



## **Measure 49: Addressing the Threat of Measure 37 Development to Oregon Farms**

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### **SUMMARY OF FINDINGS:**

Oregon is a state deeply connected to its farmland. Oregon has 40,000 farm businesses, primarily family-owned. And urban Oregonians are increasingly connected to local agriculture as they express ever-stronger interest in locally-grown foods.

While voters intended Measure 37 to provide basic fairness for landowners, it has unfortunately brought unfairness for many neighbors as well as a significant new threat to Oregon farmers:

Measure 37 development claims on farm land total more than 500,000 acres, nearly 40% more than the largest amount of farm land lost in any 5-year period since 1982. On average, Oregon lost about 165,000 acres of farm land in each five-year period between 1982 and 2002—Measure 37 claims thus total more than three times the average amount of land lost in a five-year period. More than 70% of the acreage is proposed for housing subdivisions rather than “a home or two” for neighbors’ families.

There are 4,922 claims for development on farm land. If each claimant only has 2 neighboring farms, almost 10,000 Oregon farm properties could be facing new conflicts with non-farm uses as new neighbors complain, or even sue farmers, over the noise, dust, and spraying at odd hours that go along with basic farm operations.

The situation facing Oregon’s farm land is urgent: Measure 37 claimants who have already received their waivers have applied for 171 subdivisions on more than 11,000 acres.

While virtually every corner of the state is faced with the tensions created by Measure 37 claims, prime farming areas are among the hardest hit. More than 12% of Willamette Valley farmland is under Measure 37 claim – nearly 1 in 8 acres. And certain counties face the biggest threats: nearly 25% of farmland in Washington and Hood River<sup>1</sup> counties is under Measure 37 claim.

Measure 49 will protect the majority of farmland threatened with development: measure 49 will limit the developments that take the most farmland out of farming and that create the greatest conflicts for their neighbors – large subdivisions (more than 10 homes) and commercial uses, such as gravel pits and strip malls. For the 70% of the farmland acres proposed for Measure 37 subdivision development (364,462 acres), claimants will have to choose between smaller developments (3 or fewer homes) or document that they have lost property value in order to proceed with more than 3 homes.

Measure 49 also requires development on high-value farmland to be limited in lot size and clustered to allow continued farm use for the remainder of the land.

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<sup>1</sup> Hood River Planning Department, *M37 Summary* page 33.

## **INTRODUCTION**

Oregon is a state deeply connected to its farmland. Every one of Oregon's 36 counties boasts agricultural production and the state has some of the most fertile farmlands on the continent. More than 150,000 jobs in Oregon is tied to agriculture, earning \$2.5 billion in salaries and wages. Farmers also buy \$3.2 billion in goods and materials for their operations, another major stimulus to the economy. Oregon farmers produce a harvest bountiful in both its volume and its diversity. Oregon produces more than 220 commodities commercially, and the state's products are not limited to our famous pears and strawberries. Oregon leads the nation in blackberries, Loganberries, hazelnuts, grass seed, Dungeness crab, Christmas trees, dried herbs, and potted florist azaleas.<sup>2</sup>

Oregon's farm economy is largely one of family farm operations. Of the 40,000 business entities with more than \$1,000 in annual agricultural sales, 88% are sole proprietor farms or ranches, and another 11% are family partnerships or family corporations, leaving just 1% in non-family corporations.<sup>3</sup> These families have deep roots in Oregon: the state has designated more than 1,000 "century farms" that have been held by the same family for 100 years or more.

In recent years, urban Oregonians have renewed their connection to the farm economy. Surging interest in locally-grown foods manifests itself in the rising success of farmers' markets, community-supported agriculture (CSA), and an urban restaurant scene where local farm products play an important role. Specialty crops – like hazelnuts, pears and specialized seed crops have thrived because of Oregon's combination of unique soils and climate, and farmers have proven agile in converting fields to these crops as demand for them has grown.

## **AGRICULTURE AND LAND USE PLANNING**

Since the early 1970s, Oregon has used statewide land use planning to protect valuable and productive farm lands, and to plan for growth. Motivated by the recent loss of hundreds of thousands of acres of farmland to development, Governor Tom McCall blazed the trail to create land use planning specifically to protect remaining farm and forest land around the state. Farm lands, especially some of the highly fertile lands of the Willamette Valley, have been at the center of the debate between development and protection of farm lands, because of the high productivity of soil and because protecting land for farming is a central goal of land use planning.

