



Oregon

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TO: Land Conservation and Development Commission
FROM: Judith Moore, Division Manager, Measure 49 Services
SUBJECT: **Agenda Item 6 – June 4-5, 2009, LCDC Meeting**

UPDATE ON MEASURE 49 IMPLEMENTATION

I. AGENDA ITEM SUMMARY

This item is a regular informational briefing regarding Measure 49 implementation. This report summarizes current trends for issuing preliminary evaluations and final orders. A summary of proposed 2009 legislative concepts that would amend Ballot Measure 49, which includes provisions that may make more claimants eligible for home site authorizations, is contained in the Legislative Update – Agenda Item 8.

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Additional information regarding Measure 49 is available on the DLCD Website at <http://www.oregon.gov/LCD/MEASURE49/index.shtml>

II. RECOMMENDED ACTION

This is an information-only report.

III. BACKGROUND

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 authorizes 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 authorizes 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. A rigorous requirement in applying for more than three home sites is the provision to 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.

IV. CLAIMS PROCESSING

A. Measure 49 Election Review Process

Measure 49 requires the department to review elections in the order received. The Department of Justice (DOJ) completes an initial ownership review of each claim to verify that the claimant owns the property, and when the claimant acquired the property. This is the first step in the analysis and resolution of an election. Once DOJ completes its review, an election receives completeness review by the department. Once an election has been reviewed for completeness, it is assigned to a claims analyst who will draft the department's preliminary evaluation of the election. The draft preliminary evaluation is forwarded to DOJ staff attorneys for review. Once the preliminary evaluation is deemed complete, it is mailed to the claimant, their agent where applicable, the county, neighbors of the subject property and any community planning organizations on file. Those recipients will have 28 days to submit comments in response to the preliminary evaluation, and any comments received will be forwarded to the claimant for their response. The claimant then has 21 days to submit their response to any comments before the department proceeds with preparation and issuance of a final order.

Given the many variables in processing any particular election, it is difficult to forecast when a final decision will be issued for any particular claimant.

B. Processing Status As Of May 15, 2009

As of May 15, 2009, the Department of Justice (DOJ) has completed 2,003 initial ownership reviews, and Measure 49 Services Division completeness specialists have completed 1,869 completeness reviews for Measure 49 Elections (claims). Measure 49 team leads have assigned 1,887 claims to the division's planning claims analysts, which include the team leads. The claims analysts have drafted 1,485 draft preliminary evaluations which have been forwarded to DOJ for review. The Department of Justice has returned to the department 1,259 draft preliminary evaluations for completion and issuance. The department has issued 1,114 preliminary evaluations, and 715 final orders.

1. Progress

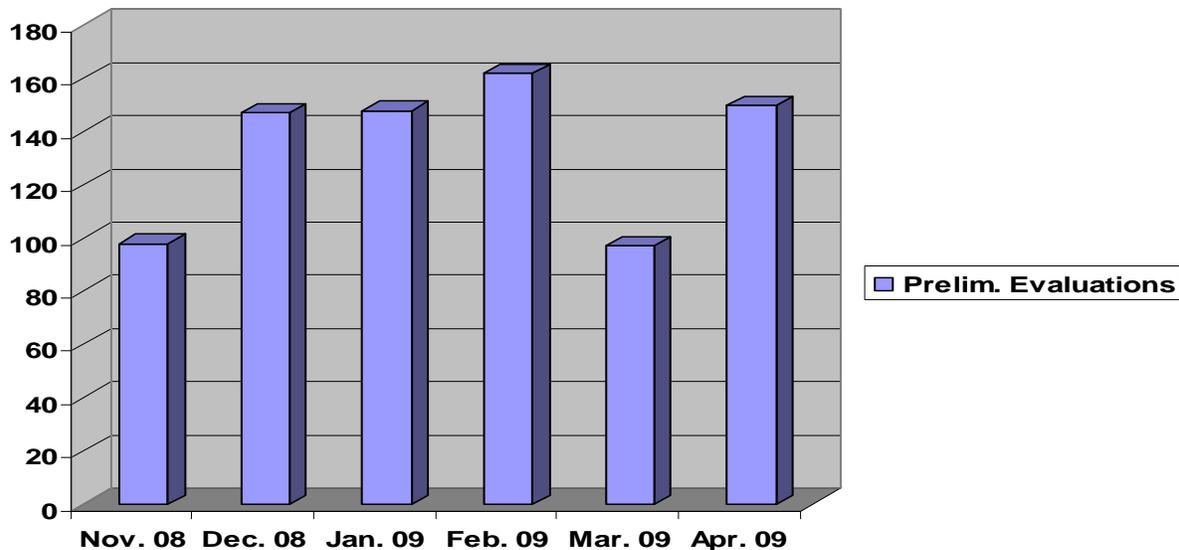
The following table provides a summary of Measure 49 implementation status and tasks:

Measure 49 Implementation Status and Tasks

Step	Task	Percent Complete
1	Confirm current owners of property	46
2	Determine owners' (claimant) property acquisition date	46
3	Determine ownership of surrounding property (for notice)	43
4	Confirm claim completeness	43
5	Evaluate the number of lots and dwellings owner permitted when property acquired	29
6	Draft preliminary evaluation	29
7	Mail preliminary evaluation to claimant, county, and neighbors for comment	26
8	Draft and mail final order	17

2. Trends

Over the last six months (November 2008 through April 2009), there has been an average of 134 preliminary evaluations mailed, with a high of 162 preliminary evaluations mailed in February 2009. The bar graph below illustrates that trend. Data are incomplete for May 2009.



The Measure 49 Services Division is continuing to work with the Department of Justice to examine ways to increase the number of Measure 49 claims processed.

V. LITIGATION

Most current litigation involves cases where the property owner has claimed a vested right to continue development started under Measure 37. There are approximately 25 active cases currently being litigated at the trial level that the state is involved in (down from 300 last year). The principal set of claims currently being litigated are cases where property owners assert their Measure 37 waivers constitute a contract that could not be nullified by the legislation or the Oregon voters.

VI. POST MEASURE 49 AUTHORIZATION LAND USE ACTIONS – ISSUES/STATUS

Counties have been submitting to the department notices of proposed land use actions that are a result of Measure 49 authorizations, and are adequately working with the department's County Communication and Compliance Coordinator, Steve Miller. Determination of legal lots of record still remains an issue for some counties. There have been a few situations where the legal lot status has an impact on the outcome of the department's authorizations; some of which have resulted in the department amending the final order to further clarify what the department authorized for a specific claim property.

VII. COMPENSATION AND CONSERVATION OMBUDSMAN

Carmel Bender Charland, the department's Compensation and Conservation Ombudsman, works with claimants concerned about the outcomes of their claims, claimants that are not eligible for relief under Measure 49, as well as claimants with unique circumstances that have been referred to her by the division, DOJ, legislators, and counties. She reviews the record of the claim and identifies issues for clarification and monitors the progress of these claims. She currently has 64 active inquiries in process.

In conjunction with the director's office and DOJ, Carmel is working through the final stages of drafting a policy and practice document for the ombudsman position which includes the scope of the ombudsman's role and process for interacting with the Measure 49 Services Division.