

Running head: Measure 37 Claims in Oregon

What is Driving Measure 37 Claims in Oregon?

Sheila A Martin, Meg Merrick, Erik Rundell, and Katie Shriver¹

Institute of Portland Metropolitan Studies,

Nohad A. Toulan School of Urban Studies and Planning, Portland State University

Abstract

With over 7,500 claims covering 750,000 acres of farm and forestland, Measure 37 claims harbor the potential to change the landscape in Oregon. The majority of these claims are located in the Willamette Valley, where growth pressures and the value gradient between land for farms and land for residential development is great. This paper explores those relationships by describing and mapping the claims in terms of location, size, and current and proposed use, and then analyzes factors that appear to be driving the claims. At a county level, variables such as population growth, farm income, farm tenure and average age of farmer are considered as explanations of claim density. Using maps, we also examine the impact of distance from urban growth boundary and proximity to public lands. We conclude with comments about the unforeseen consequences of the “time zone” zoning on agriculture and public services, and consider the fairness of the Measure 37 regime.

What is Driving Measure 37 Claims in Oregon?

Introduction

On November 2, 2004, Oregon voters passed Measure 37 by a margin of 61 to 39 percent. Of Oregon's 36 counties, only one—Benton County, home of Corvallis and Oregon State University—failed to pass the measure. Even in the Portland metropolitan region, the measure passed in all but the districts closest to the central city. In October of 2005, a Marion County trial court judge struck down the measure, but it was reinstated by the Oregon Supreme Court on February 21, 2006. Thus, the measure once again was effective on March 31, 2006.

Since the reinstatement, claims have come pouring in to county, city, and state planning offices. As of December 4, 2006, the last day on which to file a claim on a past land use action, cities, counties, and the state had received claims for over 7,500 properties covering over 750,000 acres. The overwhelming majority of the land subject to claim is resource land, and most claimants seek residential development.

A significant feature of Measure 37's regime is its definition of the right to make a claim. Rather than being universal, this right rests primarily on two factors: the date a property owner bought the land and the date of land use regulation. Although some property owners (both individuals and some timber companies that helped to finance the measure) were known proponents of the property compensation measure prior to its passage, it was impossible to predict with any level of certainty who would file claims, where claims would be made, how large they would be, and what claimants would propose to do with their property.

Now that the initial period during which claims could be easily filed has passed, we are at a point where we can begin to get a sense of the impacts of the measure on the ground and investigate the factors that are driving claims on certain types of land.

The purpose of this paper is to describe the universe of Measure 37 claims in terms of location, size, current zoning and proposed use, and type of proposed land division. We explore the socioeconomic and institutional factors motivating claimants as well as the spatial factors that drive claim activity to specific areas. We also discuss the factors that may ultimately convert claims and waivers into actual development of farm and forestland and the potential impact on agriculture, public services, and fairness.

Background

Measure 37 passed in November of 2004 by citizen initiative. Simply put, the Measure states that if a land use regulation restricts the use of private property and thereby reduces the value of property, the property owner is entitled to compensation from the government that enacts or enforces the regulation. (State of Oregon, 2003). If the government continues to apply the subject regulation 180 days from the date of written demand for compensation, the landowner has a right to sue for compensation in circuit court, and is entitled to attorney fees on top of the compensation awarded. Facing the threat of significant liability for legal fees, and with neither a fund available for compensation, nor a clear procedure for determining the value of the loss, most local governments have proceeded to waive regulations. In fact, of the over 7,500 claims that have been filed, we know of only one claim that has been awarded compensation; because they were unhappy with the award, the claimants have withdrawn the original claim and filed a new claim for additional development and greater compensation ("Palins withdraw, refile m37 claim").

Oregon's Measure 37 was not the first attempt to reduce the authority of Oregon's land use regulation. Since the state's first attempts at statewide planning in 1969, Oregonians have defeated ballot measures to eliminate statewide planning on four occasions--each by a fairly comfortable margin. However, the notion of compensation for lost value appealed to voters, and in 2000, they passed Measure 7, which was similar to Measure 37, by a 53 to 47 margin. Although Measure 7 was declared unconstitutional, its proponents revived the concept using a slightly different legal strategy: a statutory measure rather than a Constitutional amendment. The revised approach was successful, and Measure 37 passed with 61 percent of the statewide vote. With the passage of Measure 37, Oregon's planners now face a regulatory environment in which any new regulation, as well as the enforcement of existing land use regulations, will force a decision about whether to pay the claimant for lost value, or allow the landowner to develop the land as he or she could when the land was acquired.²

Measure 37 Claims Database

The Institute of Portland Metropolitan Studies (IMS) established a database for Measure 37 claims soon after the passage of Oregon Ballot Measure 37 on November 2, 2004. During the month between the passage of the measure and its effective date, cities, counties, and the state scrambled to develop claim forms and procedures. The Measure itself included little clear direction about claim form and procedures,³ in the absence of any clear direction from the state, local governments' forms and procedures varied widely. This has led to a number of difficulties regarding the collection, analysis, and mapping of Measure 37 data. The most important of these is inconsistency in the availability of some of the key variables needed for analysis. We overcame some of these problems by pursuing data from multiple data sources. Table 1 provides

a list of the key variables on the database and the percentage of claims for which data are available.

Information on claims filed with the State of Oregon was obtained from the Oregon Department of Administrative Services, which sent a monthly updated spreadsheet to IMS of claims that the State had received. The spreadsheet included information on the claimant, claim number, date the claim was filed with the state, address of the claim, the map and tax lot number of the claim, the regulation cited as the reason for the claim, the amount of compensation demanded, and the status of the claims as to whether it was pending, approved or denied by the Oregon Department of Land Conservation and Development.

Data for county and city claims came from either copies of applications and staff reports, if available, or from Measure 37 information posted on a jurisdiction's website. Wherever possible, staff reports were used rather than the claim application, because these reports generally include more accurate and complete information. However, for the flood of claims that occurred in October and November of 2006, county staff reports were not generally available. Thus, the quality and completeness of the data for more recent claims is generally not as good as that of earlier claims for which a staff report had been written.

One category where the database is fairly complete throughout the entire database is the total acreage of the Measure 37 claim filed. Approximately 96 percent of claims in the database have information for the claim's acreage. Specific jurisdictions in which the acreage information is not as complete include: Douglas County (64.7 percent of claims have acreage information), Umatilla County (74.5% of claims have acreage information), and Multnomah County (88.8% claims have acreage information). The high percent of claims with acreage information is partly due to the ability to reference a parcel's acreage on ORMaps (a State of Oregon website with tax

lot maps for the entire state) to supplement gaps in the data, as long as one has the map and tax lot number of the parcels included in a Measure 37 claim.

Data on the type of land division desired by the claimant varies in completeness depending on the county or city. Overall, 60 percent of claims in the database have information on the type of land division desired. For example, in this category Douglas County is close to complete, with 97 percent of claims citing a type of action desired for the property. Other jurisdictions that are nearly complete include: Benton County (90 percent of claims), Marion County (82.6 percent of claims), and Jefferson County (84.1 percent of claims). Jurisdictions that have relatively incomplete data for the land division desired include: Josephine County (32 percent of claims citing action desired) Hood River County (30 percent of claims), Lincoln County (28.3 percent of claims), and Lane County (16.7 percent of claims).

Complications of Mapping

Independent of inconsistencies in claim filing requirements and procedures and the inconsistencies and incompleteness of the database, cadastral geospatial data (or GIS shapefiles) have only recently been completed by the counties as a part of Oregon's ORMap project, which has sought to create geospatial data at the tax lot level for the entire state. In many cases, counties have not yet determined the legal terms by which these data will be distributed delaying GIS analysis and mapping for some parts of the state.

Moreover, while the development of statewide cadastral GIS data required the adoption of a uniform standard for the spatial data, the attribute data varies considerably from county to county. Metro, the Portland area's regional government, which has a more than twenty year history of creating GIS data and performing analysis, has developed a comprehensive set of attributes that includes sales date information for many (but not all) of the tax lots in its

jurisdiction. Most counties include minimal attribute information associated with their GIS tax lot data.

Complicating things further is the fact that each county historically devised its own system of tax lot identification numbers based on the township and range property description that has been transferred into their GIS tax lot databases. There is no uniform tax lot identification number scheme for the state. This has meant that any GIS analysis requires translating the township and range descriptions from the Measure 37 claims database to each county's tax lot identification scheme.

We have, at this time, been able to aggregate all of the claims in our Measure 37 database by township and range at the state level. In addition, we have obtained the tax lot GIS shapefiles for all of the counties in the Willamette Valley (except Lane County), and Hood River County. We have focused on these areas first because they have been the most heavily impacted by actual claims thus far.

The Geography of Measure 37

Because of the possible impacts to resource land and the costs of service provision for unanticipated subdivisions, as soon as Measure 37 became law, planners wanted to be able to anticipate how many claims were possible, how many were likely, where they might occur, and how large they might be. Predicting how many claims are possible and where they could occur has proven to be elusive because of the difficulties in obtaining sales date information for all of the tax lots in the state – the critical point of entry for a right to make a claim. While we cannot identify everyone who could make a claim, through GIS analysis, we can begin to understand some of the potential impacts relating to those claims that have been filed.

