



Eugene City Council

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www.eugene-or.gov

EUGENE CITY COUNCIL AGENDA

September 24, 2018

7:30 p.m. CITY COUNCIL MEETING
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

Meeting of September 24, 2018;
Her Honor Mayor Lucy Vinis Presiding

Councilors

Mike Clark, President
Greg Evans
Emily Semple
Jennifer Yeh

Betty Taylor, Vice President
Chris Pryor
Claire Syrett
Alan Zelenka

7:30 p.m. CITY COUNCIL MEETING
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

1. PUBLIC FORUM

2. CONSENT CALENDAR

A. Approval of City Council Minutes

- a. September 10, 2018, Work Session
- b. September 10, 2018, Meeting
- c. September 12, 2018, Work Session

B. Approval of Tentative Working Agenda

3. ACTION: A Resolution Granting a Measure 49 Claim and Waiving a Provision of Chapter 9 of the Eugene Code, 1971 for Property Located Adjacent to 70 West 24th Place, Eugene, Oregon (Assessor's Map 18-03-06-42, Tax Lot 2700)

The Eugene City Council welcomes your interest in these agenda items. This meeting location is wheelchair-accessible. For the hearing impaired, an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the receptionist at 541-682-5010. City Council meetings are telecast live on Metro Television, Comcast channel 21, and rebroadcast later in the week.

El consejo de la Ciudad de Eugene agradece su interés en estos asuntos de la agenda. El lugar de la reunión tiene acceso para sillas de ruedas. Se puede proveer a un intérprete para las personas con discapacidad auditiva si avisa con 48 horas de anticipación. También se puede proveer interpretación para español si avisa con 48 horas de anticipación. Para reservar estos servicios llame al 541-682-5010. Las reuniones del consejo de la ciudad se transmiten en vivo por Metro Television, Canal 21 de Comcast y son retransmitidas durante la semana.

For more information, contact the Council Coordinator at 541-682-5010,
or visit us online at ***www.eugene-or.gov***.

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Public Forum

Meeting Date: September 24, 2018
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 1
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This segment allows citizens the opportunity to express opinions and provide information to the council. Testimony presented during the Public Forum should be on City-related issues and should not address items which have already been heard by a Hearings Official or are on the present agenda as a public hearing item.

SUGGESTED MOTION

No action is required; this is an informational item only.

FOR MORE INFORMATION

Staff Contact: Beth Forrest
Telephone: 541-682-5882
Staff E-Mail: bforrest@eugene-or.gov

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Approval of City Council Minutes

Meeting Date: September 24, 2018
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2A
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This is a routine item to approve City Council minutes.

SUGGESTED MOTION

Move to approve the minutes for the September 10, 2018, Work Session and Meeting as well as the September 12, 2018, Work Session.

ATTACHMENTS

- A. September 10, 2018, Work Session
- B. September 10, 2018, Meeting
- C. September 12, 2018, Work Session

FOR MORE INFORMATION

Staff Contact: Beth Forrest
Telephone: 541-682-5882
Staff E-Mail: bforrest@eugene-or.gov

MINUTES

**Eugene City Council
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401**

**September 10, 2018
5:30 p.m.**

Councilors Present: Emily Semple, Betty Taylor, Alan Zelenka, Jennifer Yeh, Mike Clark, Claire Syrett, Greg Evans, Chris Pyror

Mayor Vinis opened the September 10, 2018, Work Session of the Eugene City Council.

1. Committee Reports and Items of Interest

Council Discussion

- In light of recent Boise, Idaho court case related to sleeping on the streets, Eugene should designate a place where people can legally lie down to sleep.
- Concerns expressed about predatory towing; interest in banning Styrofoam and general recycling concerns.
- Suggestion made to look at laws regulating short term rentals and nuisance issues specifically related to dry grass.
- Appreciation expressed to City Manager for issuing an administrative order that prohibits city employees from collecting data related to immigration status.
- League of Oregon Cities is meeting in Eugene from September 26-29 and the theme is focused on homelessness and affordable housing.
- City Manager will return to Council with policy options related to contract with Northwest Natural Gas, including input from Sustainability Commission.

2. WORK SESSION: Transportation System Plan Update

Transportation Planning Manager Rob Inerfeld gave a presentation about the Transportation System Plan Strategy, including background and next steps.

Council Discussion

- Would like to coordinate TSP planning with SDC methodology in order to, on a long-term basis, coordinate a wish list with what it will cost.
- Request made for more detail about the Urbanism Next study and what it will cover.
- Based on the current TSP plan, the City can get to a 40 percent reduction by 2035, though the goal is to get to 50 percent reduction by 2030. Concern expressed about not presenting a plan that would show how to meet that goal.
- Questions asked about how staff selected the list in terms of priorities, and if it was based on Council priorities.
- Support needed for some of these things in Salem; ensure that the City is coordinating its message and working with Ethan Nelson and IGR.
- Questions asked about the Franklin corridor design and timeline.
- The Land Conservation Development Commission is expected to amend some rules and potentially require new performance measures. Important to ensure it fits in with the City's timeline, and doesn't duplicate efforts.

- With regard to MovingAhead corridors , there is a need for federal funding and clarity on where the City is in terms of positioning for federal funding and mix of local, state, and federal money.
- Concern expressed that Eugene is behind and hasn't put forth a plan that meets current CRO goals.
- The CRO sets a goal for 50 percent fossil fuel reduction by 2030. Clarification requested on whether that is a legal imperative or a nice goal.
- Explanation requested of how the TSP would be approached if Council wanted to cut transportation SDCs in an effort to make housing more affordable.
- Instead of investing money on new corridors now, it would make sense to look more closely at enhanced mobility and waiting for technology to progress because it's rapidly changing.
- It's not clear that autonomous vehicles or Uber/Lyft lead to a reduction in greenhouse gases; they may actually be creating more.
- Consider adopting performance measures early before LCDC adopts its goals in order to track TSP goals as soon as possible.

3. **WORK SESSION: Improvement of Unimproved Roads**

City Engineer Mark Schoening gave a presentation that reviewed residential land supply and unimproved roads and discussed a framework for an ordinance and the practical application of an ordinance.

Council Discussion

- Confirmation that a funding stream would essentially be added to the CIP was requested.
- North Eugene has seen a large amount growth and density and there is much more development occurring than when the people originally bought their homes along these major corridors.
- Questions asked about why applicability is limited to arterials and collectors; consider expanding.
- Would like to explore definitions a little bit more, specifically how arterial and collector are defined and determined.
- Question asked about the trade-offs if council adopts this policy, including what its impacts are on what is already occurring that wouldn't be done.
- Concerns expressed about equity because historically people have paid for improvements that come with new development as part of their housing costs. Adopting this policy would mean that the next group of people would not have to pay for the same improvements?
- Question asked about how much it would be to fund all unimproved streets that are triggered by new development and what the number would be for just collectors.

MOTION: Councilor Clark, seconded by Councilor Taylor, moved to extend for 10 minutes. **PASSED 8:0**

Council Discussion

- The way the City has funded streets in the past has been inequitable.
- Question asked about a potential ordinance and what it might include from the list in the agenda packet.
- Concerns expressed about streets that would not qualify for improvement, for example 10 local streets surrounding a school even though it would promote safe routes to school and vision zero goals.
- Consider the fact that there are a high level of renters and landlords not wanting to pay to have the streets improved.
- Council has a lot more thinking to do to give direction on specifics.

- Request made for a prioritization scheme when this comes back to Council and options for how to address different priorities moving forward.
- Request made for costs and percentages related to the arterials and collectors portion and the potential projects that could meet the 20 single-family unit and 30 multi-family unit threshold and where they might be.

The meeting adjourned at 7:11 p.m.

Respectfully submitted,

Elena Domingo
Deputy City Recorder

Link to the webcast of this City Council meeting: [here](#).

MINUTES

**Eugene City Council
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401**

**September 10, 2018
7:30 p.m.**

Councilors Present: Emily Semple, Betty Taylor, Alan Zelenka, Jennifer Yeh, Mike Clark, Greg Evans, Claire Syrett, Chris Pyror

Mayor Vinis opened the September 10, 2018, meeting of the Eugene City Council.

1. PUBLIC FORUM

1. Laurie Powell – spoke about the Climate Recovery Ordinance, specifically related to the TSP.
2. John Clarenbach – shared concerns about the large increase of homeless on Mill Street.
3. Jerry Smith – talked about Eugene’s need for a public shelter.
4. David Igl – requested that council make a public statement regarding the renaming of Dunn Hall.
5. Nicholas Knight – spoke about the smoking ban and its effect on minimum wage workers.
6. John Thielking – talked about the Ninth Circuit Court opinion regarding sleeping and camping.
7. Justin MacDonald – shared concerns about public safety issues and unhoused individuals.
8. Phoenix Downer – spoke about homeless camping.
9. Gwendolyn Iris – talked about the Ninth Circuit Court opinion regarding sleeping and camping.
10. Janet Zoll – asked if the City of Eugene is in compliance with the Ninth Circuit Court ruling.
11. Michael Weed – shared concerns about City’s stance on Ninth Circuit Court ruling.
12. Kathy Walker – asked City Council to remove the camping ban.
13. Todd Boyle – asked council to focus public resources on low-income housing.
14. Ken Neubeck – expressed disappointment in the City’s response to the Ninth Circuit Court ruling.
15. Tracy Joscelyn – supported working hard towards housing individuals with winter coming.
16. Eric Jackson – spoke about moving forward after Ninth Circuit Court Decision.
17. Patrick – asked Council to think before acting with regard to unhoused individuals.
18. Daniel DeLay – spoke about the homeless epidemic.
19. Alex Reitz – talked about how the unhoused need a place to be.
20. Jerry Glass – shared opinion that it feels like war has been declared against the homeless.
21. Nicole St. Germain – asked council to think about kindness and humility towards the unhoused.

Council Discussion

- Thankful for all of the valuable input and believe that the Boise decision does affect Eugene.
- Want to be able to provide a safe place where people can lie down and legally go to sleep.

2. CONSENT CALENDAR

- A. Approval of City Council Minutes
- a. July 9, 2018, Meeting
 - b. July 9, 2018, Work Session
 - c. July 11, 2018, Work Session
 - d. July 16, 2018, Meeting
 - e. July 16, 2018, Work Session
 - f. July 18, 2018, Work Session
 - g. July 23, 2018, Meeting
 - h. July 23, 2018, Work Session
 - i. July 25, 2018, Work Session

- B. Approval of Tentative Working Agenda
- C. Approval of a Resolution Annexing Land to the City of Eugene (Assessor's Map 17-04-23-13, Tax Lot 109—located on 1127 and 1129 Maclay Drive)(City File: Jesse Brabham; A 18-2)
- D. Approval of a Resolution Annexing Land to the City of Eugene (Assessor's Map 17-03-28-40, Tax Lots 1401 and 1402—located on 1 and 2 Chevy Chase Lane). (Chase/LeCompte; A 18-4)

MOTION AND VOTE: Councilor Clark, seconded by Councilor Taylor, moved to approve the items on the Consent Calendar. **PASSED 8:0**

3. **PUBLIC HEARING:** An Ordinance Changing the Street Name of the Undeveloped Portion of Suzanne Way to Tennyson Avenue, as it Extends North From Crescent Avenue to Tennyson Avenue (City File SC 18-1)

Mayor Vinis opened the public hearing and asked if any councilors needed to disclose any bias, conflicts of interest, ex parte communications or abstentions.

Councilor Clark disclosed that before the meeting started he asked the person who is going to testify if she thought this was a good idea or not, but said he was capable of making an unbiased decision.

Associate Planner Nick Gioello introduced the Public Hearing topic.

Support

1. Teresa Bishow - spoke in support of the proposed street name change.

Neutral

No one spoke with a neutral stance on this issue.

