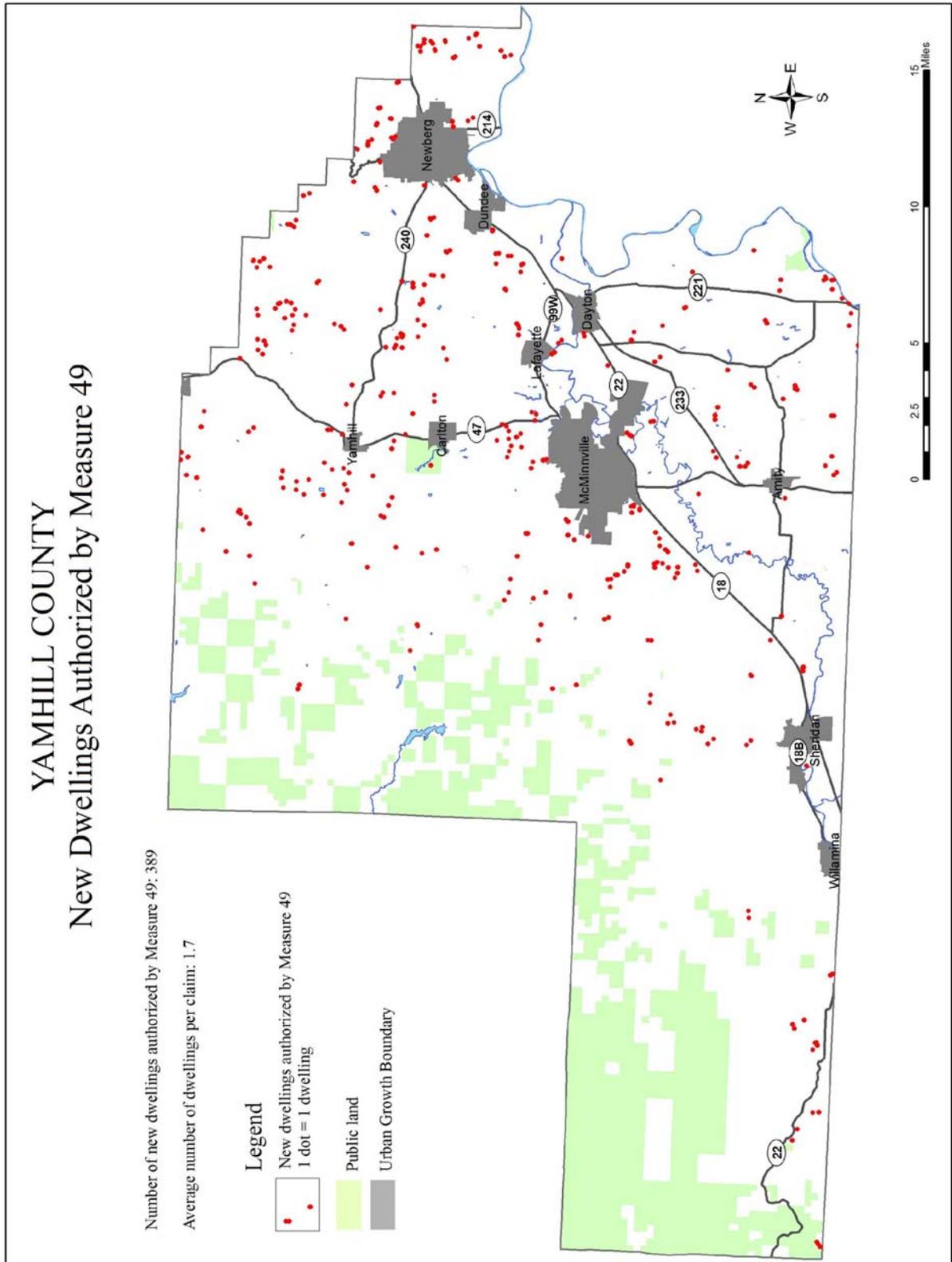
New Dwellings Authorized by Measure 49

Number of new dwellings authorized by Measure 49: 434

Average number of dwellings per valid election: 1.7