Statewide Distribution

Figures 1 and 2 show the density of Measure 37 claims throughout the state of Oregon. Table 2 shows the number of claims and acreage by county. Almost 65 percent of the claims and 40 percent of the claim acreage is located in the 11 counties of the Northwest and Willamette Valley, including Hood River County.

The distribution of Measure 37 claims is geographically defined by the urban growth boundaries that surround every municipality in Oregon and by the presence of public land (federal, state, and county) (Figure 1). Even at this coarse level of spatial resolution (number of claims per township), two additional observations can be made. Claims are, in general, associated with a proximity to urban growth boundaries in general and they are, not surprisingly, especially concentrated in the Portland tri-county area.

When the percentage of acreage per township under Measure 37 claims (Figure 2) is compared to the number of claims per township, it becomes clear that a small number of very large claims, generally adjacent to public land, are responsible for the geographic shift in densities of claimed land that can be seen between figures 1 and 2. Stimson Lumber Company, for example, has claimed more than 35,586 acres in Washington County alone concentrated in the Coast Range, abutting public land.

Elsewhere in the state, a relatively large number of claims is associated with the Grants Pass and Medford-Ashland urbanized areas. The density of acreage of claims per township, however, reveals significant acreages under claim in relatively remote areas east of Depoe Bay at the coast, southwest of Prineville in central Oregon, northwest of La Grande, and just north of Halfway at the eastern edge of the state. Claimants in these remote areas are both private parties and corporate land owners including timber companies and corporate ranches.

Claim Size, Current Zoning, and Requested Development

As shown in Table 3, the size of the claims varies by region, with the largest claims in Eastern Oregon, and the smallest in the Willamette Valley. The distribution of claims by size is shown in Figure 3. While just over one percent of the claims are for tracts of land of larger than 1000 acres, these very large claims comprise one-third of the total claim acreage.

The Oregon land use system was designed to limit urbanization on resource lands. Not surprisingly, the majority of the claim acreage is on land that is currently zoned for either farm or forest land. Table 4 shows the distribution of claims and claim acreage by current zoning. We know current zoning for about 72 percent of the claims. Only 11 percent of the claims and one percent of the claim acreage is for land that is not currently in resource use. The claims are overwhelmingly requesting residential development; of the 52 percent of claims for which we have data on the proposed development, 92 percent of the claims and 86 percent of the acres are for residential development. The next largest category of proposed development is for mixed residential development. Figure 4 shows how the residential development proposals break down in terms of the number of residential lots requested. We have data on this variable for 42 percent of the claims, comprising 58,745 lots. Of the claims for which we have data, 1288 claims, or 40 percent, are requesting 1 to 3 lots. Another 30 percent are requesting 4 to 9 lots. About 20 percent of the total number of lots requested is from claimants that are developing very large residential developments of over 500 lots.

What have other studies found about resource land conversion?

Before using the claims data to examine the forces that might be driving the location and type of claim activity, we examined the literature on farmland and forestland conversion to form hypotheses about factors that might drive claim filings. One perspective is that zoning to protect

farm and forestland is inherently inefficient (Gardner, 1977); when zoning is removed, the market will allocate more land for housing and other (non resource) uses. Thus, the opportunity to remove or waive zoning regulations under Measure 37 would naturally lead to a rush of claims wherever farm and forest zoning was causing an inefficient allocation of land.

Where might we expect the zoning to be most restrictive or inefficient? We would expect the inefficiency to be greatest in areas where population and job growth, a limited supply of buildable land, and reduced relative demand for local food and timber force up the price of buildable land compared to the protected farm and forest land.

But how do resource landowners decide when its time to sell? Bernard and Butcher (Bernard, 1989) examined the sell/hold decision of landowners in Clark County, Washington and found that landowner characteristics were more important than those of the parcel. This suggests that the motivations of individual landowners may be important determinants of claim activity. This was confirmed by Lynch and Lovell (Lynch & Lovell, 2003), who found that both the landowner's future plans, as well as its distance to a city determined whether it would participate in a farmland preservation program.

What factors point buyers toward farm and forest land for conversion? Drozd and Johnson (Drozd & Johnson, 2004) showed that many buyers have special motivations, aside from farmland characteristics, to convert land to housing. Beyers and Nelson (Beyers & Nelson, 2000) pointed to natural amenities and environmental quality. Thus, a buyer might be attracted to the amenity values of a farm or forest parcel's amenity values or its access to good transportation infrastructure (Cervero, 2003). This might encourage a landowner to file a claim due to the parcel's perceived desirability, and therefore the potential selling price.

One interesting aspect of Measure 37 is that it allows for *development in areas of otherwise protected farmland*. That is, one landowner who has held land longer than his neighbor has a right to develop even where his neighbor's land is protected agricultural or forestland. This monopoly position potentially offers a very strong incentive to convert, as the monopoly prices may be far higher than the price that would be obtained if the neighbors were also allowed to develop (Jaeger, 2006). This is borne out by the work of Irwin (Irwin, 2002) and Roe et al (Roe *et al.*, 2004), who find that potential home buyers place a greater value on land that is surrounded by protected cropland. Thus, the parcels available through M37 claims that are surrounded by protected land may be in very high demand.

Hypotheses and Evidence: County-level Analysis

Given the findings referenced above, we formed a set of hypotheses that can be tested with the data available in the Measure 37 database and with other publicly available data. We first constructed a county-level variable that expresses the density of claims. This variable, the claim acreage as a percent of total private land, is shown in Table 2. We looked for correlations at the county level between claim density and other socioeconomic variables that might explain the propensity of an owner to file a Measure 37 claim. A summary of those hypotheses and the correlation results appear in Table 5.

As expected, population growth and claim density are strongly correlated, particularly if we examine population growth since 1970--prior to the establishment of most land use laws. Since both variables are in log form, the coefficient can be interpreted as an elasticity: a ten percent increase in population growth from 1970 to 2006 increases the claim density by 5.9 percent. Figure 5 shows a scatterplot of the log of claim density and the log of population growth from 1970 to 2006.

We also tested a number of variables relevant to a farm owner's decision to convert his land. The only variable showing a strong correlation with claim density at the county level was the percentage of acreage on farms where the operator's primary occupation is farming. The correlation coefficient is $-.529$, meaning that a ten percent increase in the percentage of acreage farmed by farmers whose primary occupation is farming leads to a 5.2 percent decrease in claim density. It is possible that these variables would be more strongly correlated with claim density for farmland only.

We then calculated a different density variable that uses only claim acreage on EFU land. We then looked for correlations between this variable, EFU claim density, and farm-related variables discussed above. The results are shown in Table 6. Only one additional significant correlation was found—age of the farmer—and the correlation was opposite our hypothesis that older farmers would be more likely to sell. The correlation shows that in counties with an older average age of farm operators, the EFU claim density is lower.

Hypotheses and Evidence: Micro-level analysis

It's not surprising that it is difficult to explain the density of Measure 37 claims at the county level. Claims are distributed throughout the state, and the literature suggests that parcel-level characteristics are very important in the process of resource land conversion. To examine these characteristics in greater detail, we developed detailed maps focused on the Willamette Valley north of Lane County, and Hood River County. We have begun our larger scale analysis in the Willamette Valley and Hood River County because it is here where Measure 37's impacts are greatest. Our exploratory analysis at this scale includes the location of claims, the size of claims, the current zoning of land affected by claims, requested land division, the Measure's impacts on prime farm soils (using the National Resource Conservation Service Soil Survey

Land Capability Classification System's Class 1 and Class 2 soils), and the relationship, in Metro's service area (Clackamas, Multnomah, and Washington counties), of claims where available sales data (Metro's RLIS, 2007) suggest that claims are unlikely. Where feasible, we constructed the maps at the tax lot level because it is at this level where the abstract moves to the specificity of place that the impacts of Measure 37 will play out.

Willamette Valley

Distribution. The geographic distribution of claims in the Willamette Valley, like the state as a whole, is largely dictated by the presence of urban growth boundaries (there are few claims inside UGBs, as this land is already considered urbanizable) and publicly owned land (Figure 6). A simple Euclidean distance calculation of claim locations to UGBs in the Willamette Valley indicates that approximately 90 percent of these claims are within five miles of a UGB, and 51 percent are within two miles of the closest UGB. Only .6 percent of these claims are farther than 15 miles away with the longest distance being 24 miles.

To get a sense of the density of claims between UGBs and public land in the Willamette Valley, a similar distance was calculated between Measure 37 claims and publicly owned land outside of UGBs. Fifty-two percent are within two miles of public land; 89 percent are within five miles of public land; and 100 percent are within 10 miles of public land.

Many of the claims in close proximity to the Metro UGB are smaller in size, while the large claims tend to be located closer to the edge adjacent to public lands in the Coast and Cascade Ranges (Figure 6). It should be noted that the Measure 37 applications for Linn County do not require the claimant to specify a map and tax lot number. As a result, the claims depicted on the maps for Linn County represent only about 1/3 of the claims filed in the county.

The largest percentage of claims in the Willamette Valley (36.5 percent) has exclusive farm use zoning. As the claims get closer to the Coast Range and Cascades, where many of the largest acreage claims are located, the claims tend to be on land with forest use zoning. This is especially noticeable in Washington County as claims transition from exclusive farm use zoned land to forest zoned land to the west (Figure 7).