Oppose

No one spoke in opposition to this issue.

Mayor Vinis closed the Public Hearing and the record.

4. **ACTION: A Resolution Granting a Measure 49 Claim and Waiving a Provision of Chapter 9 of the Eugene Code, 1971 for Property Located Adjacent to 70 West 24th Place, Eugene, Oregon (Assessor's Map 18-03-06-42, Tax Lot 2700)**

MOTION: Councilor Clark, seconded by Councilor Taylor, moved to adopt the Resolution Granting a Measure 49 Claim for Property Located adjacent to 70 West 24th Place, Eugene Oregon.

Assistant Planner Dan Lawler and Senior Planner Gabe Flock introduced the action item.

Council Discussion

- Questions asked about the 2014 code amendments and why the city added a provision that restricted the building size on alley access lots.
- Concern expressed that a decision made in this case would set a precedent for other Measure 49 cases, cases related to ADUs, or alley access lots.
- This situation seems to be an unintended consequence stemming from the 2014 code changes and the lot in question does seem to qualify for an exemption to the rule.
- Encourage re-opening the record to allow the public to make additional comments.

MOTION TO SUBSTITUTE AND VOTE: Councilor Semple, seconded by Councilor Taylor, moved to substitute for the current motion to re-open the record for the Measure 49 claim for additional written testimony until 5:00 p.m. Wednesday, September 12, 2018 and the claimant's rebuttal period until 5:00 p.m. Wednesday, September 19, 2018 and postpone council's vote to Monday September 24, 2018. **PASSED 6:2**, Councilors Syrett and Pryor opposed.

Council Discussion

- Request made for a better staff analysis of the evidence that was presented throughout the process and whether or not it was applicable to the decision.
- Question asked about the timeline to make the decision and whether opening the record would affect the deadline at all.

VOTE: PASSED 8:0

The meeting adjourned at 8:56 p.m.

Respectfully submitted,

Elena Domingo
Deputy City Recorder

Link to the webcast of this City Council meeting: [here](#).

MINUTES

**Eugene City Council
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401**

**September 12, 2018
12:00 p.m.**

Councilors Present: Emily Semple, Betty Taylor, Alan Zelenka, Jennifer Yeh, Mike Clark, Claire Syrett, Chris Pyror

Councilors Absent: Greg Evans

Mayor Vinis opened the September 12, 2018, Work Session of the Eugene City Council.

1. WORK SESSION: Marginalized Voices Report and Recommendations

Equity Accessibility Analyst Katie Babits, along with Bonnie Souza and Ib Hamide of the Human Rights Commission, gave a report about marginalized voices, specifically findings from the WeCU Work Group.

Council Discussion

- Appreciate the amount of thoughtful work that went into the report and presentation, and thankful to everyone that was involved organizing and participating.
- This work is helping us move towards the goal of helping the community understand each other's experiences and creating a safe and welcoming community.
- Believe it is important that the council take a position to support the recommendations put forth by the WeCU work group.
- Supportive of the recommendations, would like to dig deeper on the second recommendation and think about what message we should be sending when putting together a rapid response.
- Can use the communication opportunity to alter the unconscious actions or complicity that occurs, can help change the frame of reference.
- Most interested in the rapid response recommendation because it seems like something that would be cheap and easy, but want to know what it would look like or entail.
- Interested in hearing more about what a multicultural center looks like, what it would do, and how it would be operated.
- Question asked about a group that used to help people understand each other that presenter Ib Hamide had been a part of.
- If the City develops a cultural liaison position, that person should also act as a Sister City liaison.
- Consider using Ceremonial Matters portion of the council meeting as an opportunity to invite individuals to come and inform people about special holidays, etc.
- We neglect the relationships with the Native Americans who were here before all of us and we should learn more about their customs.
- Questions asked about what would constitute an "other threatening act" and when a response would be solicited.
- Challenged the Human Rights Commission members to think of that definition differently and think about how we can stand together more frequently on all fronts.
- Interested in other goals including the website and want to hear from the work group what they imagine having on the website.

- Designated physical spaces is something that could happen quickly, but consider what kind of spaces are they going to be, how they make people feel safe, and how it would be different from anything available now.
- Request made for a list of spaces that could be used now.
- Staff is moving forward on the initiative of recognizing 20 cultures by 2021, and it may be a shortcut to establishing a multi-cultural center.

2. WORK SESSION: City Council Process Session

City Manager's Office Division Manager Becky DeWitt and City Recorder Beth Forrest gave an overview of the process work session, including goals, information items, and options for consideration and discussion.

Council Discussion

- Concerned that a two-tiered work session request process would lead to one councilor feeling satisfied by the answers received, but others still wanting to have a dialogue.
- Would like to see the introduction of resolutions put into a formal policy like a work session poll because it's currently an ad-hoc process that can move forward without consensus.
- Work sessions are requested by a councilors because they want council to have a public discussion about an idea, not necessarily because there are questions.
- A conversation can be had about streamlining work sessions and how to get through them quicker once they have been scheduled.
- Questions asked about the two-hour rule and asking for staff help. If something is going to take a significant amount of time, then it should be put forth by the council as a body.
- Appreciate the responsiveness from staff on the mayor and council email list.
- A further screen for holding a work session is unnecessary as most work session requests are put forth to discuss creating or changing a policy and couldn't be answered with a simple document.
- It is awkward that you cannot respond to something someone has said on the spot and instead have to wait until your turn in the queue.
- "No surprises" policy continues to be relevant; try to reaffirm dedication to as much lead time as possible.
- Concerns expressed about when work sessions are added to the end of a meeting, when additional work sessions are added, and when time is extended during a meeting.
- Important to keep public hearings at 7:30 p.m. because that is what the public is used to.

MOTION AND VOTE: Councilor Clark, seconded by Councilor Taylor, moved to extend 10 minutes. **PASSED 7:0**

Council Discussion

- Clarification requested about why the cost estimate for a City-employed minutes recorder was so high.
- Frustration expressed that current minutes are available later than when needed and have so little information in them.
- Would like to have other options than re-watching the tape to get answers about meetings because it takes too long.
- Consider sharing draft minutes with Council once available, whether or not a packet or meeting is upcoming.
- Prefer minutes the way they used to be, which provided what people said with context and a sense of what was being talked about.
- It would be nice to have minutes that reflect a sense of council intent.
- Suggestion made to keyword indexing the webcast to find things easier within the video.

- Interested in having a system of technology at the council table that would enable meetings to go faster, with an electronic board and the ability to interact with it and move through the meetings more quickly.
- Used to have frequent minute corrections because it was easy to look through for your name and put forth corrections if needed.
- Written minutes will be obsolete in a few years; would rather spend time enhancing our current system and enabling searchable words for our webcast videos.

The meeting adjourned at 1:44 p.m.

Respectfully submitted,

Elena Domingo
Deputy City Recorder

Link to the webcast of this City Council meeting: [here](#).

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Approval of Tentative Working Agenda

Meeting Date: September 24, 2018
Department: City Manager's Office
www.eugene-or.gov

Agenda Item Number: 2B
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This is a routine item to approve City Council Tentative Working Agenda.

BACKGROUND

On July 31, 2000, the City Council held a process session and discussed the Operating Agreements. Section 2, notes in part that "The City Manager shall recommend monthly to the council which items should be placed on the council agenda. This recommendation shall be placed on the consent calendar at the regular City Council meetings (regular meetings are those meetings held on the second and fourth Monday of each month in the Council Chamber). If the recommendation contained in the consent calendar is approved, the items shall be brought before the council on a future agenda. If there are concerns about an item, the item may be pulled from the consent calendar at the request of any councilor or the Mayor. A vote shall occur to determine if the item should be included as future council business." Scheduling of this item is in accordance with the Council Operating Agreements.

RELATED CITY POLICIES

There are no policy issues related to this item.

COUNCIL OPTIONS

The council may choose to approve, amend or not approve the tentative agenda.

CITY MANAGER'S RECOMMENDATION

The City Manager has no recommendation on this item.

SUGGESTED MOTION

Move to approve the items on the Tentative Working Agenda.

ATTACHMENTS

A. Tentative Working Agenda

FOR MORE INFORMATION

Staff Contact: Beth Forrest

Telephone: 541-682-5882

Staff E-Mail: bforrest@eugene-or.gov



City Council Tentative Agenda

Updated September 20, 2018

Meeting Location: Harris Hall, 125 East 8th Avenue, unless otherwise noted

September 2018					
Date	Day	Time	Title	Length	Dept. Contact
24-Sep	Monday	5:30 pm	 Committee Reports and Items of Interest	45 mins	Mark Gissiner, PA
			 Police Auditor/Civilian Review Board Report (Work Session)		
			 Ordinance on Street Name Change, SC 18-1 Living Strong, LLC (Action)	30 mins	Nick Gioello, PDD
		7:30 pm	 Public Forum		Dan Lawler, PDD
 Resolution on Elise Moore Measure 49 Claim (M49 18-1) (Action)					
Expected absences for 9/24: none					
26-Sep	Wednesday	12 pm	 Community Safety System Update (Work Session)	90 mins	Kristie Hammitt, CS
Expected absences for 9/26: none					



Work Session



Action



Public Hearing



Public Forum



Consent Calendar



Committee Reports/Items of Interest



Ceremonial Matters



Pledge of Allegiance

October 2018						
Date	Day	Time	Title		Length	Dept. Contact
8-Oct	Monday	5:30 pm	 Committee Reports and Items of Interest	60 mins	Michael Kinnison, PDD Denny Braud, PDD	
			 URA Riverfront Update (Work Session and Possible Action)			
			 Downtown Riverfront Local Improvement District (Action)	30 mins	Mark Schoening, PW	
		7:30 pm	 Ceremonial Matters		Nick Gioello, PDD	
			 Public Forum			
			 Resolution Annexing Land on Filbert Avenue (Monkey Hero, LLC; A 18-3) (Consent Calendar)			
Expected absences for 10/8: none						
10-Oct	Wednesday	12 pm	 Joint City Council/Lane County Commission – Homeless Services Systems Analysis Interim Update (Work Session)	90 mins	Jason Dedrick, CS	
Expected absences for 10/10: none						
15-Oct	Monday	5:30 pm	 Transit Tomorrow Update (Work Session)	45 mins	Rob Inerfeld, PW	
			 Transportation SDC Methodology (Work Session)	45 mins	Dan Kaler, PW	
			7:30 pm	 TBD (Public Hearing)		
Expected absences for 10/15: none						
17-Oct	Wednesday	12 pm	 Police Commission Annual Report and Work Plan (Work Session)	45 mins	Jeremy Cleversey, EPD	
			 MUPTE Application for Obie Development (Work Session)	45 mins	Amanda Nobel, PDD	
Expected absences for 10/17: none						
22-Oct	Monday	5:30 pm	 Committee Reports and Items of Interest	90 mins	Kristie Hammitt, CS	
			 Community Safety System Update – Part 2 (Work Session)			
		7:30 pm	 Public Forum		Pam Berrian, CS	
			 Ordinance Granting Comcast Franchise Agreement (Public Hearing)			
Expected absences for 10/22: none						

24-Oct	Wednesday	12 pm	 Joint City Council/Planning Commission Meeting (Work Session)	90 mins	Robin Hostick, PDD
Expected absences for 10/24: none					
31-Oct	Wednesday	12 pm	 Climate Action Plan Update (Work Session)	45 mins	Chelsea Clinton, CS
			 River Road/Santa Clara N’hood Plan – Project Update (Work Session)	45 mins	Eric Brown, PDD
Expected absences for 10/31: Taylor, Pryor					