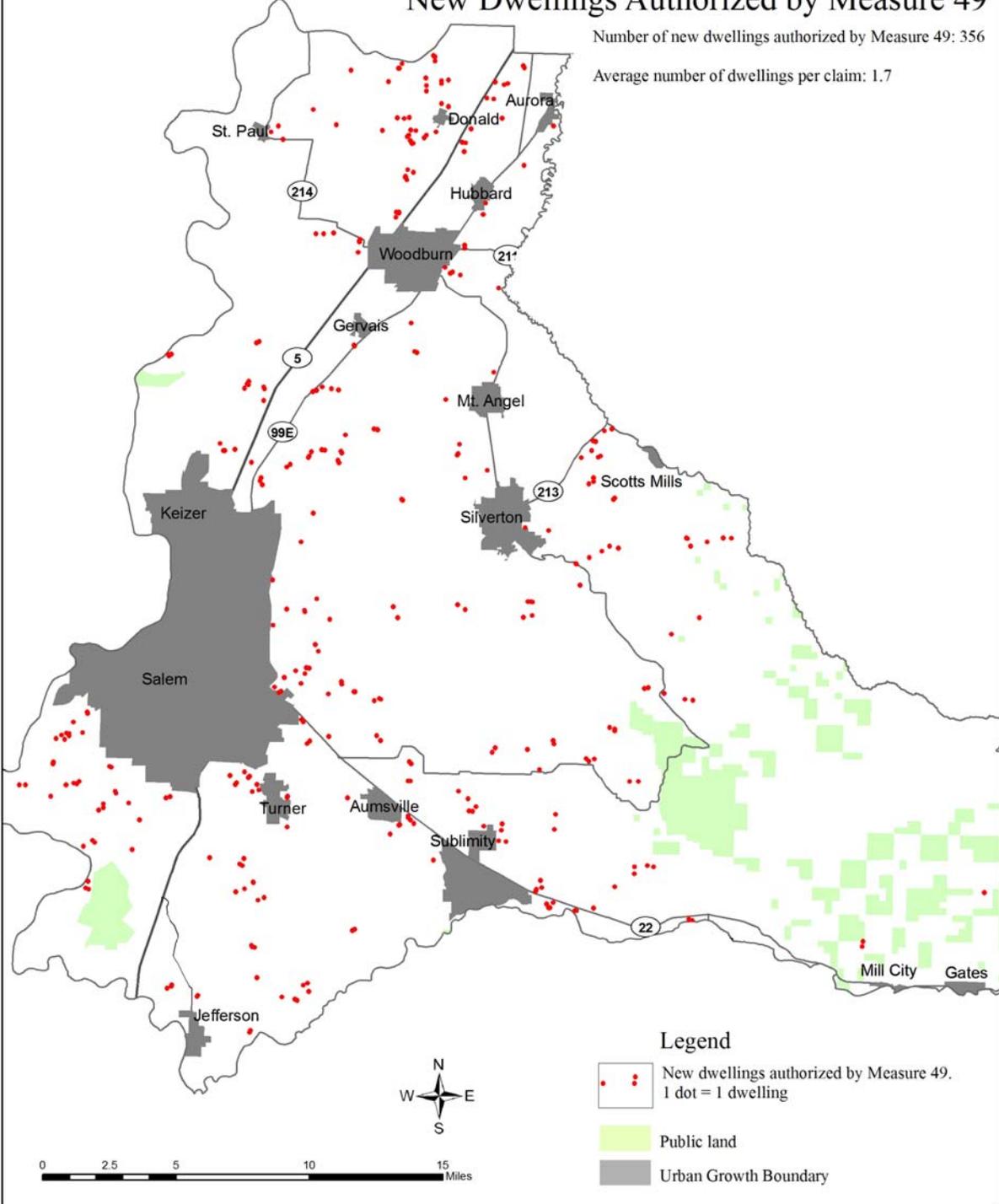
4. **Maps of Additional Counties with Highest Numbers of New Dwellings Authorized by Measure 49**