Requested land use. Claims requesting a subdivision, which consists of dividing a parcel into four or more lots in Oregon, is the most commonly requested land division type for Measure 37 claims filed for the nine counties mapped with 40.6 percent of requests. They are dispersed throughout the valley, but the largest claims (that do specify an action) are requests for a subdivision (figure 3). Nearly 30 percent (29.8 percent) of claims do not specify a request or the request is unknown, and 19.4 percent of claims specify a partition of the property (division into three lots or less in Oregon) as the desired land division type. The remaining 10.1 percent of claims either do not request a land division, i.e. they plan on building a house on the existing parcel, or are asking for some other actions, such as a lot line adjustment, which does not create any new lots.

Impact on soils. The Willamette Valley is known for the quality of its farm soils. Indeed, Senate Bill 100 was driven in large part by the desire to preserve such soils by eliminating leapfrog development through the establishment of UGBs and resource-based land use zoning. Using the National Resource Conservation Service SSURGO Soil Survey classification Class 1 and Class 2 soils as an indicator of prime farm soils, the impact of claims is significant in some places in the Valley.

Figure 8 illustrates the percentage of Class 1 and Class 2 soils by county that are affected in one way or another by Measure 37 claims in the Willamette Valley and Hood River County,

the counties examined in this paper. While it is clear that Hood River County's agricultural potential is significantly impacted by possible development on its prime soils (48 percent of Class 1 soils and 22 percent of Class 2 soils in Hood River County), some counties in the Willamette Valley are impacted as well. Nearly 12 percent of Benton County's Class 1 soils are affected by claims as are 10 percent of Class 2 soils in Polk and Multnomah counties. It should be noted that the data for Linn County is incomplete, with only 1/3 of its claims included in this analysis. Furthermore, because of the incompleteness of the database with regard to the intention to subdivide, especially in Hood River County, we cannot say precisely how many acres of the soils will be affected.

Greenbelt effect. Because of the availability of sales data (although incomplete) for Metro's Regional Land Information System (RLIS) GIS dataset, we can begin to get a sense of the potential impacts of the measure on farmland and raise questions about the economic viability of the farming enterprise if requested subdivision development should occur. Figure 9 illustrates an area of western Washington County including Hillsboro, Forest Grove and the land surrounding their urban growth boundaries.

Several aspects of this tax lot level map are provocative. First is the size of some of the individual and clustered subdivision claims that approximate the size of a small city such as Cornelius immediately east of Forest Grove. Second, the distribution of claims is relatively even across this western portion of the county. Perhaps what is most striking is seeing the claims in relationship to the tax lots with known sales dates that occurred after two key dates: the 1979 acknowledgement of Metro's urban growth boundary, and the 1994 farm income test that requires a minimum \$80,000 gross farm income for high production soils (a lower standard applies for low production soils) in two consecutive years or three out of five previous years for

a property owner in an EFU zone to build a “farm residence” (OAR 660-033-0120(B)). Despite the missing sales dates, it is clear that many of the larger Measure 37 claims (many of which have specified the intent to subdivide) in this area have the benefit of being surrounded by what amounts to ensured “open space” because property owners who purchased their land after these dates are much less likely to be able to make a Measure 37 claim. This pattern holds true for the southeastern portion of Clackamas County as well.

This raises serious questions about the viability of the farming enterprise in an environment in which farmland is punctuated by significant leapfrog subdivision development. Over and above the obvious questions of service and infrastructure costs, it raises questions of fairness to farmers who may find a political landscape dominated by suburban interests unfavorable to the less palatable aspects of agricultural production such as the spraying of chemicals and 24-hour harvesting. Moreover, as found in the literature on farmland conversion, the reality of these de facto “greenbelts” could increase the likelihood that the claimants’ land will, in fact, be developed. All of this should be considered in light of the fact that in the Willamette Valley, for nearly 30 percent of the claims the land division desire is unspecified, and that because the sales date data for all of the tax lots is incomplete, we do not know how many more claims are possible.

Hood River County

Distribution. Similar to claims filed in the Willamette Valley, claims in Hood River County are also bounded in the Hood River Valley by the large amount of public land in Hood River County. These claims are distributed up and down the valley, but there is also a large area of contiguous parcels with Measure 37 claims southeast of the City of Hood River (Figure 10). This dispersion is true for both large and small acreage claims. The vast majority of these claims

(75 percent) are on exclusive farm use zoned land as a result of being contained to the valley where the highest value agricultural soils are (Figure 11).

Impacts on soils. The impact of Measure 37 claims on Class 1 and Class 2 soils in Hood River County is particularly significant (Figure 8). Hood River County has only 395 acres of Class 1 soils that are highly concentrated on orchard land southeast of the city of Hood River where a number of Measure 37 claims are clustered. One hundred and eighty-eight acres or (48 percent) of these soils are under claim. Class 2 soils are also significantly impacted with 22 percent claimed. Again, much of this soil is currently orchard land.

Requested land use. As mentioned previously, 70 percent of claims for Hood River County in the database do not specify or make clear the desired land division by the claimant (Figure 10). This is true for many of the large claims, especially those filed close to the two-year December 4th, 2006 deadline. This is because the information gathered for many of these claims was from a table of Measure 37 claims filed in the county from the Hood River County Planning Department that did not include the desired land division action.

Unique conditions in Hood River County. The Hood River area, with its unique geographic location at the eastern entry of the Columbia River Gorge and at the foot of Mt. Hood, is nationally known for its proximity to world-class windsurfing, hiking, and skiing. In addition, its topography lends itself to spectacular views of the Mt. Hood, Mt. Adams, and the Columbia River Gorge all of which are largely protected public land.

Because of the incomplete information in the Measure 37 database regarding the desired land uses of claimants, the potential impacts cannot be fully described. However, there is little doubt about the desirability of residential sites for permanent, vacation, and recreational inhabitants. Given the proximity to public land and the likelihood of a similar property sales-

date pattern to that demonstrated in Washington County, Hood River County claims may also experience a “greenbelt” effect created by farm and forest lands purchased after the enactment of Senate Bill 100 (or other regulation) that cannot be subdivided, that may enhance the likelihood of development of Measure 37 claims. Much of this land consists of prime soils that are currently under orchard cultivation and would be permanently lost if developed.

The resulting geography of privately held farm and forest land that is punctuated with leapfrogging subdivisions is one that questions both the economic viability of agricultural activities remaining in the area after Measure 37 development occurs and the inequities relating to farm and forest landowners who do not have the same unregulated right to subdivide.

Concluding Comments

Oregon landowners have requested compensation or waiver from regulations for over 750,000 acres of land in Oregon. Most of this land is currently resource land, and most of the claims say they are considering residential development. These 750,000 acres represent *potential* development. A number of factors could feasibly prevent these claims from being developed as their claimants have proposed. These factors include the market for land, the availability of water and infrastructure, the requirements of development permits, and the uncertainty caused by the current lack of transferability of waivers under Measure 37.⁴

We do know that those claims that are most likely to be developed are those close to the UGB, where population pressure is greatest, and near public lands, where amenity value makes the land very desirable for residential development. Particularly in the Portland Metropolitan area, the drive to increase density within the UGB has limited the availability of larger homesites, and therefore created an unmet demand for larger parcels that feel rural but are accessible to urban amenities.

As we can see from the pattern of claims in Washington and Hood River Counties, development of these not-too-far-out parcels could have devastating effects for agriculture in some parts of the state. A case study analysis of selected Measure 37 claims in 2005 found that in many cases, residential development in an agricultural area is likely to cause conflicts between residential and agricultural uses and thereby affect the farmers' ability to earn a profit (Martin & Shriver, 2006). Although this occurs in many states in the nation, the irony of the way Measure 37 is playing out in Oregon is that farmers who have recently purchased their land and cannot obtain a Measure 37 waiver are still subject to the land use regulations even though the waiver of these regulations for others is negatively affecting their ability to farm.

We don't really know how Measure 37 claims affect the decisions of other landowners to file claims. If we knew the universe of those who are eligible for Measure 37 claims, we could examine the differences between claimants and nonclaimants. One likely scenario is that neighbors of claimants who are eligible to file a claim will opt to do so simply to preserve their option to develop. In the event that Measure 37 waivers become fully transferable, this will probably become much more evident as landowners file to secure rights that they can sell whenever they care to.

Has Measure 37 improved the fairness of the land use system in Oregon? Measure 37 restores to its claimants the right to use their land as they could have when they purchased their property.

But just as changes in the land use laws affected the use of Measure 37 claimants, these claims affect the intrinsic and economic value of neighbors' properties. These neighbors based their investment decisions on the legal framework in place at the time they purchased their properties. Farm neighbors of Measure 37 claimants who continue to farm may spend more and

more of their time addressing residential-agricultural conflicts—conflicts they expected to avoid when they purchased their property in an Exclusive Farm Use zone. If they find that their profitability is harmed by these conflicts, they will not have access to the options given the Measure 37 claimants.

Measure 37 was promoted with the idea that landowners should be compensated for the loss of the use of their land. But the measure provides neither a method for determining the extent of those losses nor a method for financing them. The city councils, county commissions, and state agencies making decisions on Measure 37 claims throughout the state are left with no option but to waive regulations for some classes while keeping them in place for others. Under Measure 37, Oregon's land use system is no longer based on state goals, or farm productivity, or effective planning, or resource conservation, or smart infrastructure investments. Instead of land zones, we now have time zones. Is that "fair?"