November 2018						
Date	Day	Time	Title		Length	Dept. Contact
13-Nov	Tuesday	5:30 pm	 Committee Reports and Items of Interest		45 mins	Will Dowdy, PDD
			 Town Square Update (Work Session)			
			 TBD (Work Session)			
		7:30 pm	 Pledge of Allegiance to the Flag		45 mins	Dan Lawler, PDD
 Public Forum						
 Resolution Annexing Land Located at 183 Ferndale Drive, (McGinley A 18-5) (Consent Calendar)						
			 Ordinance Granting Comcast Franchise Agreement (Action)			Pam Berrian, CS
Expected absences for 11/13: none						
14-Nov	Wednesday	12 pm	 Parks SDC Methodology (Work Session)		45 mins	TBD, PW
			 TBD (Work Session)			
Expected absences for 11/14: none						

19-Nov	Monday	5:30 pm	 Human Rights Commission and Sustainability Commission Work Plans (Work Session)	45 mins	Katie Babits, CS Chelsea Clinton, CS
			 TBD (Work Session)	45 mins	
		7:30 pm	 TBD (Public Hearing)		
Expected absences for 10/15: none					
26-Nov	Monday	5:30 pm	 Committee Reports and Items of Interest	45 mins	Jenessa Dragovich, PDD
			 Clear and Objective Housing Approval Criteria Update (Work Session)	45 mins	
			 TBD (Work Session)		
	7:30 pm	 Public Forum			
Expected absences for 11/26: none					
28-Nov	Wednesday	12 pm	 Recycling Update (Work Session)	45 mins	Michael Wisth, PDD
			 TBD (Work Session)	45 mins	
Expected absences for 11/28: none					

December 2018					
Date	Day	Time	Title	Length	Dept. Contact
10-Dec	Monday	5:30 pm	 Committee Reports and Items of Interest	90 mins	Mike Kinnison, PDD Anne Fifield, PDD
			 Housing Tools and Strategies (Work Session)		
		7:30 pm	 Public Forum		Finn Cronin, CS
			 Resolution Acknowledging Receipt of CAFR (Consent Calendar)		Jamie Garner, CS
			 Supplemental Budget (Public Hearing and Action)		Jamie Garner, CS
			 URA Supplemental Budget (Public Hearing and Action)		Finn Cronin, CS
			 URA-Resolution Acknowledging Receipt of URA Annual Financial Report (Action)		
<i>Expected absences for 12/10: none</i>					

12-Dec	Wednesday	12 pm	 Emergency Operations Center (Work Session)	45 mins	Randi Bowers-Payne, CS
			 TBD (Work Session)	45 mins	
Expected absences for 12/12: none					

Council Break: December 13 – January 3

January 2019						
Date	Day	Time	Title		Length	Dept. Contact
3-Jan	Thursday	5:30 pm	State of the City			
Expected absences for 1/3: none					Soreng Theater, Hult Center	
14-Jan	Monday	5:30 pm	 Committee Reports and Items of Interest			
			 TBD (Work Session)			
			 TBD (Work Session)			
		7:30 pm	 Public Forum			
Expected absences for 1/14: none						
16-Jan	Wednesday	12 pm	 TBD (Work Session)			
			 TBD (Work Session)			
Expected absences for 1/16: none						
22-Jan	Tuesday	5:30 pm	 TBD (Work Session)			
		7:30 pm	 TBD (Public Hearing)			
Expected absences for 1/22: none						
23-Mon	Wednesday	12 pm	 TBD (Work Session)	45 mins		
			 TBD (Work Session)	45 mins		
Expected absences for 1/23: none						
28-Jan	Monday	5:30 pm	 Committee Reports and Items of Interest			
			 TBD (Work Session)			
			 TBD (Work Session)			

		7:30 pm	 Public Forum		
<i>Expected absences for 1/28: none</i>					
30-Jan	Wednesday	12 pm	 TBD (Work Session)  TBD (Work Session)		
<i>Expected absences for 1/30: none</i>					

February 2019						
Date	Day	Time	Title		Length	Dept. Contact
11-Feb	Monday	5:30 pm	 Committee Reports and Items of Interest			
			 TBD (Work Session)			
			 TBD (Work Session)			
		7:30 pm	 Public Forum			
Expected absences for 2/11: none						
13-Feb	Wednesday	12 pm	 TBD (Work Session)			
			 TBD (Work Session)			
Expected absences for 2/13: none						
19-Feb	Tuesday	5:30 pm	 TBD (Work Session)			
		7:30 pm	 TBD (Public Hearing)			
Expected absences for 2/19: none						
20-Feb	Wednesday	12 pm	 TBD (Work Session)	45 mins		
			 TBD (Work Session)	45 mins		
Expected absences for 2/20: none						
25-Feb	Monday	5:30 pm	 Committee Reports and Items of Interest			
			 TBD (Work Session)			
			 TBD (Work Session)			

		7:30 pm	 Public Forum		
<i>Expected absences for 2/25: none</i>					
27-Feb	Wednesday	12 pm	 TBD (Work Session)  TBD (Work Session)		
<i>Expected absences for 2/27: none</i>					

March 2019					
Date	Day	Time	Title	Length	Dept. Contact
11-Mar	Monday	5:30 pm	 Committee Reports and Items of Interest  TBD (Work Session)  TBD (Work Session)		
		7:30 pm	 Public Forum		
<i>Expected absences for 3/11: none</i>					
13-Mar	Wednesday	12 pm	 TBD (Work Session)  TBD (Work Session)		
<i>Expected absences for 3/13: none</i>					

Council Break: March 14 – April 8

 Work Session	 Action	 Public Hearing	 Public Forum	 Consent Calendar
 Committee Reports/Items of Interest	 Ceremonial Matters	 Pledge of Allegiance		

Approved Work Session Polls to be Scheduled	Councilor	Date Approved
Hwy 99/Bethel Urban Renewal District	Evans	11/9/17
Home Energy Score Policy	Semple	3/9/18
Data Collection Policy/Protection of Individuals and Groups	Syrett	7/19/18
Follow-Up Work Sessions to be Scheduled		
\$1 Million Shelter		
Commercial Setbacks		
Inclusionary Zoning		

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Action: A Resolution Granting a Measure 49 Claim and Waiving a Provision of Chapter 9 of the Eugene Code, 1971 for Property Located Adjacent to 70 West 24th Place, Eugene, Oregon (Assessor's Map 18-03-06-42, Tax Lot 2700)

Meeting Date: September 24, 2018
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Dan Lawler
Contact Telephone Number: 541-682-5282

ISSUE STATEMENT

The City Council is scheduled to take action on a Measure 49 claim submitted by Elise Moore for the alleged reduction in fair market value to property located on a vacant lot adjacent to 70 West 24th Place, Eugene, Oregon. A vicinity map is provided as Attachment A.

BACKGROUND

In 2007, Oregon voters approved Measure 49 (codified as ORS 195.300-336), which grants a property owner of residentially zoned land located within an urban growth boundary the right to compensation or waiver of a regulation (at the option of the government) if the following five substantive requirements are met:

- The claimant owns title to the property.
- The regulation constitutes a "land use regulation" as defined in Measure 49 and it was enacted after January 1, 2007, but not more than five years before the date the claim was filed.
- The regulation "restrict[s] the residential use" of residentially zoned private property.
- The effect of the regulation reduces the fair market value of the property.
- The regulation does not fall within one of Measure 49's six exemptions.

The council must decide: 1) whether a Measure 49 claim meets all five requirements listed above, and 2) if the Measure 49 claim meets all five requirements, whether to compensate the claimant, or waive enforcement of the land use regulation.

This Measure 49 claim seeks waiver of a land use regulation, adopted in 2014 as part of the Single Family Code Amendments, that limits building size on alley access lots to 10 percent of the total lot size or 800 square feet, whichever is smaller. The property owner asserts that the land use regulation restricts the residential use of her property because it limits the size of a dwelling on her property to a maximum of 462 square feet and leaves her with no way to build the 1,200 square foot home she desires for the property. Prior to adoption of the regulation, the property owner could have built a home of at least 2,000 square feet. As a result, the property owner claims that the regulation restricts her residential use and reduces the fair market value of her property and she seeks compensation or waiver of the regulation.

A City Council public hearing on this Measure 49 claim was held on July 16, 2018. The claimant's attorney, Bill Kloos, testified in favor of granting the claim. No other testimony was received at the public hearing. Following the hearing, the council left the record open one week, until 5:00 p.m. on July 24, 2018, for submission of written testimony and provided the claimant an additional week, until 5:00 p.m. on July 31, 2018, to rebut evidence and arguments submitted.

At the council meeting on July 23, 2018, the council voted to extend the open record period until 5:00 p.m. on July 27, 2018, and to extend the claimant's rebuttal period until 5:00 p.m. on August 3, 2018. At the council meeting on September 10, 2018, the council voted to extend the open record period again until 5:00 p.m. on September 12, 2018, and to extend the claimant's rebuttal period until 5:00 p.m. on September 19, 2018.

All testimony and evidence received to date is available at <http://pdd.eugene-or.gov/LandUse/SearchApplicationDocuments?file=M49-18-0001>. Copies of materials received prior to the most recent open record period were previously provided to the City Council under separate cover. For ease of reference, materials submitted during the most recent open record period (September 10-19) are included as Attachment B.

Testimony received during the most recent open record period raised two primary issues:

- The argument that the council should deny the Measure 49 claim because limitations on dwelling size regulate a dwelling's physical characteristics, but do not constitute a restriction of residential use of the property.
- The argument that granting the Moore Measure 49 claim will lead to a proliferation of future Measure 49 claims seeking waiver or compensation for any regulation that impacts the physical characteristic of residential dwellings.

Staff have reviewed the newly submitted testimony and continue to recommend that the City Council grant the claim.

Staff has provided the council with a resolution that approves the property owner's Measure 49 claim, along with the City Manager's supporting Report and Recommendation (Exhibit A to the resolution), which are included with this AIS as Attachment C. Staff has also provided the council as Attachment D, an alternative resolution that denies the claim, along with findings (Exhibit A to the resolution) concluding that EC 9.2751(18)(a)3. does not restrict the residential use of the Claimant's property.

The Report and Recommendation has been updated to reflect council's vote to re-open the record. A detailed description of staff's analysis of several issues related to the claim can be also found in the memo provided to Council on July 20, 2018, which is included in the record materials previously provided to Council.

A copy of the Measure 49 claim, along with record materials submitted prior to September 10, 2018, is contained in a notebook available at the City Manager's Office. A copy of that notebook is also available for public inspection at the Eugene Planning and Development Department, First Floor Reception, 99 West 10th Avenue, Eugene, Oregon, 97401 between 9:00 a.m. and 4:00 p.m.

Measure 49 requires the council to make a decision on the claimant's claim within 180 days of the

date the claim was deemed complete. In this case, council must approve or deny this claim no later than October 6, 2018.

RELATED CITY POLICIES

None.

COUNCIL OPTIONS

The City Council may consider the following options:

1. Adopt the attached resolution granting the Moore Measure 49 claim.
2. Adopt the attached resolution denying the Moore Measure 49 claim.
3. Adopt one of the attached resolutions with specific modifications as determined by City Council.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends that City Council adopt the resolution granting the claim.

SUGGESTED MOTION

Move to adopt a Resolution Granting a Measure 49 Claim for Property Located adjacent to 70 W. 24th Place, Eugene, Oregon.