Land use planning has continued to focus on protecting farm land because development of non-farm uses on farm lands creates significant challenges for the agriculture industry. On the most basic level, as farm land is converted to non-farm uses, Oregon's agricultural land base declines. In today's globalized economy, many family farmers are expanding into larger operations, or would like to, in order to stay competitive. However, farmers can rarely afford to pay the prices that land would bring if it were being converted to housing subdivisions.

As Oregonians become even more concerned about local sources of food for their families, the loss of local farm land will become a more and more important issue.

## **LOOKING FORWARD:**

### **OREGON'S FARM LAND UNDER MEASURE 37 OR MEASURE 49**

In 2004, Oregon voters approved Measure 37, intending to provide basic fairness for landowners who owned their property before new land use planning rules were adopted. Unfortunately, Measure 37 has failed to deliver basic fairness and has led to a series of new challenges for farmers as thousands of non-farm developments have been proposed on hundreds of thousands of acres of farm land.

### ***Fairness Fails to Materialize***

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<sup>2</sup> Oregon Department of Agriculture. *The State of Oregon Agriculture*. January 2007.

<sup>3</sup> Ibid.

Smaller landowners seeking to build relatively small numbers of homes found out that Measure 37 still does not allow such development because the measure does not allow landowners to transfer their development rights to a new owner or heirs. Because development rights would evaporate if the owner dies, banks and title insurance companies will not offer loans or title insurance to smaller Measure 37 claimants.<sup>4</sup>

Larger companies, however, capable of self-financing their development, are not impeded by this obstacle. Thus it is the largest developments that are in the best position to move forward under Measure 37, and it is those claimants whom Measure 37 was promoted to help who are left out in the cold.

### ***Non-farm Development Threatens Farming***

The most easily quantifiable threat to farming represented by Measure 37 development is the sheer volume of farmland at stake. Developments of housing subdivisions, commercial uses (such as strip malls), and industrial uses (such as gravel pits) affect Oregon's farm lands more than any other type of land.

Of the nearly 800,000 acres of land proposed for development under Measure 37, more than 500,000 acres (518,128) would represent farm land lost to development.<sup>5</sup> Half a million acres of farm land converted for development would represent a loss of farmland at an historic rate: between 1982 and 2002, the single biggest decline in farmland acres in any 5-year period was nearly 370,000 acres lost between 1997 and 2002 and the average decline was about 165,000 acres.<sup>6</sup>

**• Proposed Measure 37 development represents a potential loss of farmland 40% greater than the largest amount of land lost in any 5-year period since 1982.**

**• Proposed Measure 37 development represents a potential loss of farmland *more than three times higher* than the average amount of farmland lost in 5-year periods between 1982 and 2002.**

Of course, no one can say when development proposed under Measure 37 will be realized. However, counties are approving the majority of requests for development rights, and hundreds of claims have proceeded beyond approval of their Measure 37 waiver and have entered the development stage. Data from the Department of Land, Conservation, and Development indicate that **Measure 37 claimants who have received waivers have already applied for 171 subdivisions on more than 11,000 acres.**<sup>7</sup>

In addition to potentially causing massive loss of farmland to development, Measure 37 threatens farmers with the appearance of new non-farm uses on neighboring properties. Non-farm uses next to farm land can create conflicts for farmers that can threaten their very ability to farm the land. This comes from a very basic tension: new residents of subdivisions in rural areas are often looking for what they imagine to be a quiet idyllic life, but farm operations are far from it. Farm operations are noisy and often involve spraying pesticides or generating large volumes of airborne dust. Farm operations often take place late at night and early in the morning.

These activities do not simply cause annoyance for farmers as neighbors complain—they can also result in lawsuits. Right-to-farm laws provide some protections to farmers but are not nearly

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<sup>4</sup> Richmond, Henry R. and Houchen, Timothy G., American Land Institute. *Measure 37: Is it Doing What Oregon Voters Wanted?* September 2007.

<sup>5</sup> Ibid.

<sup>6</sup> Analysis of data from United States Department of Agriculture, National Agricultural Statistics Service. *2002 Census of Agriculture*. June 2004.

<sup>7</sup> Analysis of list of claims that have proceeded into development (beyond waiver approval) from Oregon Department of Land Conservation and Development.

comprehensive for all aspects of farming. And even if farmers are ultimately successful, they often cannot afford hefty legal fees to defend their right to stay in business.

New development can also threaten the resources that farmers depend on. Many areas of Oregon farm land have limited access to groundwater. Farm families already struggling to manage water supply could find themselves without adequate water for their business when development of subdivisions means drilling multiple new wells to take water from the same aquifer.