References

- Atiyey, V., Roberts, B., & Gray, J. D. (2007). *Measure 37 report and recommendations*.
- Bernard, C. H. a. W. R. B. (1989). Landowner chracteristics: A basis for locational decisions in the urban fringe. *American Journal of Agricultural Economics*(August).
- Beyers, W. B., & Nelson, P. B. (2000). Contemporary development forces in the nometropolitan west: New insights from rapidly growing communities. *Journal of Rural Studies*, 16, 459-474.
- Cervero, R. (2003). Road expanmsion, urban growth, and induced travel: A path analysis. *Journal of the American Planning Association*, 69, 145-163.
- Drozd, D. J., & Johnson, B. B. (2004). Dynamics of a rural land market experiencing farmland conversion to acreages: The case of saunders county, nebraska. *Land Economics*, 80(2), 294.
- Gardner, B. D. (1977). The economics of agricultural land preservation. *American Journal of Agricultural Economics*, 59(5), 1027.
- Irwin, E. G. (2002). The effects of open space on residential property values. *Land Economics*, 78(4), 465.
- Jaeger, B. (2006). The effects of land use regulations on property values. *Environmental Law*, 36, 105-130.
- Lynch, L., & Lovell, S. J. (2003). Combining spatial and survey data to explain participation in agricultural land preservation programs. *Land Economics*, 79(2), 259.
- Martin, S. A., & Shriver, K. (2006). *Documenting the impact of Measure 37: Selected case studies*. Portland, Oregon: Portland State University, Institute of Portland Metropolitan Studies.
- Oregon Administrative Rule. 1994. 660-0330120(B).
http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_033.html
- Palins withdraw, refile m37 claim. (Dece,ber 1, 2006). *Central Oregonian*.
- Roe, B., Irwin, E. G., & Morrow-Jones, H. A. (2004). The effects of farmland, farmland preservation, and other neighborhood amenities on housing values and residential growth. *Land Economics*, 80(1), 55.
- State of Oregon, S. o. S. (2003). Measure requiring compensation for regulations taking value of property: Oregon Secretary of State's Office.

Author Note

We are grateful for support for this project from Gray Family Fund at the Oregon Community Foundation. The Foundation's staff and Mr. Gray have provided many helpful suggestions throughout the process. Any remaining errors are our own.

Endnotes

1. Katie Shriver worked for the Institute of Portland Metropolitan Studies at the beginning of this project but is now with the Oregon Community Foundation.
2. There is much debate over whether waivers must allow a landowner to develop as he could when he first acquired his property, or whether the waiver must only allow the landowner sufficient development to compensate for the documented value of the loss. A recent set of recommendations to the legislature from former Governors Atiyeh and Roberts and John Gray to the legislature (Atiyeh *et al.*, 2007) summarizes these issues. A recent paper by Bill Jaeger offers a general discussion of compensation valuation (Jaeger, 2006).
3. Although Measure 37 allows local governments to adopt a claims processing procedure, it states that these procedures cannot be a prerequisite to filing a claim. This provision has limited local governments' ability to collect data and processing fees.
4. An interpretation by the Oregon Attorney General has states that waivers under Measure 37 are not transferable to a new owner. However, the transferability issue has been and is still the subject of a number of court cases. Generally, the courts have held that Measure 37 waivers are only transferable after the waiver has been vested, i.e. a development permit has been approved and some level of development has occurred.

Table 1. Key Variables Available on the Measure 37 Database

Inconsistency in claim forms and processes among jurisdictions has challenged our ability to collect consistent data for all claims.

Variable	Description	Valid Observations	
		Number	Percent
Jurisdiction type	Jurisdiction with which claim was filed (can be more than 1, e.g., county and state)	7563	100
Date of Demand	Date demand filed with each jurisdiction - County	4774	100
	State	3044	97
City	City where claim is located	7563	100
County	County where claim is located	7563	100
Claim size (acres)	Acres of claim	7294	96
Current zoning	Current zoning of land	5416	72
Type of land division	Partition, subdivision, other, or none	4544	60
Number of lots requested	Where land division is requested, number of lots requested	3184	42
Type of Development requested	Commercial, residential, etc.	3936	52
Compensation demanded	Dollar amount demanded	5064	67
Taxlot ID	Geographical information allowing the mapping of the claim	7164	95

Table 2. Claims, Acreage, and Claim Density by County

Although the total claim density is low overall, in some counties such as Hood River and Washington, claim density is very high.

County	Claims	Claim Acres	Claim area, % private land area	County	Claims	Claim Acres	Claim area, % private land area
Baker	139	56,945	4.42	Lane	412	34,857	2.89
Benton	140	11,765	3.57	Lincoln	198	43,314	10.44
Clackamas	1049	33,121	5.84	Linn	494	39,927	4.45
Clatsop	109	5,180	1.43	Malheur	13	976	0.07
Columbia	182	10,673	2.71	Marion	489	24,836	4.98
Coos	230	38,185	5.54	Morrow	0	0	0.00
Crook	66	41,349	4.29	Multnomah	187	4,024	2.09
Curry	117	22,873	6.61	Polk	270	18,803	4.45
Deschutes	185	15,248	3.25	Sherman	0	0	0.00
Douglas	258	17,479	1.16	Tillamook	88	12,710	5.28
Gilliam	1	7	0.00	Umatilla	47	29,302	1.87
Grant	16	6,725	0.55	Union	62	20,054	2.03
Harney	1	40	0.00	Wallowa	31	4,748	0.55
Hood River	233	13,786	11.34	Wasco	49	15,608	1.71
Jackson	574	59,406	6.85	Washington	902	64,246	16.11
Jefferson	138	26,427	4.69	Wheeler	2	1,608	0.21
Josephine	319	17,396	5.80	Yamhill	454	36,447	9.50
Klamath	103	21,248	1.27	Total	7563	750,530	2.69
Lake	5	1,217	0.09				

Table 3. Claims and claim size by region

The size of claims varies by region, with the smallest claims in the Willamette Valley and the largest in Eastern Oregon.

Region	Claims (N)	Total Acres	Size of Claim		
			Maximum	Average	Median
NW/Willamette Valley**	4812	292,485	14,779	62	26
Coast	742	122,262	6,759	167	50
Southern	1254	115,528	6,646	100	37
Central	438	98,632	15,464	229	57
Eastern	317	121,622	16,078	412	119
All Claims	7563	750,529	16,078	103	33

Table 4. Claims and Acreage by Current Zoning

The majority of claim acreage is on land currently zoned for farm or forest use.

Current Zoning	Claims	Acres	Percent Claims	Percent Acres
Unknown	2,147	250,650	28.4%	33.4%
Exclusive Farm Use*	2,771	305,986	36.6%	40.8%
Farm/Forest Use	805	36,563	10.6%	4.9%
Forest Use	1,004	145,399	13.3%	19.4%
Residential	687	8,329	9.1%	1.1%
Industrial	28	256	0.4%	0.0%
Mixed Use	9	80	0.1%	0.0%
Open Space	21	770	0.3%	0.1%
Commercial	41	184	0.5%	0.0%
All other	50	2,313	0.7%	0.3%
All Claims	7,563	750,529	100.0%	100%

**Includes claims that have multiple zonings including EFU.*

Table 5. Pearson Correlation Coefficients with County-Level Claim Density

Only population growth and farmer occupations are correlated with county-level claim density.

Variable	Hypothesis		Correlation
	Sign	Explanation	
Population growth, 1990 to 2006	+	Higher recent growth increases pressure to sell	.385*
Population growth 1970 to 2006	+	Same as above	.591**
Average age of farmer	+	Older farmers are more likely to want to sell so they can retire	-.236
Change in value of production from 1997 to 2002	-	Where farming is healthy, people are less likely to sell	.213
Percent of farms with net losses, 2002	+	Where farms are losing money, people are more likely to sell	.260
Percent acreage on farms operated by full owners	-	Full owners are less likely to sell	.273
Percent of acreage on farms where operators' primary occupation is farming	-	Full time farmers are less likely to sell	-.529**

* indicates correlation was significant at the .05 level (2 tail)

** indicates correlation was significant at the .01 level (2 tail)

Table 6. Pearson Correlation Coefficients with County-Level EFU claim density

Examining claim density for EFU claims only strengthened the correlation with farm occupation, but the age of the farmer was negatively correlated with claim density.

Variable	Hypothesis		Correlation
	Sign	Explanation	
Average age of farmer	+	Older farmers are more likely to want to sell so they can retire	-.453**
Change in value of production from 1997 to 2002	-	Where farming is healthy, people are less likely to sell	.295
Percent of farms with net losses, 2002	+	Where farms are losing money, people are more likely to sell	.221
Percent acreage on farms operated by full owners	-	Full owners are less likely to sell	.317
Percent of acreage on farms where operators' primary occupation is farming	-	Full time farmers are less likely to sell	-.598**

Figure 1. Statewide Measure 37 Claims: Number of Claims per Township

(see attached maps)

Figure 2. Statewide measure 37 Claims: Percent of Acreage of Township

(see attached maps)

Figure 3. Number of Claims and Percent Acres by Claim Size

While a very small share of the claims are for tracts of land of larger than 1000 acres, these very large claims comprise one-third of the total claim acreage.