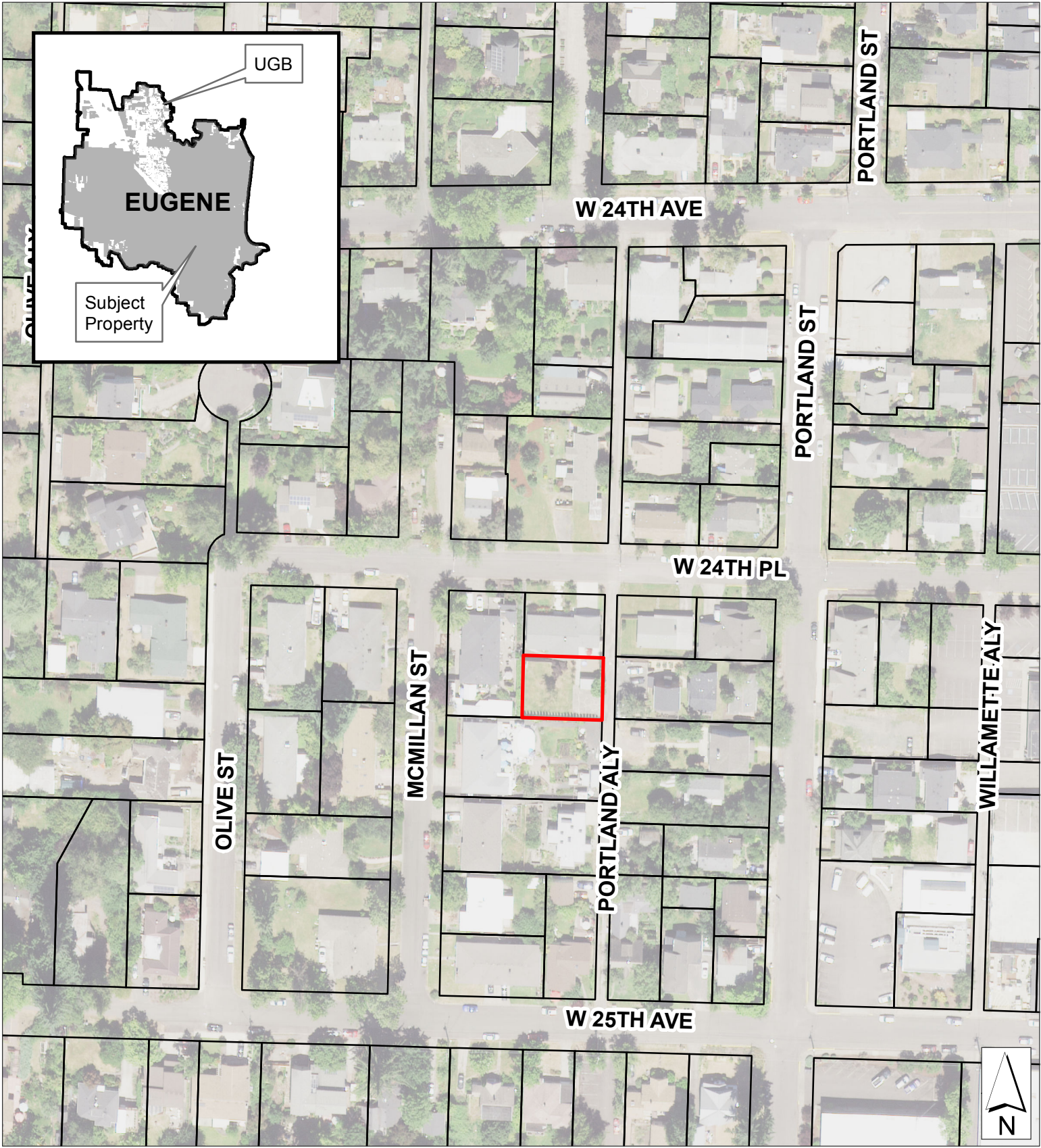
ATTACHMENTS

- A. Vicinity Map
- B. Open Record Materials received between September 10 and 19, 2018
- C. Resolution Granting Claim and Exhibit A to Resolution, (City Manager's Report and Recommendation)
- D. Resolution Denying Claim and Exhibit A to Resolution (Findings)

FOR MORE INFORMATION

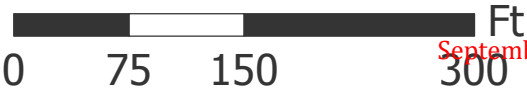
Staff Contact: Dan Lawler, Assistant Planner
Telephone: 541-682-5282
Staff E-Mail: dlawler@eugene-or.gov

Vicinity Map



Legend

 Subject Property



Caution:
This map is based on imprecise
source data, subject to change,
and for general reference only.
September 24, 2018, Meeting - Item 3
September 17, 2018



LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

September 17, 2018

Eugene Mayor and City Council
c/o Eugene City Manager
125 East 8th Ave., Second Floor
Eugene, OR 97401

Re: Measure 49 Claim; Elise Moore; Lane County Assessor's Map 18-03-06-42, Tax Lot 2700

Dear Mayor and Council:

At Mr. Conte's request you have taken the lid off this proceeding again. The Conte theory is that the Council should read the operative phrase in the statute – "restrict the residential use of private real property" – to mean "prohibit the residential use of private real property." Thus, in the Conte view, so long as the owner could build something then there is no valid M49 claim, regardless how much the value of the property has been diminished. Or is there some size residential use that would be just too small? How small could the new regulation shrink the potential dwelling and still not trigger a M49 claim? 400 square feet? 300 square feet? How about a comfy 10'x10'? Would that be enough to escape a M49 claim?

"Restrict" is not the same as "prohibit" in anyone's dictionary.

You have competent staff reports explaining why the City Manager, City Attorney and City Planners believe the owner has proven her case. And now, in response to the Conte testimony, City Attorney Brotherton is telling the Council, in about as plain terms as the CAO speaks, that the City Attorney will not be able to successfully defend the owner's appeal to circuit court if the Council denies the claim as Mr. Conte requests:

"[W]e (including Glenn [Klein]) believe that a judge is more likely to conclude that the difference between a 2,000+ sq. ft. home and a 462 sq. ft. home amounts to a restriction on Moore's residential "use" of her property."

The sky is not falling here. This will not set off a string of dominos. There is not a M49 line forming to the left. This is just a one-off case of an owner who was pinched too hard by the ordinance. The statute intends relief in situations like this.

Sincerely,

Bill Kloos

Bill Kloos

LAWLER Daniel R

From: BROTHERTON Kathryn
Sent: Wednesday, September 12, 2018 4:47 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R; FLOCK Gabriel
Subject: Moore Measure 49 Claim

Mayor and Council,

Below are a couple of clarifications regarding the Moore Measure 49 claim. I am not sending this to you as confidential legal advice, but rather for inclusion in the Moore M49 record.

1. Glenn Klein did not issue a written legal opinion regarding the Wilson M49 claim. There was a "Report and Recommendation of the City Manager" that recommended denial of the Wilson M49 claim. This Report and Recommendation was ultimately adopted by Council as Exhibit A to the resolution denying Wilson's claim. The City Attorney's Office ("CAO") was involved, and provided input, in the preparation of the Wilson Report and Recommendation, as well as the Council AISs. At your June 21, 2017, work session on the Wilson claim, Assistant City Attorney Lauren Sommers and Principal Planner Alissa Hansen co-presented the item to Council, explaining the basis for Staff's recommended denial of Wilson's claim. While Glenn verbally contributed to the discussion with Council in June (and he also provided verbal advice at Council's January 17, 2017, public hearing); neither Glenn, nor anyone else in the CAO, provided Council with a separately-issued legal opinion regarding the Wilson claim.

Like in Wilson, the CAO has been involved in the Moore M49 claim, and has provided input in the preparation of the Report and Recommendation of the City Manager that recommends approval of Moore's M49 claim. Lauren Sommers worked extensively on the Wilson M49 claim, and she has served as the primary legal advisor to Planning staff on the Moore claim.

As you know, the CAO works collaboratively to provide the best legal advice to both City staff and the Council. To the extent it is helpful for Council to know whether Glenn was consulted regarding this (Moore) M49 claim, particularly as it compares to the (2017) Wilson M49 claim – I want to be clear: he was. Weeks ago Lauren sought Glenn's input on staff's recommended approval of the Moore M49 claim; I confirmed this with Glenn again today. Consistent with Lauren and me, Glenn's position is that approving Moore's claim and granting her requested waiver is reasonable (*i.e.*, legally defensible) under the M49 statute. We land here by asking ourselves how, if appealed, a judge would likely answer the question of whether a 462 sq. ft. house is the same "use" of Moore's residential property as a 2,000+ sq. ft. house; we (including Glenn) believe that a judge is more likely to conclude that the difference between a 2,000+ sq. ft. home and a 462 sq. ft. home amounts to a restriction on Moore's residential "use" of her property. As discussed below, we are not making two different legal interpretations of the M49 statute for Moore and Wilson; we do not believe that approval of the Moore M49 claim undermines, or negates, Council's decision in 2017 to deny Wilson's M49 claim.

2. The CAO does not view Wilson and Moore as similarly situated M49 claimants that necessitate the same outcome. Significantly, the Wilson claim was primarily recommended for denial because of the claimant's inadequate appraisals. Regarding that issue, at Council's June 21, 2017, work session, Glenn stated:

"As you heard from both Lauren and Alissa, the recommendation you're going to see Monday is to deny and it's not really based on the square footage issue. The simplest basis for denial that we're confident would be upheld if somebody appeals up to the court is the fact that we have an expert who has said the appraisal that the claimants submitted does not meet the requirements of

Measure 49 and there's no rebutting evidence to say that it does. And so that's the basis, you will see in the decision document that forms not the only basis for denying but that's going to be the primary basis for denying."

While there is some testimony in the record questioning Moore's appraisals, unlike in Wilson, we do not believe that it is legally defensible to deny Moore's claim on grounds that the appraisals are inadequate.

Additionally, we view the facts of Moore and Wilson as being extremely different. For Wilson, we believe that a judge would have concluded that preventing Wilson's structure from automatically qualifying as a secondary dwelling, when Wilson could still place both a secondary and a primary dwelling on the property, did not amount to a restriction on Wilson's residential use of the property. We reached a different conclusion in Moore. That is, for Moore, we think a judge is more likely to uphold a conclusion that limiting Moore to a 462 sq. ft. house amounts to a restriction on her residential use of the property.

3. The question for Council in deciding whether to grant or deny Moore's M49 claim is: Does the 2014 code amendment that reduced the maximum lot coverage for an alley access lot from 50% to 10% or 800 sq. ft., whichever is smaller, restrict Moore's residential use of her property? Staff recommend concluding that the reduction of 50% to 10% (*i.e.*, 2,000+ sq. ft. to 462 sq. ft.) is a restriction on her residential use of the property, not just a physical limitation on the residential use. We believe that is a legally defensible decision for Council to make. Alternatively, we also believe it would be legally defensible for Council to deny Moore's claim by concluding that, because both before and after the 2014 code amendment Moore could construct a residential dwelling on her property, just dwellings of different sizes, her residential "use" of the property has not been restricted. We simply are not as confident that denying Moore's claim would be upheld by a judge.

4. If Council approves Moore's M49 claim, Council would not be bound to approve all other M49 claims seeking waiver of a "physical" requirement. Any M49 claimant would still have to prove all of the elements of a M49 claim, including that the regulation restricts their residential use of the property and that the restriction reduces the value of the property. Generally speaking, outside the realm of a protected class, Equal Protection is a constitutional standard prohibiting the City from treating two similarly situated people differently with no rational basis for that different treatment. Thus, if you grant Moore's M49 claim and another property owner that is similarly situated to Moore files a Measure 49 claim seeking waiver of the 10% lot coverage regulation for an alley access lot, unless the Council concludes it made a mistake granting Moore's claim (and can articulate how it was a mistake) or can otherwise set forth a rational basis for treating the claims differently, I would advise Council that it should treat the similarly situated claimants consistently. Given the innumerable fact patterns that could be presented by a M49 claimant (making it unlikely for there to be similarly situated claimants), we believe it is unlikely that Council would be setting a significant precedent if it approves Moore's M49 claim.