MARION COUNTY

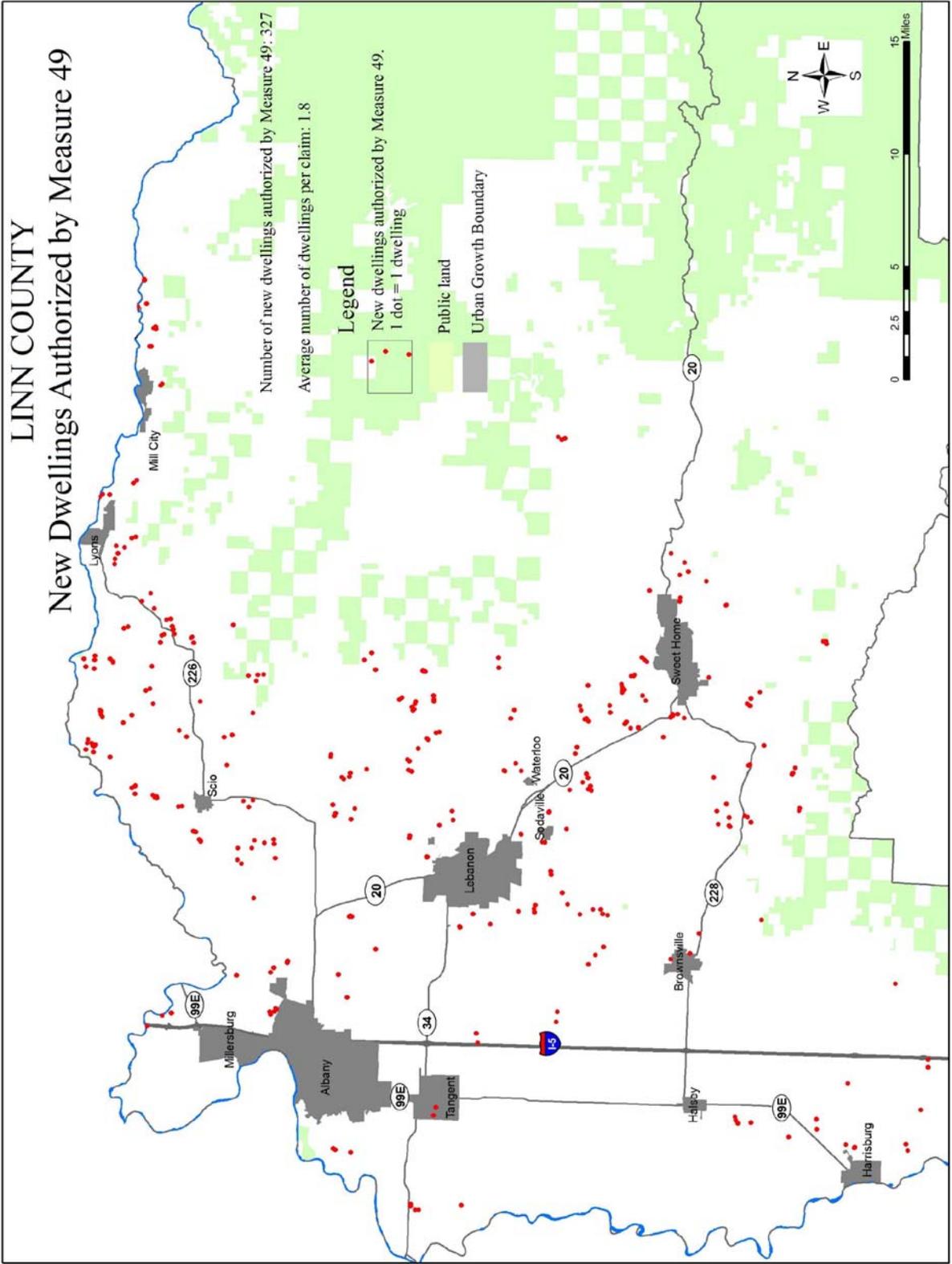
New Dwellings Authorized by Measure 49

Number of new dwellings authorized by Measure 49: 356
 Average number of dwellings per claim: 1.7



LINN COUNTY

New Dwellings Authorized by Measure 49



C. Claims Denied under Measure 49

While the claim approval rate under Measure 49 was approximately 78%, the rate of claim denials was not insignificant. Most of the claims denied under Measure 49 fell into a few broad categories:

- a. At the time the claimant acquired the property he/she was not lawfully permitted to establish the number of home sites sought under Measure 37/49*

To receive compensation under Measures 37 and 49, a claimant had to be lawfully permitted to establish the requested number of home sites on the date the claimant acquired the property. In other words, Measures 37 and 49 address regulatory limits placed on property *after* the owner acquires it. When an owner buys property already subject to regulations, there is no surprise and no fairness issue.