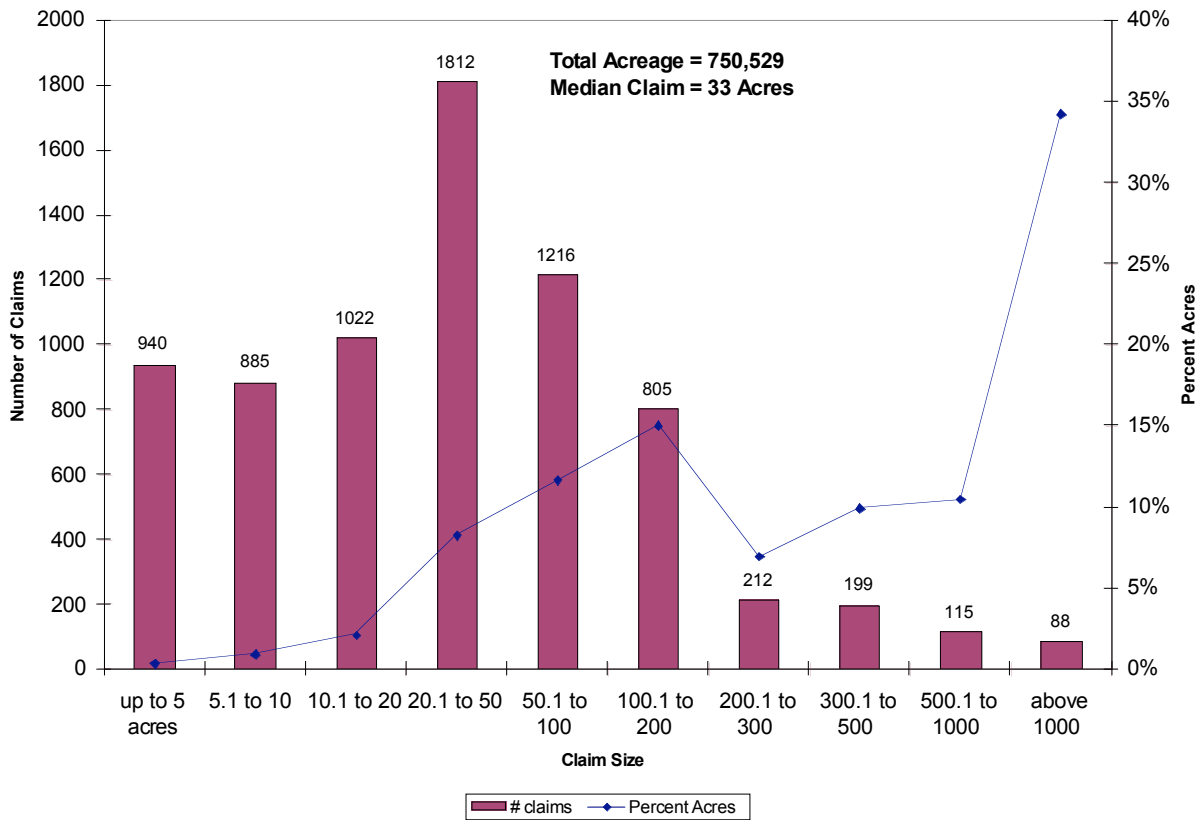


Figure 4. Total lots requested and Percent Lots by Size

About 20 percent of the total number of lots requested for very large residential developments of over 500 lots.

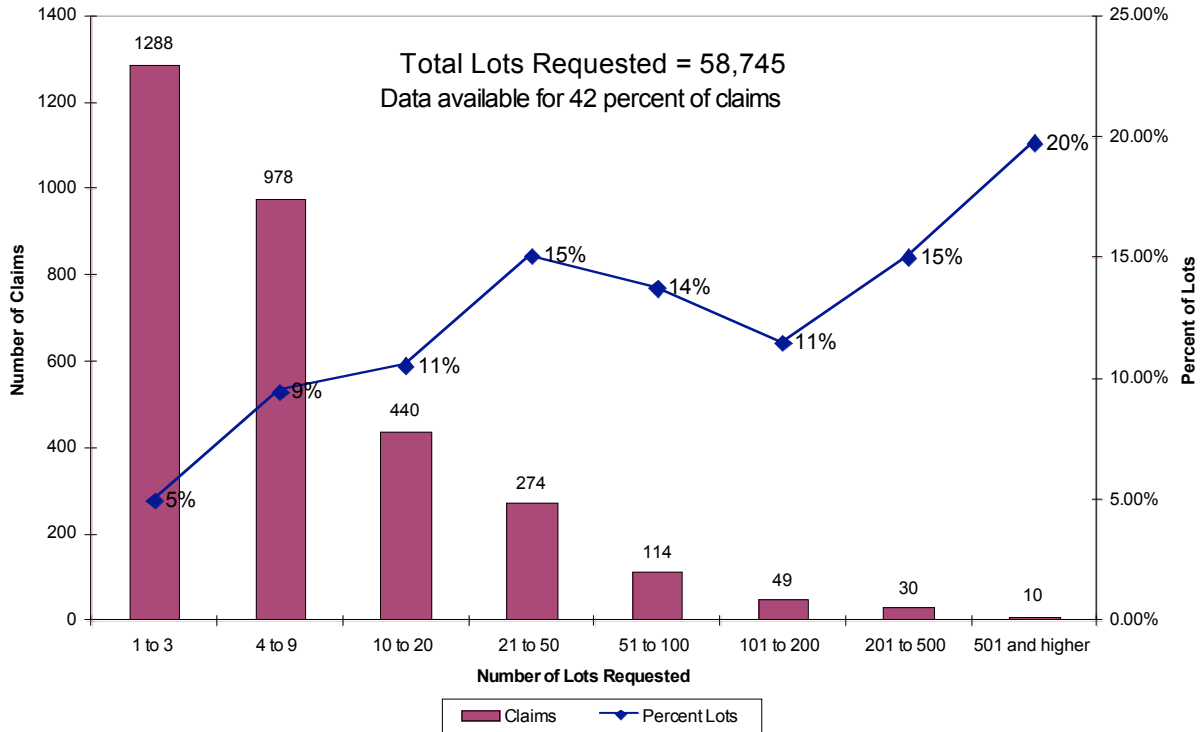
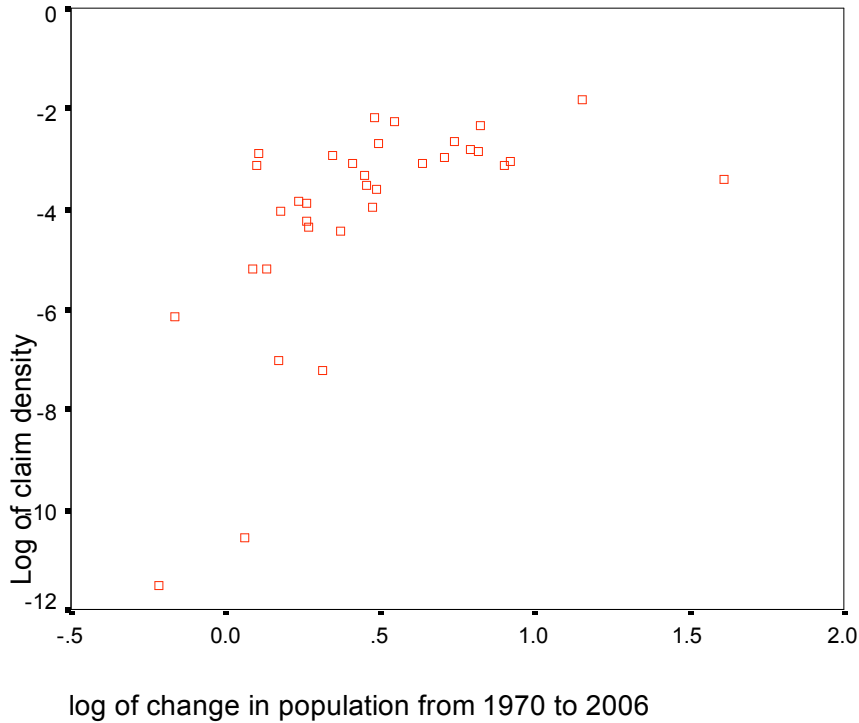


Figure 5. Scatterplot: log of population growth from 1970 to 2006 by log of claim density

A ten percent change in the population growth rate from 1970 to 2006 is associated with a 5.9 percent increase in the density of claims at the county level.