Kathryn Brotherton
Eugene City Attorney

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Wednesday, September 12, 2018 4:40 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Testimony: Draft "Analysis" for City Manager Report (and Resolution findings) to DENY M49 18-1
Attachments: M49 18-1 Analysis to Deny DRAFTx.pdf

September 12, 2018 (by e-mail at 4:39 PM)

Mayor and City Councilors,

Please find attached DRAFT text that could be used in an alternative "City Manager's Report and Recommendation" that is attached and adopted as findings for a Council Resolution that DENIES the Moore Measure 49 claim (M49 18-1).

Please forgive the unpolished formatting. I produced this by editing a PDF of the CM Report for the "Wilson" M49 claim, that the City Council denied.

The City Manager should provide the Council with a complete, alternative report with these or equivalent findings.

The Council should insist that they have before them two complete alternatives to consider on September 24.

Respectfully submitted,

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

**Accredited Earth Advantage
Sustainable Homes Professional**

III. Analysis of Claim

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for "owners" of real property. Measure 49 defines "owner" to include "[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]" ORS 195.300(18).

Based on information that the Claimant submitted (Easement Deed 2010-033733) and information from the Lane County Regional Land Information Database (RLID), the City Manager concludes that Claimant Elise Moore acquired fee title to the subject property on July 8, 2010. Accordingly, Claimant Elise Moore is the owner of the property.

B. "Land Use Regulations"

Measure 49 requires compensation (or waiver) only for those regulations that constitute "land use regulations" as that term is defined by Measure 49. Further, the regulation must have been enacted after January 1, 2007, but within five years of the date of the claim. Measure 49 defines "land use regulation," with respect to cities, as a "provision of a city comprehensive plan, zoning ordinance or land division ordinance *that restricts the residential use of private real property zoned for residential use.*" ORS 195.300(14)(c). (Emphasis added).

EC 9.2751(18)(a)3 is a provision of the City's zoning ordinance, and it regulates residential uses on property zoned for residential uses. EC 9.2751(18)(a)3 was adopted as part of Ordinance No. 20541 as part of the Single Family Code Amendments, which became effective August 29, 2014. The Claimant filed her Measure 49 claim on January 29, 2018. EC 9.2751(18)(a)3. was enacted after January 1, 2007, but within five years of the date of the claim. However, as discussed in more detail in section C, below, EC 9.2751(18)(a)3. does not restrict the residential use of Moore's property; therefore, EC 9.2751(18)(a)3 does not qualify as a "land use regulation" for purposes of Measure 49.

C. Restriction on Residential Use

A "land use regulation" only gives rise to a Measure 49 claim if the regulation restricts the residential use of private real property. The specific regulation that the Claimant points to is EC 9.2751(18)(a)3., which limits the square footage of new dwellings built on alley access lots. The Claimant alleges that EC 9.2751(18)(a)3. restricts the residential use of her property because it prevents her from building a home that would have been allowed before the regulation took effect.

Adopted on July 28, 2014 (by Ordinance No. 20541) and effective on August 29, 2014, EC 9.2751(18)(a)3. establishes the following limitations on square footage of buildings on alley access lots:

(18) Alley Access Lots in R-1

(a) General Standards.

1. Applicability. Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.
2. Use Regulations. Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.
3. Building Size. The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms..

Prior to the Council's adoption of the above-quoted code provision, general R-1 zoning regulations applied to alley access lots and allowed lot owners to build structures that cover up to 50% of the lot. Thus, the Claimant could have built a 1,200 square foot house on her alley access lot before EC 9.2751(18)(a)3. went into effect because the total lot size is 4,620 square feet. Now, however, EC 9.2751(18)(a)3. limits any structure on the Claimant's lot to a maximum of 462 square feet, which restricts the Claimant's ability to build an economically and practically feasible home on the property.

Claimants assert that EC 9.2751(18)(a)3.. is a "land use regulation" that "restricts the residential use" of their property because prior to the 2014 adoption of Ordinance No. 20541, the existing residence on Claimants' property would have automatically qualified to allow a 1,200 s.f. dwelling. However, following the adoption of Ordinance No. 20541, the dwelling would be limited to 462 s.f..

However, despite the dwelling size restrictions imposed by EC 9.2751(18)(a)3., staff has determined that a 462 s.f. one-family would be legal and practicable to build and occupy.

As Planning staff point out, while EC 9.2751(18)(a)3. prevents claimant from building a 1,200 s.f. one-family dwelling, EC 9.2751(18)(a)3. does not foreclose the Claimant from developing a one-family dwelling. The Claimant argue that her use of the property is restricted because prior to EC 9.2751(18)(a)3., the dwelling she desires to build could be 1,200 s.f. (or larger) and now it cannot exceed 462 s.f. However, Measure 49 requires that a landuse regulation restrict a residential *use* and as noted above, EC 9.2751(18)(a)3. does not prevent the residential use of the property generally, nor does it prohibit Claimant from establishing a one-family dwelling on the subject property. Paul Conte and Bill Aspegren have also submitted testimony into the record arguing that EC 9.2751(18)(a)3. does not restrict the use of Claimant's property.

Because the Claimant can still place a one-family dwelling on the subject property, the City Manager concludes that EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property as required by Measure 49.

LAWLER Daniel R

From: Margie James <margjam57@gmail.com>
Sent: Wednesday, September 12, 2018 3:17 PM
To: *Eugene Mayor, City Council, and City Manager; LAWLER Daniel R
Subject: Measure 49 (Moore) Claim

Dear Mayor and Councilors,
As active leaders in Friendly Area Neighborhood (FAN), the neighborhood in which Mrs. Moore's property lies, we have been following planning department recommendations and other testimony provided and we urge you to deny her Measure 49 claim.

We have concerns that if city council approves this claim, there will be more M-49 filings , and handling claims on a case by case basis is not efficient for an already strapped planning department, nor is it solving the underlying problem which has to do with code for maximum dwelling size for alley access lots. It seems that initiating a code amendment to increase the size of dwellings allowed on alley access lots would be a better approach, currently 10% of lot size... what about 20%? 25%?

There needs to be consistency in council response to M-49 claims. Providing improved code for maximum dwelling size on alley access lots would benefit property owners who have been "caught" in the rule change that doesn't change a property owner's ability to build housing, but does change what that housing might look like. At the same time, not having to deal with additional M49 claims would free staff time to move forward with the many other projects on their table.

Please deny the current Measure 49 claim (Moore) and **initiate** change in code for maximum dwelling size on alley lots that is more reasonable for property owners than current code, and allows city staff to use their time more constructively.

Thank-you,

Margie James
Pam Wooddell
FAN co-chairs

The VERY SIMPLE Story of Measure 49

A Measure 49 claim must demonstrate **a restriction in the use** of the property.

A **primary residential use** was allowed on Elsie Moore's property under regulations prior to Ordinance 20526 of 2014 and that **same use** is allowed under 20526. Therefore, the adoption of R1 code amendments in 2014 had **no effect** on the potential **use** of this property.

Every proposed project is required to be in compliance with current code standards.

Dimensions such as height, square footage, setback etc. all may represent limitations to the form of what may be built but they do **not** constitute **usage**.

If the standards for a project like the one proposed by the claimant no longer seem adequate then the appropriate action would be to **make changes to the code**.

In other words, the only defensible resolution would be to **deny this claim which is without legal merit and move to correct the code**.

The moral of the story: Failure to deny this claim increases the likelihood of a proliferation of such Measure 49 cases, and, even more worrisome, may cripple the City's ability to make and enforce meaningful code changes going forward.

September 12, 2018

To: Dan Lawler
From: Bill Aspegren
Re: Additional Testimony Relating to Elsie Moore's Measure 49 Claim
Cc: Mayor, City Council and City Manager

Elsie Moore has filed a Measure 49 claim alleging the value of her alley lot has decreased due to code changes that were implemented in 2014, limiting the size of a house she can build on her alley lot. Rather than compensation she is asking for an exemption.

Staff has recommended giving Moore an exemption to allow a 1200 square foot home on her alley lot. Based on lot size the recent code would still allow a house on her lot, but only roughly 460 square feet.

I believe this is an incorrect recommendation and not based on an accurate interpretation of the facts.

Consider these points:

- The 2014 code changes have not restricted “the **residential use** of [the] private real property” (ORS 197.305(1)). A house could be built on the alley lot prior to and after the 2014 changes. In fact, there is testimony showing a home was recently built on an alley lot that was slightly smaller than the Moore lot.
- Physical characteristics, such as building height, square footage, setbacks and other physical elements do not restrict the **residential use**. Glenn Klein, former Eugene Attorney, affirmed this interpretation in the recent Wilson Measure 49 claim.
 - The Wilson claim was rejected because the **residential use** was not restricted due to the 2014 code changes. The Moore claim is similar in that **residential use** is not restricted and consistency dictates that the claim should be rejected.
- Approving this claim sets a dangerous precedent. Any change to Eugene's code that affects physical characteristics of a **residential use** would be subject to a measure 49 claim for five years. This would virtually eliminate the City's ability to make changes that would improve compatibility and transition, thus enhancing livability.
 - The City attorney stated that she did not feel this was a problem. This is a poorly thought out response, and approval of an exemption for this claim could open the City to many similar Measure 49 claims.
- Hypothetical appraisals representing a year before and after the 2014 changes allege the alley lot owned by Moore lost \$25,000 in value. These appraisals were never verified by an independent appraiser as was done for the Wilson Measure 49 claim. There are certainly questions as to the accuracy of the appraisals and an independent look should be a standard practice.
 - The lot was purchased by Moore in 2010 for \$55,550 from a neighbor.
 - The county assigns Real Market Values (RMVs) to land. Although not necessarily what a property will sell for they do reflect a pattern. Below are RMVs for the Moore alley lot. After purchase the RMV fell, but by 2013 the RMV was rising and continued to rise. This should have been a clue to get an independent evaluation of the appraisals.
 - 2010 RMV \$86,528
 - 2011 RMV \$78,708

- 2012 RMV \$78,708
- 2013 RMV \$73,807
- 2014 RMV \$76,917
- 2015 RMV \$79,963
- 2018 RMV \$83,771

Rejecting this claim does not mean the 2014 code change cannot be reviewed after the claim is settled. I believe by simply changing the allowed house square footage from 10% to 20% of lot square footage would provide for a larger alley house, without creating an incompatible structure. Fixing the code is a more practical way to solve this problem rather than making an exception, which will prevent future necessary code changes.

Before voting to grant an exemption for this measure 49 claim make sure you have an accurate understanding of the facts. Please vote to reject this claim.

Thanks,

Bill Aspegren

Ward 3

South University Neighborhood

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 10:32 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Testimony M49 18-1 (Moore) Statutory Interpretation
Attachments: TestimonyM49_18-1Sep11CONTE.pdf

September 11, 2018

Mayor and Councilors,

Please review the attached testimony that provides substantial additional support for the correct interpretation of the M49 statutes.

While it is pretty technical, it provides compelling analysis that supports the interpretation that Glenn Klein presented, and with which I agree.

In contrast, the planner and City Attorney have done *no* legitimate analysis to support their erroneous interpretation.

This message and attachment are submitted for the record in M49 18-1 (Moore).

Respectfully,

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

**Accredited Earth Advantage
Sustainable Homes Professional**

Testimony in Opposition to Granting the Measure 49 Claim M49 18-1 (Moore)

Submitted by Paul Conte on September 11, 2018 by e-mail.

The following provides additional legal foundations for the proper interpretation of the Measure 49 statutes. It is necessarily “legalistic,” but it follows the rules for statutory construction. The City Attorney *should* have done at least as thorough a job, but did not.

This material augments previous testimony on the interpretation of M49 statutes, including the interpretation made by former City Attorney Glenn Klein.

As a reminder, here is the text of the fundamental criterion that must be met before “the owner of the property shall be entitled to just compensation” through a Measure 49 claim:

ORS 195.305(1) If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in ORS 195.310 to 195.314.