In a large proportion of the claims denied, the claimant was not lawfully permitted to establish the requested dwellings on the property when he or she acquired it. Related to this category, many claimants believed that their *family* acquisition date would be considered rather than the date they acquired the property. However, both Measures 37 and Measure 49 made compensation dependent on the *claimant's* acquisition date. The fact that a claimant's family member acquired the property at an earlier date did not affect a claimant's eligibility for relief under either Measure 37 or Measure 49.

- b. The claimant was not an owner of the property*

To qualify for relief under Measure 49, a claimant had to be a current owner of the property. Under Measure 37, the discussion focused on whether a claimant had "an interest" in the property. Measure 49 narrowed the scope of those who qualified for relief, limiting it to those who are current owners of property. Under Measure 49 sellers under a land sale contract, holders of life estate interests and trustees of revocable trusts were not considered owners of property (conversely – purchasers under a contract, and trustees of an irrevocable trust are considered as owners). Additionally, claimants who transferred property to a business entity, such as to a "family" LLC or partnership are not owners for purposes of Measure 49 (and were not treated as owners under Measure 37).

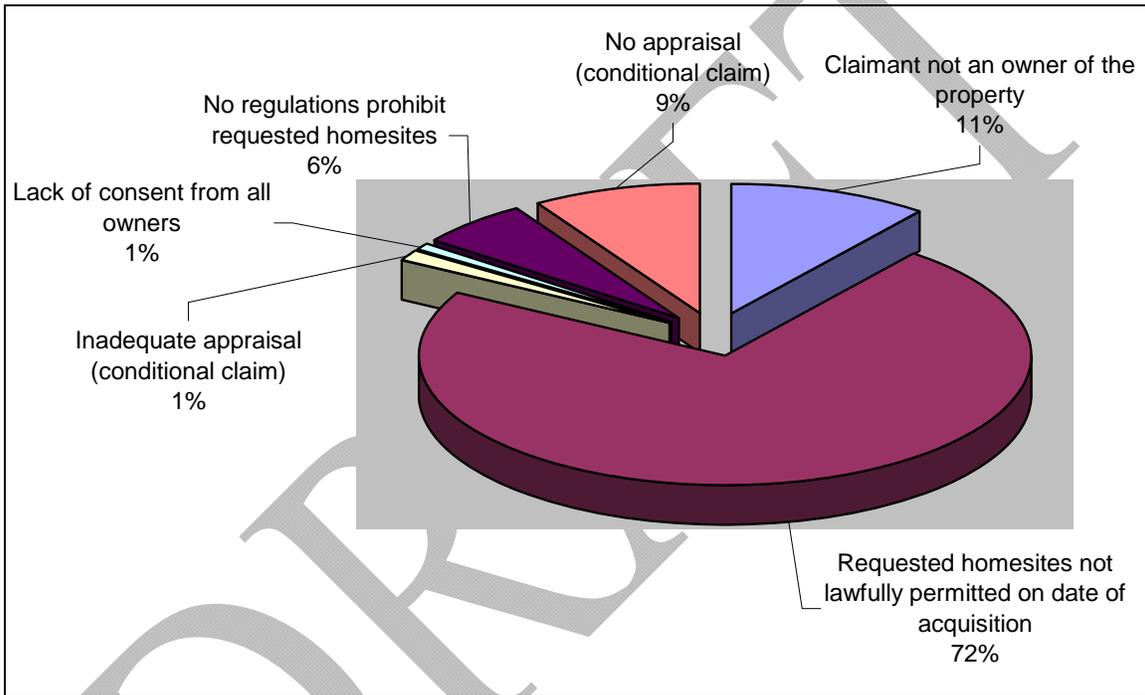
- c. The claimant transferred and reacquired the claim property*

Measure 49 states that if a claimant transferred property to a different owner and then reacquired the property, the claimant's acquisition date becomes the date the claimant reacquired the property. Some claimants transferred property to a third party, for varying amounts of time, and then reacquired the property at a later date. Because such an action changed a claimant's acquisition date to the later date, Measure 49 saw some claimants denied relief based on the zoning of the property on the later acquisition date.

d. No regulations prohibit the requested home sites

A smaller number of claims were denied under Measure 49 because the claimant was not currently prohibited from establishing the requested number of home sites. While the claimant may have been prohibited from establishing a larger Measure 37 request, because claimants were limited to a maximum request of three home sites under Measure 49, a number of claims were denied because the claimant could establish the requested home sites under current law.

