



Oregon

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April 9, 2009

TO: Land Conservation and Development Commission

FROM: Judith Moore, Division Manager, Measure 49 Services

SUBJECT: **Agenda Item 5 – April 17, 2009, LCDC Meeting**

UPDATE ON MEASURE 49 IMPLEMENTATION

I. AGENDA ITEM SUMMARY

This item is an informational briefing regarding Measure 49 implementation. The item will also include a staff presentation summarizing current trends for issuing preliminary evaluations and final orders, and a summary of proposed 2009 legislative concepts that would amend Ballot Measure 49, sponsored by Senator Prozanski. The legislative concepts may make more claimants eligible for home site authorizations. A summary of Senate Bill 945, which if passed would amend Measure 49, is located in Legislative Update – Agenda Item 6.

For information regarding this agenda item, contact: Judith Moore, Measure 49 Services Division Manager; 503-986-0043 or 503-373-0050, ext. 328; judith.moore@state.or.us

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. The department does not request that the commission take any action at the conclusion of the staff presentation. The information presented may result in consideration and possible future action by the commission.

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) upon meeting specific requirements set forth in Measure 49. 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 a claimant's election, which 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 would be issued for any particular claimant.

B. Processing Status As Of April 8, 2009

As of April 8, 2009, the Department of Justice (DOJ) has completed 1,701 initial ownership reviews, and Measure 49 Services Division Completeness Specialists have completed 1,420 completeness reviews for Measure 49 Elections (claims). Measure 49 Team Leads have assigned 1,528 claims to the division's Planning Claims Analysts which include the Team Leads. The Claims Analysts have drafted more than 1,153 preliminary evaluations which have been forwarded to DOJ for review. The Department of Justice has returned to the department 1,030 draft preliminary evaluations for completion and issuance. The department has issued 921

preliminary evaluations which include one for a section 7 (4 to 10 homes) claim, and 540 final orders.

The anticipated average number of new dwellings, based on final orders issued as of April 8, 2009 is less than two dwellings per final order. If that rate holds, the average expected total development authorized under Measure 49 would be less than 9,000 new dwellings. The department originally anticipated approximately 13,000 new dwellings.

1. Progress

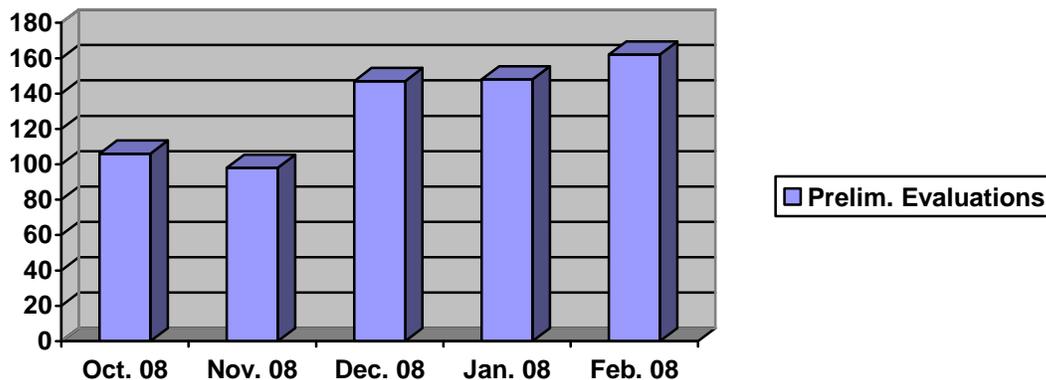
The following table provides a summary of Measure 49 implementation status and tasks:

Measure 49 Implementation Status and Tasks

| Step | Task | Percent Complete |
|------|---|------------------|
| 1 | Confirm current owners of property. | 38 |
| 2 | Determine owners' (claimant) property acquisition date. | 38 |
| 3 | Determine ownership of surrounding property (for notice). | 38 |
| 4 | Confirm claim completeness. | 31 |
| 5 | Evaluate the number of lots and dwellings owner permitted when property acquired. | 24 |
| 6 | Draft preliminary evaluation. | 22 |
| 7 | Mail preliminary evaluation to claimant, county, and neighbors for comment. | 20 |
| 8 | Review comments received. Mail comments to claimant for rebuttal. | 12 |
| 9 | Draft and mail final order. | 12 |

2. Trends

Over the last six months (October 2008 through March 27, 2009), there has been an average of 142 preliminary evaluations mailed, with a high of 162 preliminary evaluations mailed in February 2009. The bar graph below illustrates that trend. Data is incomplete for March 2009.



The Measure 49 Services Division is progressively increasing final orders and preliminary evaluations issued. In conjunction with the Department of Justice, the department continues to examine ways to increase the number of Measure 49 claims processed.

V. LITIGATION

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

It is still early in the process of claimants following through with applicable counties on their home site authorizations issued by the department. Nevertheless, the counties have been submitting to the department notices of proposed land use actions that are a result of Measure 49 authorizations, and seem to be adequately working with the department's County Communication and Compliance Coordinator, Steve Miller. What seems to be the biggest issue for the counties, however, is determination of legal lots of record. There are a few situations where the legal lot status has an impact on the outcome of the department's authorizations. Notices also vary greatly among the counties in terms of what is provided for review.

VII. COMPENSATION AND CONSERVATION OMBUDSMAN

On January 1, 2009, Carmel Bender Charland filled the vacant Compensation and Conservation Ombudsman position. Carmel 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 36 active inquiries in process.

The scope of the ombudsman role and process for interacting with the division is still being developed. Carmel is working with the division, director, and DOJ to finalize a policy and practice document for the position.