The July 20, 2018 memo from Dan Lawler to the City Council *falsely* restates this law, asserting that “[t]he statutory standard for evaluating M49 claims is whether a regulation restricts the desired residential use of the property.” (Emphasis added.) The word “desired” does not appear anywhere in the fundamental statutory criterion for entitlement to a Measure 49 claim. Lawler’s memo incorrectly attempts to insert language into the statutory criterion of ORS 195.305 by citing to a completely different subsection of ORS 195.310(1), which states:

- (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to 195.314 after June 28, 2007, if:
 - (a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;
 - (b) The person’s desired use of the property is a residential use or a farming or forest practice;
 - (c) The person’s desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and
 - (d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (Compensation for restriction of use of real property due to land use regulation) (3), has reduced the fair market value of the property.

Lawler’s memo elevates the phrase “desired use of the property is restricted” in subsection (1)(c), asserting on that basis alone that a person’s personal “desires” encompass every purpose, every physical characteristic and every other feature of a dwelling. But Lawler’s memo conveniently neglects the preceding subsection (1)(b), which makes clear that is not the Legislature’s intent:

- (1)(b) The person’s desired use of the property is a residential use or a farming or forest practice;

In this subsection, “a residential use” is on the same level as “a farming or forest practice” and has the typical meaning of “[t]he purpose for which land or a building is arranged, designed or intended, or * * * is occupied or maintained” as codified in Eugene Code definitions (EC 9.0500).

The language in additional sections of the Measure 49 statutes provide a powerful example of “context” that helps establish “the intention of the legislature,” as ORS 174.020(1) requires.

Context – The meaning of “use” in other subsections of Measure 49 statutes

Two definitions under ORS 195.300 refer to “use” with the clear meaning of “use” as a *purpose*. For example:

(24) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, and sections 2 to 7, chapter 8, Oregon Laws 2010, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property.

(25) “Zoned for residential use” means zoning that has as its primary purpose single-family residential use. (Emphasis added.)

Most literal and compelling is the phrase in subsection (25): “has as its primary purpose single-family residential use.” (Emphasis added.) This phrase fits exactly with the Eugene Code 9.0500 definition of “Use” as:

“The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained.”

And, furthermore “single-family residential” is *exactly* one of the approved “uses” – *i.e.*, one-family dwelling – in the Eugene Code for the R-1 residential zone. Clearly, the definition in ORS 195.300(25) does not treat “use” as a concept that would embody particular *physical features* of a dwelling.

With respect to ORS 195.300(24), first note that the M49 statutes provide the local jurisdiction (*i.e.*, the Eugene City Council) two alternatives to redress “land use regulations that restrict the residential use of private real property”; either:

- a) Compensation, or
- b) Waiver.

Obviously, the two alternatives apply to the same “problem” (*i.e.*, restrict[ing] the residential use of private real property). And because “waiver” explicitly “allows the owner to use property for a use,” a waiver is intended to redress problems whereby a new land use regulation *disallows* the owner from using the property for a use. Accordingly, the other alternative, compensation, must also be intended to redress problems whereby a new land use regulation *disallows* the owner from using the property for a use.

And, thus “restrict the residential use of private real property” has to mean “disallow the owner from using the property for a use.” “A use” is a term of art in land use regulations, and it is distinct from a particular *physical characteristic*, such as size, and other regulated elements of dwellings.

The term “a use” under the definition of “waiver” clearly can refer to defined uses, such as “dwelling” and “hospital” or even more specific categories, such as “single-family dwelling,” “duplex,” etc., that are based on the intended purpose (e.g., to house one family, to house two families, to house and treat sick persons). However, when the term “a use” is referenced in land use regulations, the term cannot reasonably refer to something so specific as “a 1,200 square foot dwelling” or any other building that is so specifically defined by its physical characteristics, rather than its intended purpose.

Legislative History

The legal material under “Measure 49” in the attached Oregon Voter’s Pamphlet contains the actual, full text of the measure that was adopted, as well as the Secretary of State’s official explanation. (Much of the adopted measure is recorded under “Oregon Laws,” rather than in the “Oregon Revised Statutes.” These sections are nonetheless on the same legal level as the sections included in ORS.)

The M49 ballot text and the Secretary of State’s explanation inarguably establish that M49 was (and is) about the specific “use” of residentially zoned property to build one or more dwellings. For example, “Waiver” is used numerous times with reference to: “number of lots, parcels or dwellings described in waiver” (Section 6. (2)(a), (3) and (5); Section 7. (2)(a), (3) and (4)); to “single-family dwellings” (Section 9. (2)(a), (3) and (4)); and to “dwellings authorized by a waiver” (Section 11. (6)).

There is no mention at all of specific physical characteristics of dwellings in the M49 ballot measure. The multiple references to “number of ... dwellings” also makes clear why the M49 statutes use the term “restrict,” rather than “prohibit.” In many case, a Measure 49 (and Measure 37 before that) claim was based on a land use regulation that restricted the *number* of dwellings, but did not prohibit dwellings altogether. In the case of the Moore claim, the subject property is neither restricted nor prohibited from adding one dwelling.

The M49 ballot measure included a number of sections addressing how prior Measure 37 claims were to be handled under Measure 49. Section 9 dealt with “Claims Relating to Property Within Urban Growth Boundaries,” including Eugene.

SECTION 9. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the lesser of:

(a) The **number of single-family dwellings** described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act * * * * *;

(5) To qualify for the relief provided by this section, ... the claimant must establish that:

* * * * *

(d) On the claimant’s acquisition date, the claimant lawfully was **permitted to establish at least the number of dwellings** on the property that are authorized under this section;

(e) The property is zoned for residential use;

(f) One or more land use regulations **prohibit establishing the single-family dwellings**;

(Emphasis added.)

All of these provisions deal with *number* of dwellings, not the physical characteristics.

The Secretary of State “Explanatory Statement” in the Voter’s Pamphlet explained:

“Ballot Measure 37 (2004) requires governments to pay landowners or forgo enforcement when certain land use regulations reduce their property values. This measure [49] modifies Measure 37 to give landowners who have filed Measure 37 claims the right to build homes as compensation for land use regulations imposed after they acquired their properties.

“* * * * *

“To streamline the approval process for small claims, this measure provides that those who choose to apply for up to three homes need only show they had the right to build the homes they are requesting when they acquired their property.” Page 19

As in the text of the ballot measure itself, the explanation refers to number of dwellings, with no mention of physical characteristics.

The ballot measure also includes Section 11 regarding M37 claims being rolled forward to M49 claims:

SECTION 11. (1) A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act **must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel.** However, the standards must not be applied in a manner that has the effect of **prohibiting the establishment of the dwelling,** lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law. (Emphasis added.)

This section explicitly requires compliance with “all applicable standards governing the siting or development of the dwelling” as long as these standards do not have “the effect of prohibiting the establishment of the dwelling.” In Moore’s case, the amended standard for maximum size did not prohibit the establishment of a single-family dwelling. While Section 11 explicitly applied to prior M37 claims being handle under M49 procedures, it would be absurd to interpret the M49 statutes as requiring compliance with development standards for claims initially filed under the more liberal M37 scope and yet not require compliance with claims filed after the M49 measure was adopted. With the correct interpretation of “use” in the (new) Measure 49 sections, there is no need for the statutes to explicitly state that dwellings must still comply with development standards, since a valid M49 claim requires that the “use” be restricted, i.e., by reducing (or prohibiting) the dwellings that are allowed on a subject property. This is *exactly* what Glenn Klein explained in his analysis of the Wilson M49 claim (M49 17-1) and his conclusion that the cited regulation did *not* restrict the residential use of Wilson’s property.

Here are some further references in Oregon Laws that provide additional context for interpreting the term “a use” in land use regulations ...

“Use” defined by “primary purpose”

ORS 308A.056 Definition of “farm use.” (1) As used in ORS 308A.050 to 308A.128, “farm use” means the current employment of land for the primary **purpose** of obtaining a profit in money by:

- (a) Raising, harvesting and selling crops.
 - (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof.
- etc. (Emphasis added.)

A building’s “use” as distinguished from a building’s “area” in zoning districts

Chapter 227 — “City Planning and Zoning” ...

ORS 227.090 Powers and duties of commission. (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

* * * * *

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

Example of “a use” as a term of art that is assumed to be understood and defined in local code, since “use” is not explicitly defined under the applicable statutes.

ORS 227.184 Supplemental application for remaining permitted uses following denial of initial application.

(1) A person whose application for a permit is denied by the governing body of a city or its designee under ORS 227.178 may submit to the city a supplemental application for any or all other uses allowed under the city’s comprehensive plan and land use regulations in the zone that was the subject of the denied application.

* * * * *

(4) The governing body of a city or its designee shall adopt specific findings describing the reasons for approving or denying:

(a) A use for which approval is sought under this section;

A structure’s “use” distinguished from a structure’s “appearance”

ORS 227.215 Regulation of development.

(1) As used in this section, “development” means a building or mining operation, making a material change in the **use or appearance** of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access. (Emphasis added.)

Note how the size of a building would directly affect “appearance” (*i.e.*, “mass”), but not purpose/use.

A building’s “use” distinguished from a building’s “construction”

ORS 227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary.

Regulating buildings’ “construction” includes regulating maximum size, height, etc., and regulating “use” is a *different* category in this list.

“PERMITTED USES IN ZONES” (ORS 227.500 to 227.505) -- In general, demonstrates that “use” is based on purpose or function, not physical characteristics.

A property’s “use” distinguished from the “physical characteristics of the use”

ORS 227.500(2) A city may:

- (a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section;

This is one of the clearest examples that “use” is a distinct aspect of a property or structure that is regulated separately from “physical characteristics,” such as size, of the building. If the Legislature intended “use” to encompass physical characteristics (as well as purpose), the Legislature would not have explicitly identified the two aspects. (A statutory interpretation must give effect to all provisions. ORS 174.010)

* * * * *

To my knowledge, no one at the City (or DLCD) has identified any text, context or legislative history that would support the interpretation of ORS 195.305 phrase “restrict the residential use of private real property” to encompass buildings’ physical characteristics, e.g., restricting building size. (Obviously, leaving aside restrictions on building features that would render use as a dwelling impossible or impractical. That isn’t an issue in the present case.)

In conclusion – Glenn Klein got it right based on a thorough and legitimate analysis. The current City Manager’s Report didn’t even make an attempt, and instead assumed an entirely indefensible interpretation of the M49 statutes.

Voters' Pamphlet

Oregon Special Election
November 6, 2007

vote!



Bill Bradbury
Bill Bradbury
Oregon Secretary of State

*This Voters' Pamphlet is provided for assistance
in casting your vote-by-mail ballot.*

BILL BRADBURY

SECRETARY OF STATE

JEAN STRAIGHT
DEPUTY SECRETARY OF STATE



JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722

(503) 986-1518

Dear fellow Oregonian,

In the coming weeks, you will have another chance to take the future of our state in your hands by voting.

This November's special election includes two ballot measures that deal with issues that are important to our state. Because these measures touch on such fundamental issues, they have attracted a large number of arguments. One hundred seventy-five arguments outline the debates in favor of and against the measures. I encourage you to spend some time reading through them so that you can vote wisely.

Special elections are those that are called by the Legislature when they refer issues to the voters. Our initiative and referendum system – one of the first in the nation – is now over 100 years old and gives the power of law-making to the people. That system only works, however, when citizens choose to engage in it by voting.

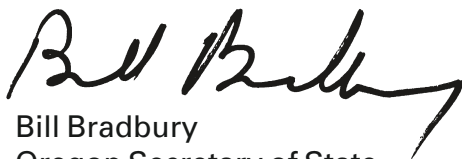
We are lucky in Oregon to be a vote-by-mail state – the only one in America! But increasingly, other states are investigating voting through the mail because it fits into the busy demands of a 21st century lifestyle. With vote-by-mail, every voter has over two weeks to read their Voters' Pamphlet and fill out their ballot. Voters can deliberate on their choices and discuss their ideas with friends and family before completing it.