Figure 6: Reasons for denials of elections (elections meeting the minimum criteria for processing, not vested, and not located within a city or UGB).



D. Litigation under Measure 49

The state was involved in 416 lawsuits as a result of Measure 37. Under Measure 49, the number of lawsuits dropped substantially to 80. Most of the lawsuits involve challenges based on the issues described above, and particularly what it means to be “lawfully permitted” to establish a specific number of home sites on a given acquisition date. Litigation is ongoing and new cases continue to be filed. However, most constitutional challenges to Measure 49 now have been resolved – with the courts upholding the authority of the legislature and the voters to amend Measure 37. A limited number of interpretation issues remain unresolved.

In addition to litigation, vesting determinations by counties are ongoing. Claimants with a common law vested right to complete and continue the use described in a

Measure 37 waiver may continue that use. Many claimants applied for vested rights determinations with the counties soon after Measure 49 took effect. However, there was no requirement to do so, and claimants continue to seek such determinations.

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III. Historical Background: Measures 37 & 49

A. Measure 37

In November 2000, 53% of Oregon voters approved Ballot Measure 7, amending Oregon's Constitution to require compensation for land use regulations that restrict the use and reduce the value of private property. Although that ballot measure was subsequently struck down by the Oregon Supreme Court, in November 2004 Oregonians approved Measure 37, a statutory measure that required payment or "waiver" of land use regulations. Measure 37 contained virtually no detail regarding how it was to be administered, except that property owners were entitled to payment unless government acted to waive regulations within 180 days of a demand -- presenting state and local government with an enormous administrative challenge and fiscal risk (particularly in the face of legislative inaction). Close to 7,000 Measure 37 claims were filed with state and local government, each requiring review to determine what the owners were entitled to do with the property when they acquired it. Remarkably, the state and local governments were able to review claims within the 180-day deadline, and avoid incurring liability.

B. Measure 49

Ballot Measure 49 (2007) amended Ballot Measure 37 (2004) to provide clear, but more limited relief to property owners affected by land use regulations adopted after they acquired their property. Ballot Measure 37 was designed to relieve property owners from land use restrictions enacted after they acquired their property or to pay them for the lost value of their land. Measure 49 authorized eligible claimants to establish up to three home sites on their property (Section 6 claims) without having to prove a loss of value to their property due to development restrictions passed by local and state government after the claimants acquired the property.

Measure 49 also authorized eligible claimants to establish up to ten home sites (Section 7 claims) if the claimant is able to demonstrate that land use regulations reduced the value of the property by an amount equivalent to the value the claimant would now receive by being able to develop additional homes. In order to apply for more than three home sites, claimants must submit an appraisal that shows the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim, and the fair market value of each home site approval to which the claimant is entitled. The claimant must be able to document that subsequent land use regulations had the effect of reducing the value of their property by at least as much as the value of the homes they now seek to develop.

Measure 49 also allows landowners the ability to seek compensation for any new (after January 1, 2007) land use regulation enacted at the state or local level that restricts residential uses of real property.

C. HB 3225

HB 3225 (2009) Provided a process for approximately 400 Measure 49 claims to proceed that would have otherwise been precluded from going forward, including: claimants that did not comply with requirement that claim be filed with the public entity that enacted the regulation; claimants with a majority of property located outside an urban growth boundary and entirely outside or entirely inside the boundaries of city, and; claimants that filed a claim only with the state but not with both the county and state. HB 3225 directed the department to issue final orders under Measure 49 on or before June 30, 2010. The department was required to investigate certain improperly filed claims and report to the legislature in January of 2010. A fee of \$175 for the processing of certain claims was required, and the department was authorized to prioritize processing of up to 100 claims that demonstrate a hardship.

IV. Ombudsman

The Compensation and Conservation Ombudsman (CCO or “ombudsman”) position was created through Measure 49 as part of the legislature’s reforms to Measure 37. The statutory charge of the ombudsman is to ensure completeness of new Measure 49 claims, and facilitate resolution of issues involving new and previously filed claims. The ombudsman position is appointed by the Governor and housed at the Department of Land Conservation and Development.