$\rho = .591$

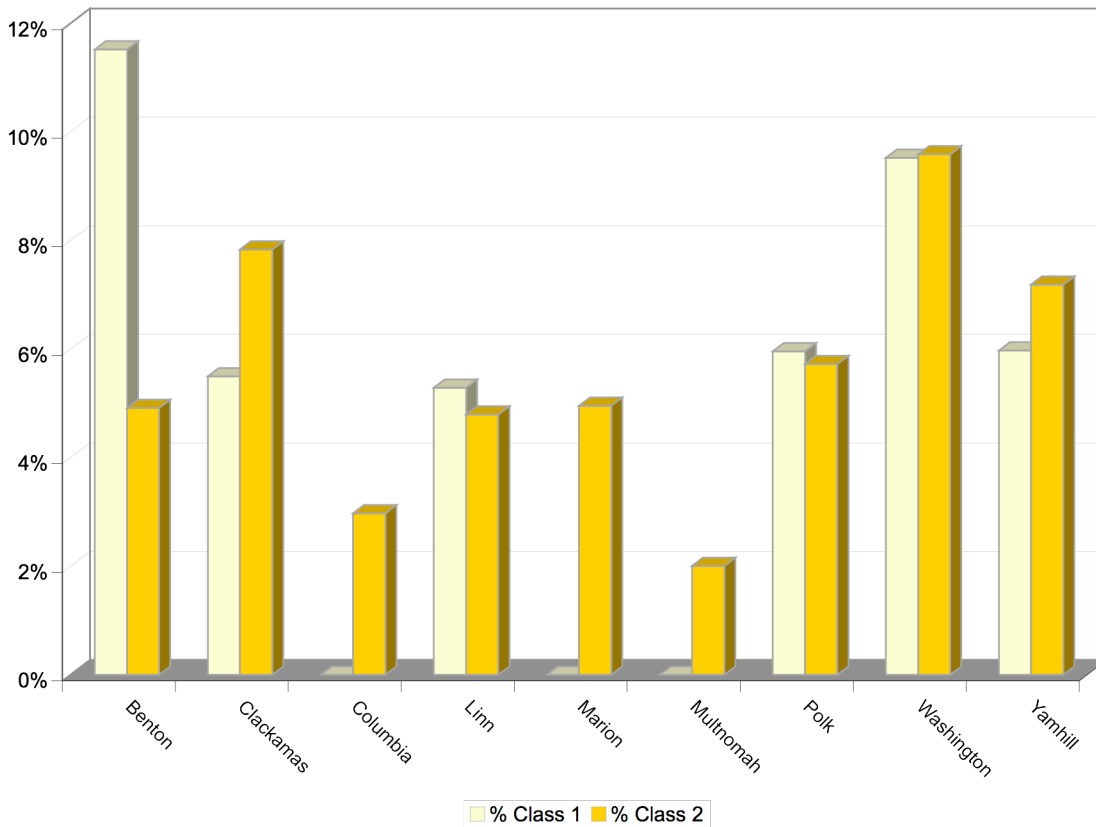
Figure 6. Willamette Valley Measure 37 Claims: Desired Action

(see attached map)

Figure 7: Willamette Valley Measure 37 Claims on Resource Lands

(see attached map)

Figure 8. Willamette Valley and Hood River M37 Claims: Percent and Total of Acres of NRCS Class 1 and Class 2 Soils Affected*



County	Class 1			Class 2		
	Total Acreage	M37 Acreage	Percent	Total acreage	M37 Acreage	Percent
Benton	9,019	1,039	12%	80,715	3,964	5%
Clackamas	6,933	381	5%	190,411	14,917	8%
Columbia	365	0	0%	37,006	1,099	3%
Douglas	15,727	409	3%	46,104	938	2%
Lane	35,489	1,231	3%	105,220	4,873	5%
Linn	25,383	1,341	5%	155,354	7,449	5%
Lincoln	0	0	n/a	17,250	2,027	12%
Marion	0	0	n/a	210,260	10,408	5%
Multnomah	971	0	0%	21,939	439	2%
Polk	7,213	430	6%	87,604	5,015	6%
Washington	5,351	510	10%	133,341	12,785	10%
Yamhill	7,820	467	6%	106,792	7,670	7%
Hood River	395	188	48%	13,075	2,890	22%

Figure 9. Washington County Measure 37 Claims: Claims and Land Sale Dates

(See attached map)

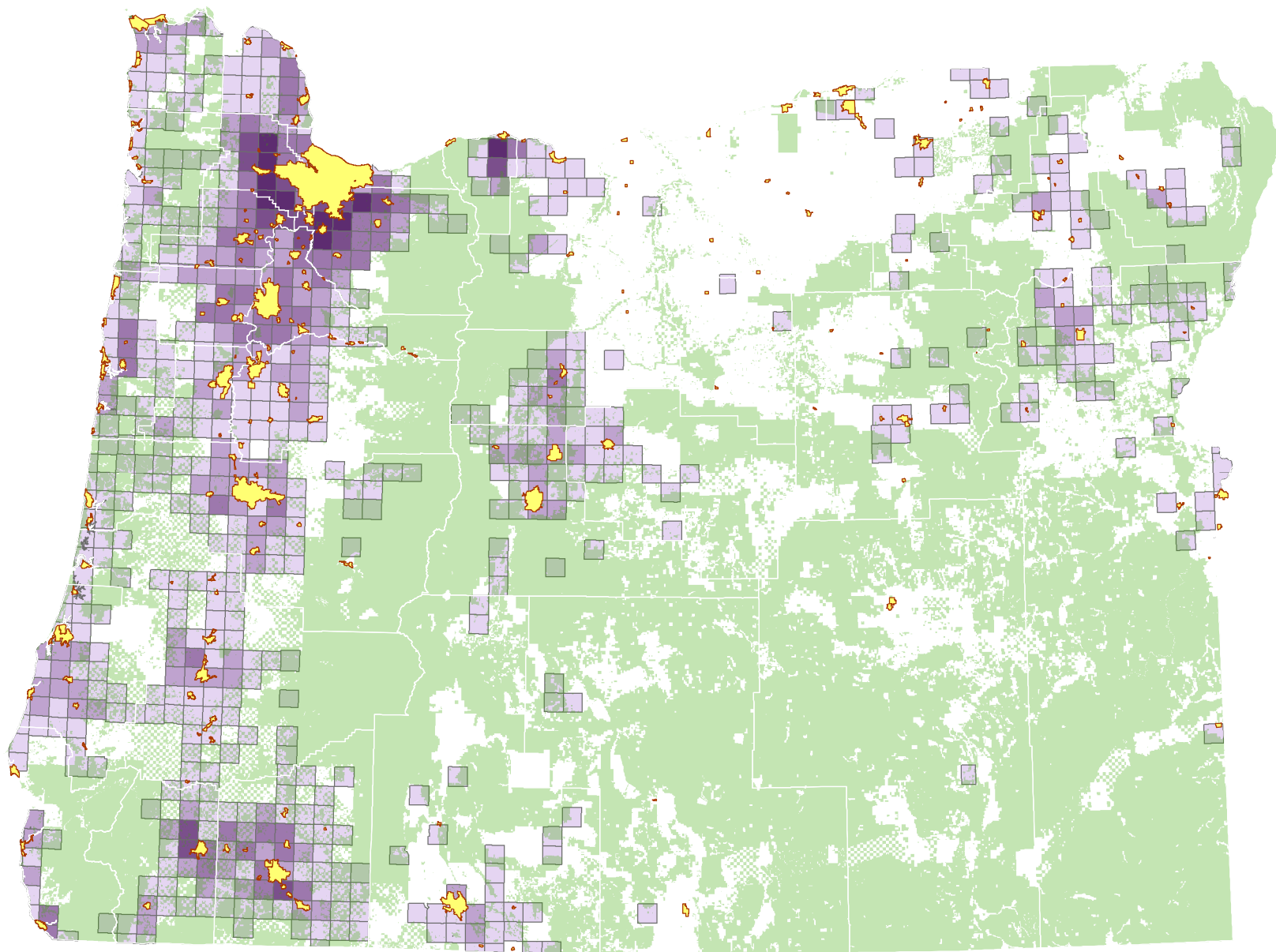
Figure 10. Hood River County Measure 37 Claims: Desired Action

(See attached map)

Figure 11: Hood River County Measure 37 Claims on Resource Land

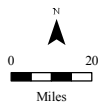
(See attached map)