October 16th is the last day to register to vote for this election if this is your first time voting in Oregon. Because of our new centralized voter registration database, you can change your address until Election Day at 8 pm and still have the opportunity to vote.

If you have more questions about voting, please visit our website at www.oregonvotes.org. There you can find the locations of your local county elections office as well as links that will help you find official ballot dropsites.

Remember, every vote counts, so make sure yours is among them. The future of Oregon rests in your hands!

Best wishes,



Bill Bradbury
Oregon Secretary of State

General Information

Voters' Pamphlet

Your official 2007 November Special Election Voters' Pamphlet provides you with information about state measures 49 and 50. These measures were referred to the ballot by the 2007 Legislature. Additionally, you can find information about vote-by-mail and voter registration, as well as contact information for county elections officials across the state.

For each of the measures in this Voters' Pamphlet you will find the following information:

- (1) the ballot title;
- (2) the estimate of financial impact;
- (3) an explanation of the estimate of financial impact, if determined to be necessary by the committee;
- (4) the complete text of the proposed measure;
- (5) an impartial statement explaining the measure (explanatory statement);
- (6) a legislative argument in support of the measure; and
- (7) any arguments filed by proponents and opponents of the measure.

The ballot title, estimate of financial impact, and explanatory statement for each measure was written by the legislature.

Citizens or organizations may file arguments in favor of or in opposition to measures by purchasing space for \$500 or by submitting a petition signed by 1,000 voters. Arguments in favor of a measure appear first, followed by arguments in opposition to the measure, and are printed in the order in which they are filed with the Secretary of State's office.

Measure arguments are printed as submitted by the author. The state does not correct punctuation, grammar, syntax errors or inaccurate information. The only changes made are attempts to correct spelling errors if the word as originally submitted is not in the dictionary.

The Voters' Pamphlet has been compiled by the Secretary of State since 1903, when Oregon became one of the first states to provide for the printing and distribution of such a publication. One copy of the Voters' Pamphlet is mailed to every household in the state. Additional copies are available at the State Capitol, local post offices, courthouses and all county elections offices.

Website

Most of the information contained in this Voters' Pamphlet is also available in the Online Voters' Guide at www.oregonvotes.org.

Español

Una versión en español de algunas partes de la Guía del Elector está a su disposición en el portal del Internet cuya dirección aparece arriba. Conscientes de que este material en línea podría no llegar adecuadamente a todos los electores que necesitan este servicio, se invita a toda persona a imprimir la versión en línea y circularla a aquellos electores que no tengan acceso a una computadora.

Important!

If your ballot is lost, destroyed, damaged or you make a mistake in marking your ballot, you may call your county elections office and request a replacement ballot. One will be mailed to you as long as you request it by November 1, 2007. After that, you may pick it up at the elections office. If you have already mailed your original ballot before you realize you made a mistake, you have cast your vote and will not be eligible for a replacement ballot.

Your voted ballot must be returned to your county elections office by 8pm election day, Tuesday, November 6, 2007.

Postmarks do not count!

County elections offices are open on election day from 7am to 8pm.

Voter Information

For questions about voter registration, ballot delivery and return, marking the ballot, requesting a replacement ballot, absentee ballots, signature requirements, the Voters' Pamphlet, when and where to vote, and other questions about elections and voting, call the toll-free voter information line at 1-866-ORE-VOTES (1-866-673-8683).

Voter information line representatives can provide services in both English and Spanish. TTY services for the hearing impaired are also available at 1-866-350-0596.

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Voter Registration Information

Registering to Vote

To vote in Oregon you need to be registered in the county where you reside.

You can register if you can answer **yes** to these three questions:

- Are you a resident of Oregon?
- Are you a US citizen?*
- Are you at least 18 years old?*

** In some cases you can register to vote before you turn 18 or before you become a citizen. For more information call 1-866-ORE-VOTES.*

How to register

You can get a voter registration card at any of the following places:

- in this Voters' Pamphlet
- any County Elections Office
- the Secretary of State's Office
- some state agencies such as the Division of Motor Vehicles
- a voter registration drive

You can fill the card out in person or send it in by US mail.

You can also print out a registration card online at www.oregonvotes.org.

To vote in the November 6, 2007, Special Election, your completed voter registration card must be either:

- postmarked by Tuesday, October 16, 2007
- delivered to a county elections office by Tuesday, October 16, 2007 **or**
- delivered to any voter registration agency (e.g., DMV) by Tuesday, October 16, 2007.

What information is required to register?

To complete your registration you will provide your:

- Full legal name
- Home address
- Date of birth
- Signature
- Valid identification

What are the identification requirements?

1. If you have a current, valid Driver's License or ID number issued by the State of Oregon Division of Motor Vehicles (DMV), you must provide it on the card.
2. If you do not have a current, valid Driver's License or ID number issued by the State of Oregon Division of Motor Vehicles, you must affirm this on the card by marking the circle in Section 4 and you must then provide the last four digits of your Social Security number in Section 4a of the card.
3. If you do not have a Social Security number, you must affirm this on the card by marking the circle in Section 4a.
4. If you do not have a Driver's License or ID number, or a Social Security number, and you are registering by mail, you must provide a copy of one of the following:
 - valid photo identification
 - a paycheck stub
 - a utility bill
 - a bank statement
 - a government document
 - proof of eligibility under the Uniformed and Overseas Absentee Voting Act (UOCAVA) or the Voting Accessibility for the Elderly and Handicapped Act (VAEH)

If you do not provide valid identification, you will not be eligible to vote for federal races. You will, however, still be eligible to vote for state and local contests.

Selecting a political party

You may want to select a political party when you register but it is not required.

Updating your voter registration

Once you have registered, you are responsible for keeping your information up to date. You can do this by completing and returning a voter registration card with the new information.

You should update your registration if you do any of the following:

- change your home address
- change your mailing address
- change your name
- change your signature
- want to change or select a political party

If you notify your county elections office of your change of residence address after October 16, 2007, you must request that a ballot be mailed to you or go to your county elections office to get your ballot.

1 qualifications *If you mark no in response to either of these questions, do not complete this form.*

Are you a citizen of the United States of America? ☐ yes ☐ no
Will you be 18 years of age on or before election day? ☐ yes ☐ no

2 personal information **denotes optional information*

name last first middle
Oregon residence address (include apt. or space number) city zip code
date of birth (month/day/year) county of residence*
phone number* email address*
mailing address (required if different than residence address) city zip code

3 political party *choose one of the following:*

☐ Constitution Party ☐ Democratic Party ☐ Independent Party
☐ Libertarian Party ☐ Pacific Green Party ☐ Republican Party
☐ Working Families Party ☐ Not a member of a party ☐ Other _____

4 Oregon DMV Driver's License/ID number *If you fill in this section, do not send a copy of ID.*

valid Oregon DMV Driver's License/ID number

☐ Mark here only if you **do not have** a valid Oregon DMV Driver's License/ID and go to step 4a.

4a last four digits of Social Security number *If you fill in this section, do not send a copy of ID.*

x x x - x x -

last four digits of Social Security number

☐ Mark here only if you **do not have** a valid Oregon DMV Driver's License/ID or a Social Security number. If you are registering by mail, please include a copy of acceptable identification, listed to the left.

5 signature *I swear or affirm that I am qualified to be an elector and I have told the truth on this registration.*

sign here _____ date today _____

! *If you sign this card and know it to be false, you can be fined up to \$125,000 and/or jailed for up to 5 years.*

6 registration updates *If you are previously registered and updating your information, fill out this section.*

previous registration name previous county and state
home address on previous registration date of birth (month/day/year)

If you have any questions, or if you would like more information on voting in Oregon:

call 1 866 ORE VOTES/673 8683

se habla español

visit www.oregonvotes.org

tty 1 866 350 0596
for the hearing impaired

September 24, 2018, Meeting - Item 3

Voters with Disabilities

If, because of a disability, you would like assistance in voting your ballot

or

If you would like instructions on assisting voters with disabilities

call **1 866 ORE VOTES/673 8683**
se habla español

tty **1 866 350 0596**
for the hearing impaired

If, because of a disability, you would like a cassette or CD version of the Voters' Pamphlet, the League of Women Voters Easy To Read Voters' Guide, or the League of Women Voters Regular Nonpartisan Voters' Guide

call **Talking Book and Braille Services**
1 800 452 0292

Digital audio and accessible text versions of the Voters' Pamphlet are available online at www.oregonvotes.org

Digital audio and accessible text versions of the League of Women Voters' Guides are available online at www.lwvor.org/votersguide.htm

Measure 49

House Bill 3540—Referred to the Electorate of Oregon by the 2007 Legislative Assembly to be voted on at the Special Election, November 6, 2007.

Ballot Title

49

MODIFIES MEASURE 37; CLARIFIES RIGHT TO BUILD HOMES; LIMITS LARGE DEVELOPMENTS; PROTECTS FARMS, FORESTS, GROUNDWATER.

RESULT OF “YES” VOTE: “Yes” vote modifies Measure 37; clarifies private landowners’ rights to build homes; extends rights to surviving spouses; limits large developments; protects farmlands, forestlands, groundwater supplies.

RESULT OF “NO” VOTE: “No” vote leaves Measure 37 unchanged; allows claims to develop large subdivisions, commercial, industrial projects on lands now reserved for residential, farm and forest uses.

SUMMARY: Modifies Measure 37 (2004) to give landowners with Measure 37 claims the right to build homes as compensation for land use restrictions imposed after they acquired their properties. Claimants may build up to three homes if previously allowed when they acquired their properties, four to 10 homes if they can document reductions in property values that justify additional homes, but may not build more than three homes on high-value farmlands, forestlands and groundwater-restricted lands. Allows claimants to transfer homebuilding rights upon sale or transfer of properties; extends rights to surviving spouses. Authorizes future claims based on regulations that restrict residential uses of property or farm, forest practices. Disallows claims for strip malls, mines, other commercial, industrial uses. See Explanatory Statement for more information.

ESTIMATE OF FINANCIAL IMPACT: The measure would require one-time state administrative expenditures of \$8.7 to \$12.5 million to evaluate claims received to date for adherence to measure requirements.

In the short term, the measure would require state administrative expenditures of \$1 million to \$2 million per biennium to evaluate future claims. In the long term, state administrative costs may be reduced as the measure limits the scope of potential future claims. The amount of those potential reductions cannot be determined.

Potential state litigation costs cannot be determined.

The measure authorizes compensation to landowners. The amount of state expenditures to pay claims for compensation cannot be determined.

The measure authorizes establishing a claims review fee for new claims not to exceed the actual and reasonable cost of reviewing a claim. The impact on state revenues cannot be determined.

The measure clarifies ongoing claims review processes and is expected to reduce local government claim processing costs from current levels. The amount of these potential reductions cannot be determined.

The measure authorizes compensation to landowners. The amount of local government expenditures to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

Text of Measure

AN ACT

Relating to compensation for loss of value of private real property resulting from land use regulation; creating new provisions; amending ORS 93.040 and 197.352; appropriating money; and providing that this Act shall be referred to the people for their approval or rejection.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2, 3 and 5 to 22 of this 2007 Act are added to and made a part of ORS chapter 195.

SECTION 1a. ORS 197.352 is added to and made a part of sections 5 to 22 of this 2007 Act.

DEFINITIONS

SECTION 2. As used in this section and sections 3 and 5 to 22 of this 2007 Act:

(1) “Acquisition date” means the date described in section 21 of this 2007 Act.

(2) “Claim” means a written demand for compensation filed under:

(a) ORS 197.352, as in effect immediately before the effective date of this 2007 Act; or

(b) Sections 12 to 14 of this 2007 Act and ORS 197.352, as in effect on and after the effective date of this 2007 Act.