Generally, the ombudsman is a resource for claimants to: better understand the Measure 49 process, identify problem issues with their claims, and receive guidance on providing additional evidence to support their claims. The ombudsman often acts as liaison with local governments to assist claimants in documenting the development that was permitted when they acquired their property. When claimants are not eligible for relief under Measure 49, the ombudsman reviews current regulations in order to direct claimants to other options they may have for developing their properties. Additionally, the ombudsman evaluates situations where recent land use regulations potentially implicate Measure 49 relief.

“I am writing to you to simply see if you can offer any information regarding uniformity of this type of situation in other counties across the state...You were of great assistance to me during the M49 waiver process and then during the partition when [the] County was requiring that we do certain things during the process that I did not feel coincided w/the M49 waiver (such as having to pay for and apply for a CUP permit in order to build a home on a parcel created under M49.”

(letter to ombudsman asking for additional assistance)

Over time, the ombudsman has received up to ten new claimant contacts per week (through phone, email, walk-in, and referral from DLCD, DOJ, counties and

advocacy groups). These typically fell into two categories. The first involved questions on the process or status of a specific claim that did not require significant research. These usually received immediate responses and little follow up. The second category involved requests for assistance by claimants who had received Preliminary Evaluations denying their claims, or claimants who know they had complicated claims and were acting preemptively. These required in-depth research, follow up, and tracking, and were treated as formal inquiries. Approximately one-third of the ombudsman's claimant contacts result in formal ombudsman inquiries, and eventually 187 ombudsman files were opened.

The ombudsman reported regularly to the legislature and to the Land Conservation and Development Commission. The ombudsman position was created to give claimants an opportunity to receive assistance in filing a Measure 49 claim, or trouble-shoot an undesirable outcome with someone who was perceived to be a neutral party. All feedback to-date indicates that this has been a successful component of the M49 program.

V. New Claims

Measure 49 elections based on Measure 37 claims have now been resolved, and no new such claims may be made. New Measure 49 claims can only be made for new land use regulations enacted after January 1, 2007 that limit residential development or a farm or forest practice, and only to the extent that the claim demonstrates that the new regulation(s) reduced the value of the property. No new valid claims have been filed with the department.

VI. Senate Bill 1049

Governor Kulongoski signed SB 1049 into law on February 25, 2010. It amends Ballot Measure 49, and has three main purposes:

- (a) To provide limited "compensation" (in the form of authorization for a home) for Measure 37 claimants who sought approval under Measure 49 to build up to ten homes, but who failed to prove that the value of their property was reduced by land use regulations (estimated to be approximately 88 claims);
- (b) To provide limited "compensation" (in the form of authorization for a home) for Measure 37 claimants who filed claims only with a county (approximately 600 claims); and
- (c) To provide more consistent relief for approximately 700 Measure 37 claimants who acquired their property between 1975 and the date their county's land use regulations were approved by the state (pre-acknowledgement claims).

The deadline for making a claim under SB 1049 passed in October 2010, and approximately 68 claims have been received by the department. The legislatively-designated deadline for processing these claims in June 30, 2011

VII. What's next?

Measure 49 is embedded in Oregon's land use program, with both backward-leading and forward-leading paths. The backward-leading path, almost complete, included ballot measures, demands for a loosening of land use requirements from mostly rural property owners, and ultimately, a claim-based resolution allowing over 4,600 claims to be filed for limited residential development. Under this process over 6,100 new dwellings and 3,800 new parcels have been authorized by the state. Actual development will occur over a long period of time, as owners decide to carry out their authorizations.

The forward-leading path will largely be determined by state and local jurisdictions as they consider proposals for new regulations that could limit residential, farm or forest uses and reduce property values. If a property owner believes that a new regulation (enacted after January 1, 2007) restricts a residential use (or a farm or forest practice) and reduces the fair market value of their property, then the property owner may, under Measure 49, receive relief in the form of compensation for that loss, or receive a waiver to use the property to the extent that loss of fair market values was reduced.

The forward-leading aspects of Measure 49 already have influenced some efforts to consider regulatory changes by the legislature, and by state agencies. As time goes on, the balancing required by Measure 49 will continue to influence state and local policies and bring equity concerns to the forefront of policymaking.