



Oregon

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July 17, 2009

TO: Land Conservation and Development Commission

FROM: Judith Moore, Division Manager, Measure 49 Services

SUBJECT: **Agenda Item 11 – July 29-31, 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 Final Report on 2009 Land Use Legislation – Agenda Item 7.

For information regarding this agenda item, contact: Judith Moore, Measure 49 Services Division Manager; 503-373-0050 ext. 373; 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.

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 July 10, 2009

As of July 10, 2009, the Department of Justice (DOJ) has completed 3,341 initial ownership reviews, and Measure 49 Services Division completeness specialists have completed 2,499 completeness reviews for Measure 49 Elections (claims). Measure 49 team leads have assigned 2,598 claims to the division's planning claims analysts. The claims analysts have drafted 1,954 draft preliminary evaluations which have been forwarded to DOJ for review. The Department of Justice has returned to the department 1,671 draft preliminary evaluations for completion and issuance. The department has issued 1,465 preliminary evaluations, and 939 final orders.

1. Progress

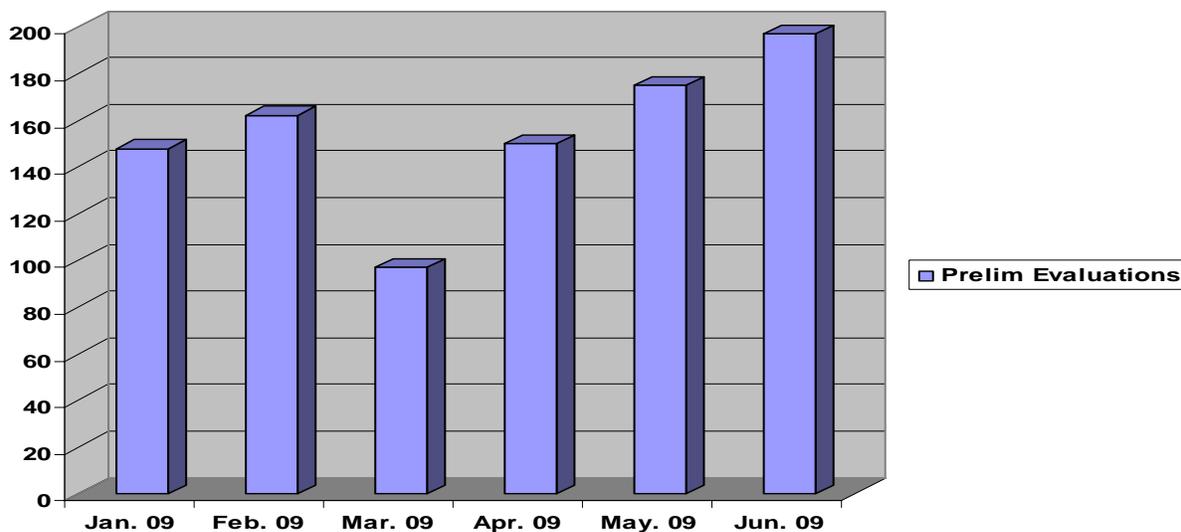
The following table provides a summary of Measure 49 implementation status and tasks:

Measure 49 Implementation Status and Tasks

Step	Task	Percent Complete
1	Confirm current owners of property and determine property acquisition date	77%
2	Determine ownership of surrounding property and confirm claim completeness	58%
3	Evaluate number of lots/dwellings permitted and draft preliminary evaluation	45%
4	Mail preliminary evaluation to claimant, county, and neighbors for comment	34%
5	Draft and mail final order	22%

2. Trends

Over the last six months (January 2009 through June 2009), there has been an average of 155 preliminary evaluations mailed, with a high of 197 preliminary evaluations mailed in June. The bar graph below illustrates that trend. Data are incomplete for July 2009.



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

V. LITIGATION

Six Measure 49 claimants have challenged their final orders, five in circuit court and one in the Court of Appeals; two of the circuit court cases may become moot with the passage of HB 3225. Most current litigation involves cases where the property owner has claimed a vested right to continue development started under Measure 37. The State is actively litigating approximately

20 circuit court cases where a claimant seeks a vested rights determination; one appeal to the Court of Appeals is pending. Another five circuit court cases involve claims that Measure 37 rights remain even after the voters' passage of Measure 49; six such cases are pending in the Court of Appeals.

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

Amendments to Measure 49 rules earlier this year require counties to submit to the department notices of proposed land use actions that are a result of Measure 49 authorizations (final orders). The department's County Communication and Compliance Coordinator, Steve Miller, reviews the notices received and provides comments to the counties in support of the proposed land use action when it complies with the authorization issued in the department's final order. Steve has been effectively working with counties in situations where it is unclear whether the proposed land use action complies with the terms of the final order and further clarification of the action is needed, and when modification of the proposal is necessary in order for the proposed land use action to comply with the final order.

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.

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.