Farmers invest in their businesses like any other business-owner through preparing and planting new fields and obtaining necessary equipment for the farming process. Many farmers have stuck with their operations or located in Oregon because of the relative certainty that their areas would remain conducive to farming. When uncertainty takes over – through the specter of housing subdivisions next door – farmers don't have the incentive to continue to invest and look for a way to reduce their risks. As a result, many go out of business. This phenomenon has been repeated over and over in farming areas around the US in which development sprawl has won out and replaced productive farmland close to population centers.

While it is impossible to forecast into the future to determine exactly how development allowed by Measure 37 will create new conflicts between farmers and their new non-farming neighbors, several important pieces of evidence point toward major conflict:

First, **70% of the proposed development on farmland would be housing subdivisions**, not just an additional home or two.<sup>8</sup> Larger developments – with more new neighbors and a greater need for groundwater – create bigger problems for farmers than efforts by neighbors to build a new home or two.

Second, the sheer number of properties at stake means there are even more farm properties who will be neighbors of new developments. Development claims have been filed for 4,922 properties on farmland.<sup>9</sup> **If the average farm property under Measure 37 claims has just two neighbors, 9,844 Oregon farms are threatened with new non-farm neighbors and potential conflicts.**

#### **MEASURE 49: PROTECTING OREGON FARM LANDS**

Measure 49 attempts to fix the problems created by Measure 37. It does so in two ways: first, by granting the basic fairness that voters intended when they cast votes for Measure 37, and second, by limiting the large developments allowed under Measure 37.

##### ***Providing Fairness for Land Owners***

Measure 49 provides the fairness to landowners promised – but not delivered – by Measure 37. It allows any landowner to proceed with up to 3 new home sites on their land if they could have done so when they bought the land. It also allows landowners to apply for up to 10 homes, but to do so they will have to document that their situation meets the basic premise of Measure 37, meaning that their property value was reduced by land use planning rules. On high-value farmland, high-value forestland, and in water-restricted areas, developments would be limited to 3 new home sites.

Measure 49 actually delivers this fairness in a way Measure 37 does not, because Measure 49 allows landowners to transfer the development rights with their property which must be used within 10 years. This will allow landowners to obtain the necessary loans and title insurance to proceed with small, limited developments, thus providing development rights to all landowners, not just large companies who can self-finance developments.

##### ***Protecting Farm Lands***

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<sup>8</sup> Analysis of data from Richmond & Houchen 2007.

<sup>9</sup> Richmond & Houchen 2007.

Measure 49 provides clear protection to Oregon farm lands. It limits large developments that present the greatest risk to farm operations. Specifically, it prohibits commercial and industrial development on lands that are not planned for such uses. Similarly, it limits residential development on farm land to 10 houses generally, if landowners can document reduced property value, and 3 houses on high-value farm land (or in cases where landowners prefer the faster track for approval).

These limitations mean that the 30% of the Measure 37 claims on farm lands that are less threatening (those for 3 or fewer homes) will be able to proceed on a "fast track," but the 70% of developments that are for more problematic subdivisions will be subject to a higher standard of review (those for 4 to 10 homes) and many of the claims will be scaled back (those for more than 10 homes).

In addition, development on farmland must be clustered at one portion of the property on three two-acre lots on high-value farmland and on five acre lots on other lands. This allows large swaths of farm and forest land to be preserved for future generations.

It is worth noting that Measure 49 opponents claim that development of massive housing subdivisions will be stopped due to lack of services or due to the health and safety exemption of Measure 37. Reality does not match this claim. Several county commissions have approved housing subdivisions despite limited groundwater availability and uncertainty about the adequacy of services based on systems development charges and future property tax resources. Richard Whitman of the Oregon Department of Justice testified during the 2007 legislative session that the Measure 37 health and safety exemption would be very difficult to apply to development beyond basic building code and public nuisance requirements.

## **CONCLUSION**

Measure 37 has presented Oregon's agriculture industry with a new and unprecedented threat: more than 500,000 acres of development proposed on farm lands across the state, potentially taking large areas of land out of farm production and creating new conflict with non-farm neighbors moving in. Seventy percent of this development would not be in the form of a home or two for neighbors' kids, but rather in the form of housing subdivisions, potentially meaning large numbers of new neighbors who are not expecting noisy and dusty farm operations at all hours of the day and whose water consumption could threaten their farm neighbors' water supply.

Measure 49 is supported by the Oregon Farm Bureau Federation and 16 other farm organizations because it offers a good solution to these problems for Oregon farmers. It limits the development on farm land to small or medium-sized residential developments to minimize conflicts with non-farm neighbors and to keep Oregon land in agriculture.