Statewide Measure 37 Claims: Number of Claims per Township

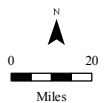
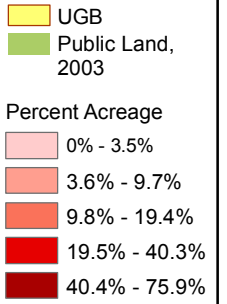
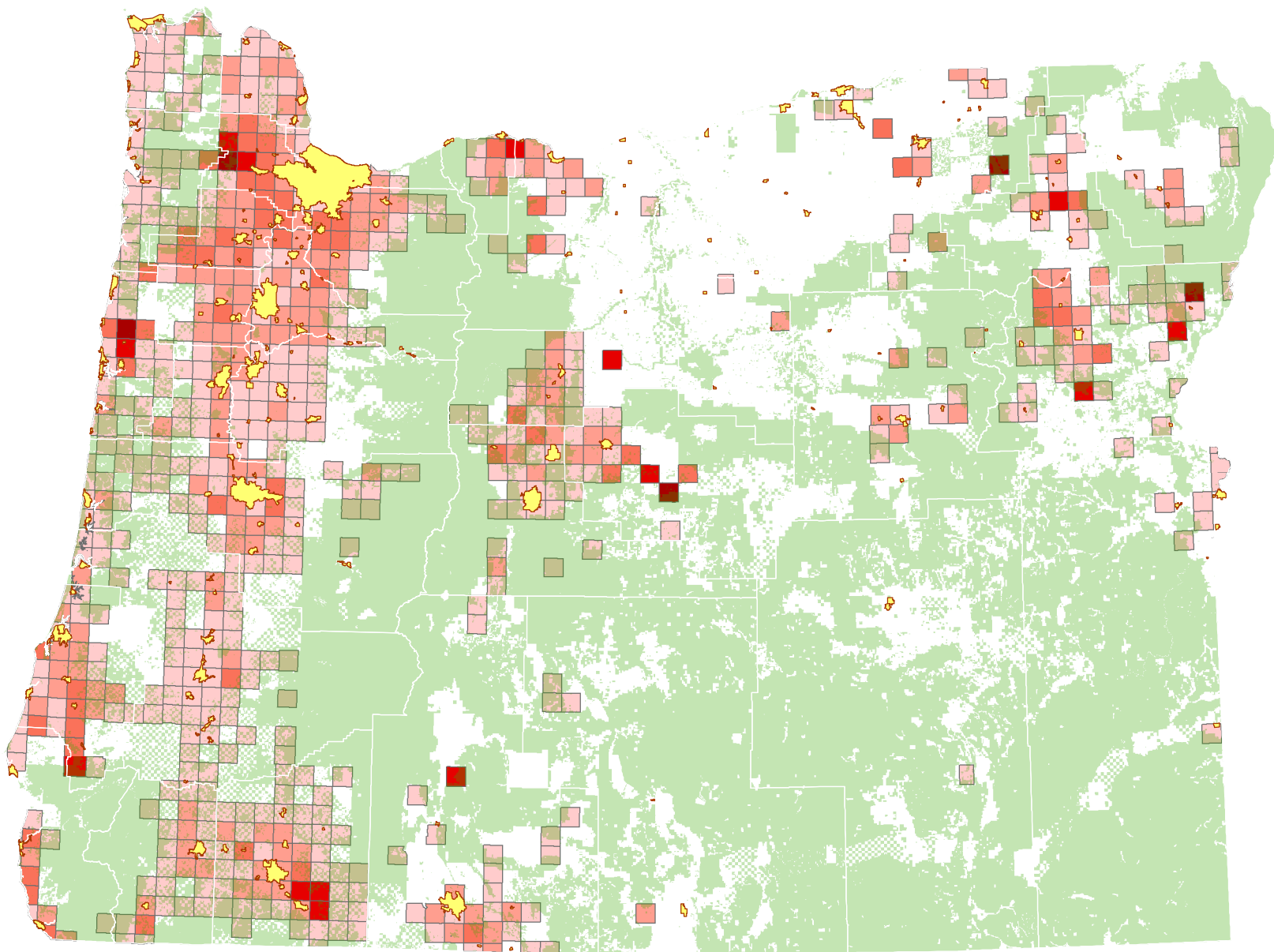


UGB
Public Land,
2003

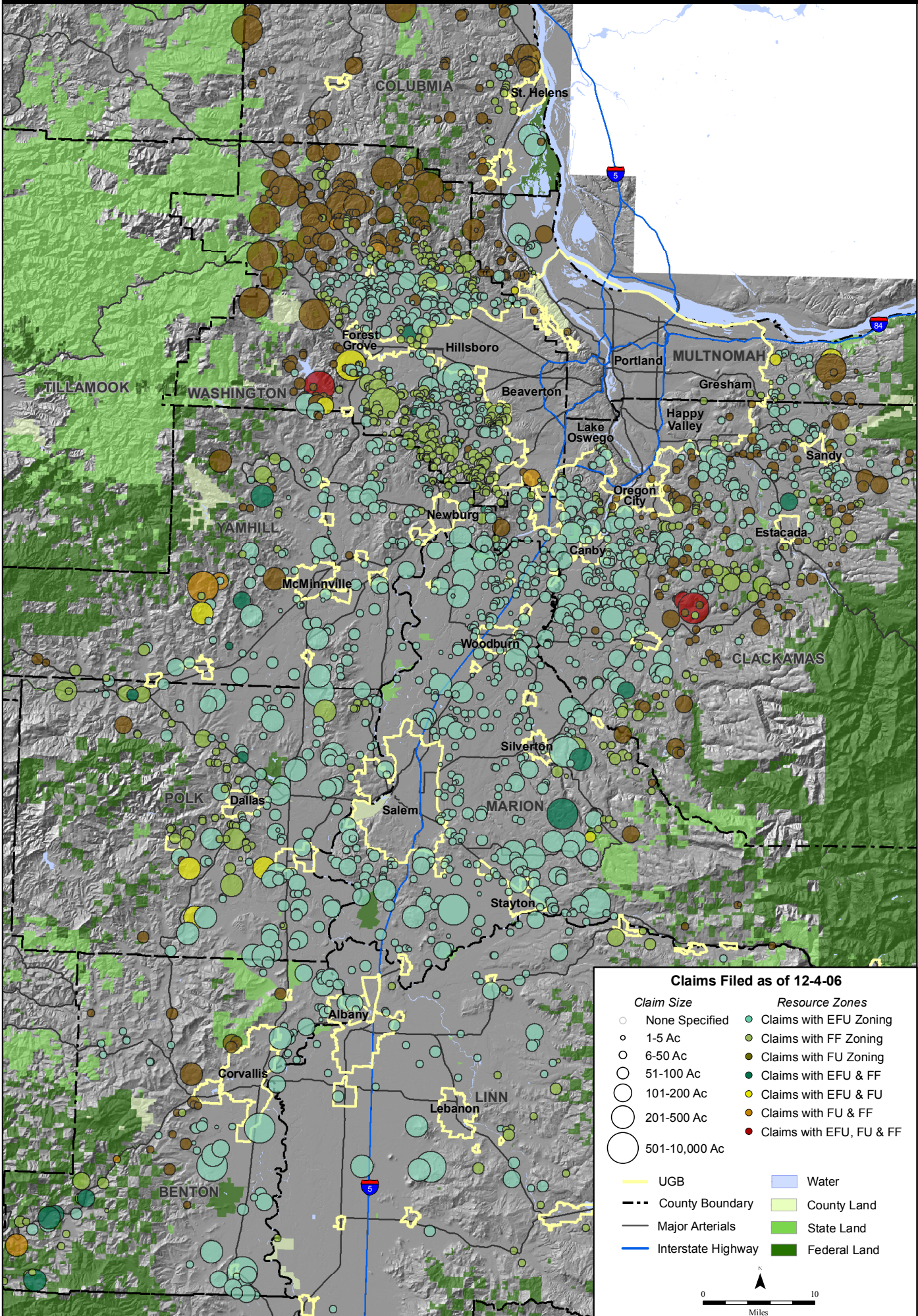
Number of Claims
1 - 8
9 - 22
23 - 43
44 - 74
75 - 119



Statewide Measure 37 Claims: Percent Acreage of Township

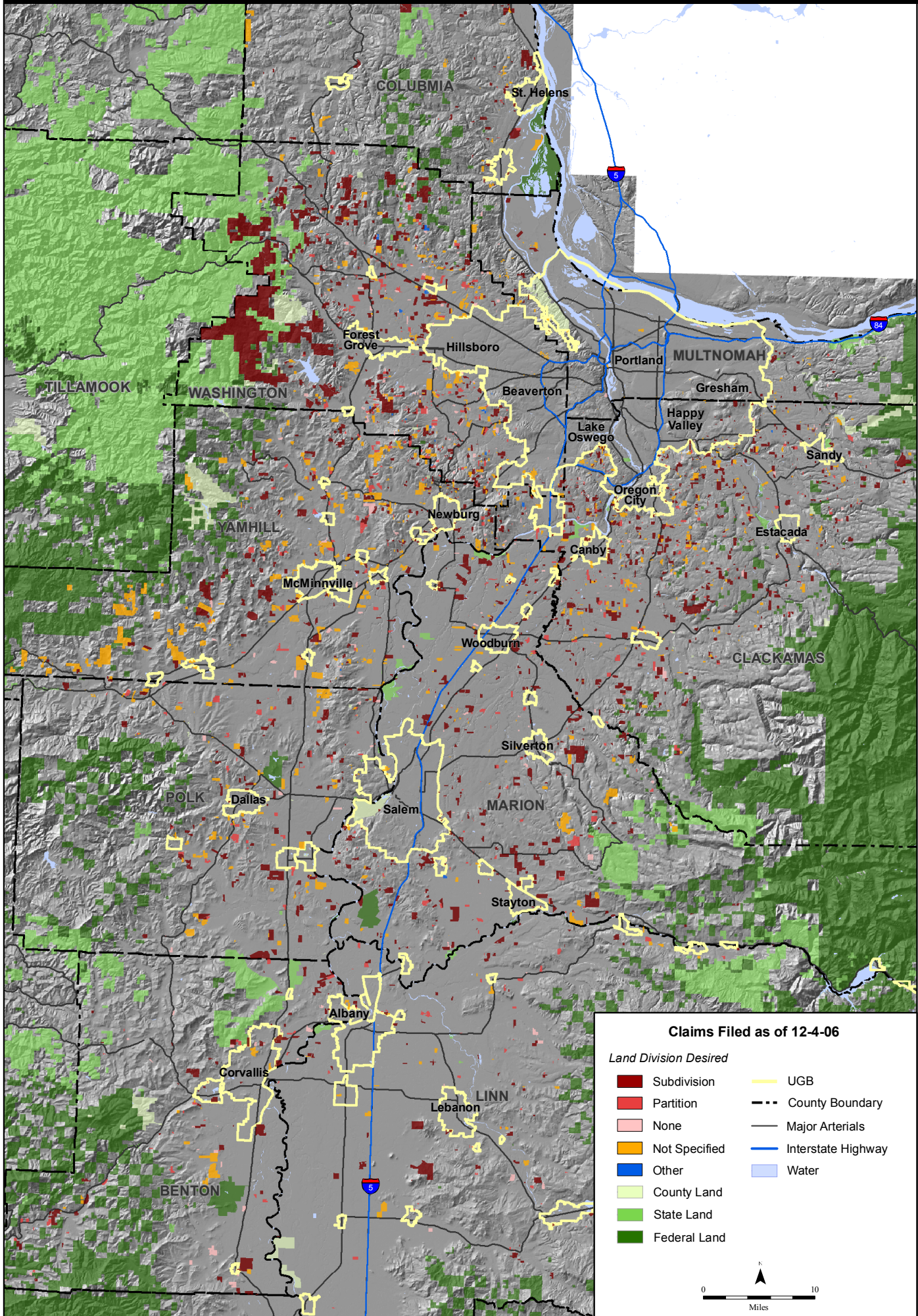


Willamette Valley Measure 37 Claims on Resource Land



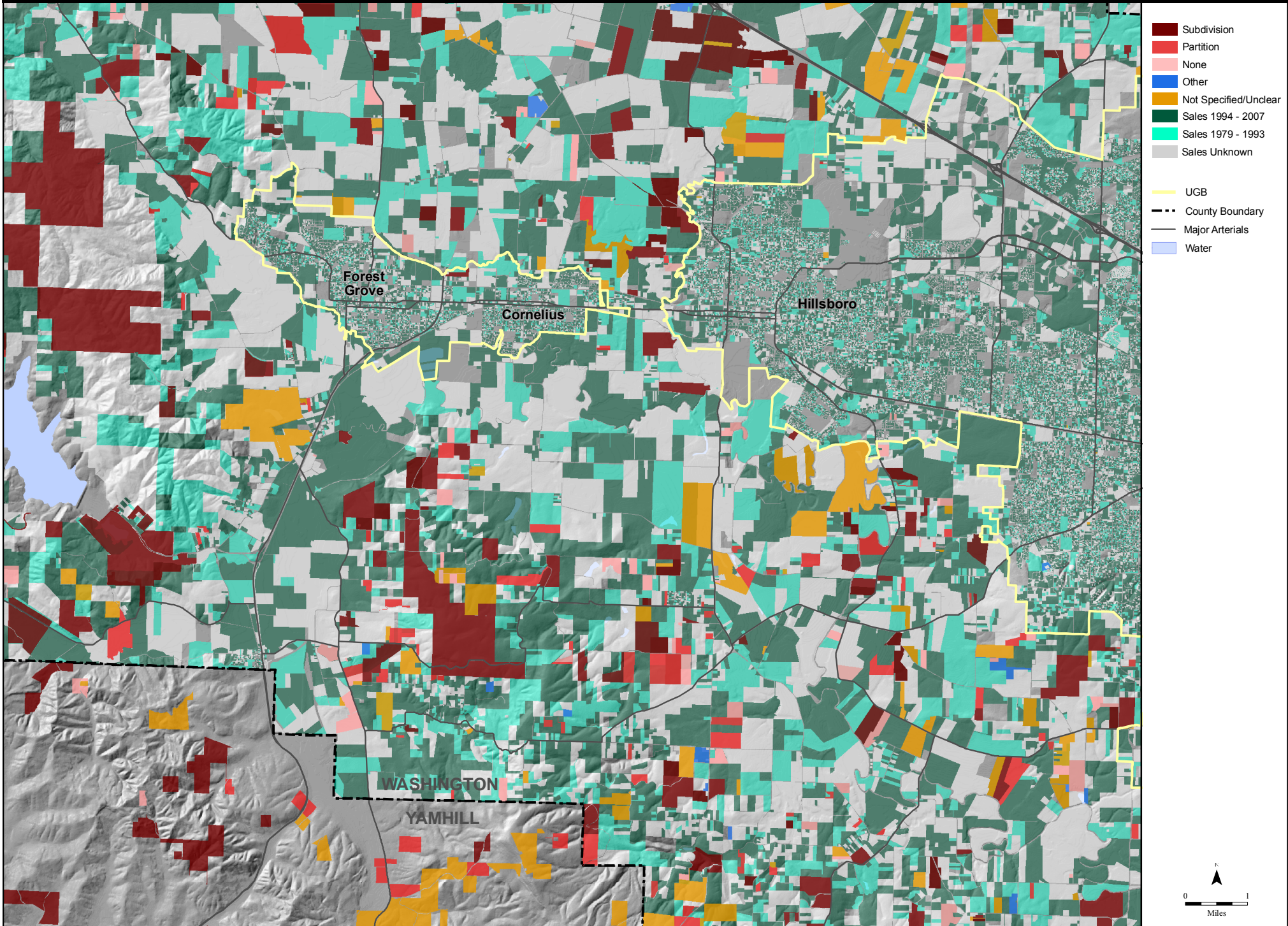
Sources: M37 Claims: Institute of Portland Metropolitan Studies; Boundaries, Roads and Water: Metro RLIS, US Census Bureau; UGBs, Tax Lots: Metro RLIS, Marion Co. and Yamhill Co.

Willamette Valley Measure 37 Claims: Desired Action

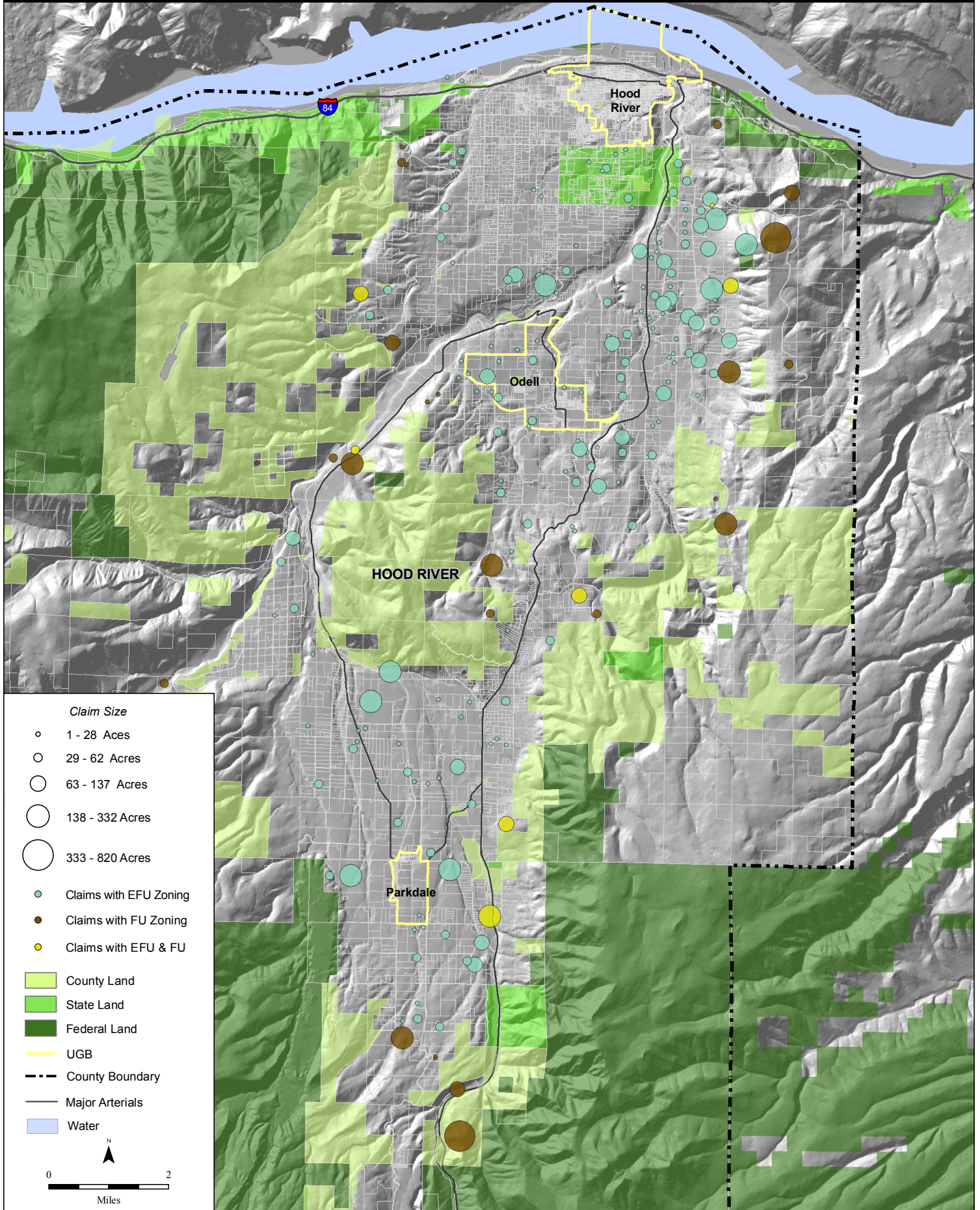


Sources: M37 Claims: Institute of Portland Metropolitan Studies; Boundaries, Roads and Water: Metro RLIS, US Census Bureau; UGBs, Tax Lots: Metro RLIS, Marion Co. and Yamhill Co.

Washington County Measure 37 Claims: Claims and Land Sale Dates



Hood River County Measure 37 Claims on Resource Land



Hood River County Measure 37 Claims: Desired Action