(3) “Enacted” means enacted, adopted or amended.

(4) “Fair market value” means the value of property as determined under section 21b of this 2007 Act.

(5) “Farming practice” has the meaning given that term in ORS 30.930.

(6) “Federal law” means:

(a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government;

(b) A requirement contained in a plan or rule enacted by a compact entity; or

(c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.

(7) “File” means to submit a document to a public entity.

(8) “Forest practice” has the meaning given that term in ORS 527.620.

(9) “Ground water restricted area” means an area designated as a critical ground water area or as a ground water limited area by the Water Resources Department or Water Resources Commission before the effective date of this 2007 Act.

(10) “High-value farmland” means:

(a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are the effective date of this 2007 Act.

(b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and the following soils:

(A) Subclassification Illw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;

Measure 49

(B) Subclassification Ille, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically Huffling Silty Clay Loam.

(c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly is:

(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

(B) Within the boundaries of a district, as defined in ORS 540.505; or

(C) Within the boundaries of a diking district formed under ORS chapter 551.

(d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

(11) "High-value forestland" means land:

(a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

(12) "Home site approval" means approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.

(13) "Just compensation" means:

(a) Relief under sections 5 to 11 of this 2007 Act for land use regulations enacted on or before January 1, 2007; and

(b) Relief under sections 12 to 14 of this 2007 Act for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

(a) A statute that establishes a minimum lot or parcel size;

(b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;

(c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;

(d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;

(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

(15) "Measure 37 permit" means a final decision by Metro, a city or a county to authorize the development, subdivision or partition or other use of property pursuant to a waiver.

(16) "Owner" means:

(a) The owner of fee title to the property as shown in the deed records of the county where the property is located;

(b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

(17) "Property" means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.

(18) "Protection of public health and safety" means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.

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(19) “Public entity” means the state, Metro, a county or a city.

(20) “Urban growth boundary” has the meaning given that term in ORS 195.060.

(21) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under sections 5 to 22 of this 2007 Act or ORS 197.352, as in effect immediately before the effective date of this 2007 Act, to allow the owner to use property for a use permitted when the owner acquired the property.

(22) “Zoned for residential use” means zoning that has as its primary purpose single-family residential use.

LEGISLATIVE POLICY

ON FAIRNESS TO PROPERTY OWNERS

SECTION 3. (1) The Legislative Assembly finds that:

(a) In some situations, land use regulations unfairly burden particular property owners.

(b) To address these situations, it is necessary to amend Oregon’s land use statutes to provide just compensation for unfair burdens caused by land use regulations.

(2) The purpose of sections 5 to 22 of this 2007 Act and the amendments to Ballot Measure 37 (2004) is to modify Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.

BALLOT MEASURE 37

SECTION 4. ORS 197.352 is amended to read:

197.352. [The following provisions are added to and made a part of ORS chapter 197:]

(1) If a public entity enacts [or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 2004, that restricts] **one or more land use regulations that restrict the residential use of private real property or [any interest therein] a farming or forest practice and [has the effect of reducing] that reduce the fair market value of the property, [or any interest therein,] then the owner of the property shall be [paid just compensation] entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in sections 12 to 14 of this 2007 Act.**

(2) Just compensation **under sections 12 to 14 of this 2007 Act** shall be [equal to] **based on** the reduction in the fair market value of the [affected] property [interest] resulting from [enactment or enforcement of] the land use regulation [as of the date the owner makes written demand for compensation under this section].

(3) Subsection (1) of this section shall not apply to land use regulations **that were enacted prior to the claimant’s acquisition date or to land use regulations:**

[(A)] **(a)** Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. [This subsection shall be construed narrowly in favor of a finding of compensation under this section];

[(B)] **(b)** Restricting or prohibiting activities for the protection of public health and safety[, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations];

[(C)] **(c)** To the extent the land use regulation is required to comply with federal law; **or**

[(D)] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. [Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or]

[(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.]

[(4) Just compensation under subsection (1) of this section shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.]

[(5) For claims arising from land use regulations enacted prior to December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.]

[(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this section, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this section in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.]

(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just compensation under this section. Nothing in subsection (3) of this section is intended to affect or alter rights provided by the Oregon or United States Constitution.

(b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection of human health and safety.

(c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the public entity enacting the regulation has no discretion under federal law to decline to enact the regulation.

[(7)] **(5)** A [metropolitan service district, city, or county, or state agency] **public entity** may adopt or apply procedures for the processing of claims under [this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this section] **sections 12 to 24 of this 2007 Act.**

[(8)] **(6)** [Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this section, the governing body responsible for enacting] **The public entity that enacted the land use regulation [may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property] that gives rise to a**

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claim under subsection (1) of this section shall provide just compensation as required under sections 12 to 24 of this 2007 Act.

*[(9)] (7) A decision by a [governing body under this section shall not be considered a] **public entity that an owner qualifies for just compensation under sections 5 to 22 of this 2007 Act and a decision by a public entity on the nature and extent of that compensation are not** [and use [decision as defined in ORS 197.015 (11)] **decisions.***

[(10)] Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this section. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this section. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.]

[(11)] Definitions - for purposes of this section:]

[(A)] "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.]

[(B)] "Land use regulation" shall include:]

[(i)] Any statute regulating the use of land or any interest therein;]

[(ii)] Administrative rules and goals of the Land Conservation and Development Commission;]

[(iii)] Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;]

[(iv)] Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and]

[(v)] Statutes and administrative rules regulating farming and forest practices.]

[(C)] "Owner" is the present owner of the property, or any interest therein.]

[(D)] "Public entity" shall include the state, a metropolitan service district, a city, or a county.]

*[(12)] (8) The [remedy] **remedies** created by [this section is] **sections 5 to 22 of this 2007 Act are** in addition to any other remedy under the Oregon or United States [Constitutions] **Constitution**, and [is] **are** not intended to modify or replace any [other] **constitutional** remedy.*

[(13)] (9) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect.

BALLOT MEASURE 37 CLAIMS MADE ON OR BEFORE THE DATE OF ADJOURNMENT SINE DIE OF THE 2007 REGULAR SESSION OF THE SEVENTY-FOURTH LEGISLATIVE ASSEMBLY (Generally)

SECTION 5. A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly is entitled to just compensation as provided in:

(1) Section 6 or 7 of this 2007 Act, at the claimant's election, if the property described in the claim is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(2) Section 9 of this 2007 Act if the property described in the claim is located, in whole or in part, within an urban growth boundary; or

(3) A waiver issued before the effective date of this 2007 Act to the extent that the claimant's use of the property complies with the waiver and the claimant has a common law vested right on the effective date of this 2007 Act to complete and continue the use described in the waiver.

(Claims Relating to Property Outside Urban Growth Boundaries)

SECTION 6. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly is eligible for three home site approvals on the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be approved for property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state; or

(b) Three, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed three.

(3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief under this section may establish at least one additional lot, parcel or dwelling on the property. In addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant may amend the claim to reduce the number to no more than three by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If a claim was for a use other than a subdivision or partition of property, or other than approval for establishing a dwelling on the property, the claimant may amend the claim to seek one or more home site approvals under this section. A person amending a claim under this subsection may not make a claim under section 7 of this 2007 Act.

(5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.

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(6) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act, to qualify for a home site approval under this section the claimant must establish that:

- (a) The claimant is an owner of the property;
- (b) All owners of the property have consented in writing to the claim;
- (c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;
- (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;
- (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3); and
- (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are authorized under this section.

(7) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(8) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for a property under this section, the claimant may seek other governmental authorizations required by law for the partition or subdivision of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those authorizations.

SECTION 7. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly for property that is not high-value farmland or high-value forestland and that is not in a ground water restricted area is eligible for four to 10 home site approvals for the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be established on the property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state;

(b) 10, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed 10; or

(c) The number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than 10 in any case.

(5) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act to qualify for a home site approval under this section, the claimant must establish that:

- (a) The claimant is an owner of the property;
- (b) All owners of the property have consented in writing to the claim;
- (c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;
- (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;
- (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3);
- (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels and dwellings on the property that are authorized under this section; and

(g) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in

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fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing 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 the property one year after the enactment. The appraisal also must show the fair market value of each home site approval to which the claimant is entitled under section 6 (2) of this 2007 Act, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under subsection (6) of this section. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(10) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for the property under this section, the claimant may seek other governmental authorizations required by law for the subdivision or partition of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the subdivision or partition, or the dwelling, does not apply to the review of those authorizations.

SECTION 8. (1) No later than 120 days after the effective date of this 2007 Act, the Department of Land Conservation and Development shall send notice to all the following claimants that filed a claim for property outside an urban growth boundary:

(a) A claimant whose claim was denied by the state before the effective date of this 2007 Act, but who may become eligible for just compensation because of section 21 (2) of this 2007 Act or any other provision of sections 5 to 22 of this 2007 Act;

(b) A claimant whose claim was approved by the state before the effective date of this 2007 Act; and

(c) A claimant whose claim has not been approved or denied by the state before the effective date of this 2007 Act.

(2) The notice required by subsection (1) of this section must:

(a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a dwelling on the property under sections 5 to 22 of this 2007 Act;

(b) Identify any information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by filing the form provided by the department within 90 days after the date the department mails the notice and form required under subsection (1) of this section. In addition, the claimant must file any information required in the notice. If the claimant fails to file the form within 90 days after the date the department mails the notice, the claimant is not entitled to relief under section 6 or 7 of this 2007 Act.

(4) The department shall review the claims in the order in which the department receives the forms required under subsection (3) of this section. In addition to reviewing the claim, the department shall review the department's record on the claim, the form required under subsection (3) of this section, any new material from the claimant and any other information required by sections 5 to 22 of this 2007 Act to ensure that the requirements of this section and section 6 or 7 of this 2007 Act are met. The department shall provide a copy of the material submitted by the claimant to the county where the property is located and consider written comments from the county that are timely filed with the department. If the department determines that the only land use regulations that restrict the claimant's use of the property are regulations that were enacted by the county, the department shall transfer the claim to the county where the property is located and the claim shall be processed by the county in the same manner as prescribed by this section for the processing of claims by the department. The county must consider any written comments from the department that are timely filed with the county.

(5) If the claimant elects to obtain relief under section 7 of this 2007 Act, the claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7 (6) of this 2007 Act. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must be filed with the department or, if the claim is being processed by the county, with the county within 180 days after the date the claimant files the election to obtain relief under section 7 of this 2007 Act. A claimant that elects to obtain relief under section 7 of this 2007 Act may change that election to obtain relief under section 6 of this 2007 Act, but only if the claimant provides written notice of the change on or before the date the appraisal is filed. If a county is processing the claim, the county

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may impose a fee for the review of a claim under section 7 of this 2007 Act in an amount that does not exceed the actual and reasonable cost of the review.

(6) The department or the county shall review claims as quickly as possible, consistent with careful review of the claim. The department shall report to the Joint Legislative Audit Committee on or before March 31, 2008, concerning the department's progress and the counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.

(7) The department's final order and a county's final decision on a claim under section 6 or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision approves the claim, the order or decision must state the number of home site approvals issued for the property and may contain other terms that are necessary to ensure that the use of the property is lawful.

(Claims Relating to Property Within Urban Growth Boundaries)

SECTION 9. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the lesser of:

(a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;

(b) 10, except that if there are existing dwellings on the property, the number of single-family dwellings that may be established is reduced so that the maximum number of dwellings, including existing dwellings located on the property, does not exceed 10; or

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the information required by section 10 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of single-family dwellings that may be established for purposes of subsection (2)(a) of this section is the number in the most recent waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but not more than 10 in any case.

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued

by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located, in whole or in part, within an urban growth boundary;

(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;

(e) The property is zoned for residential use;

(f) One or more land use regulations prohibit establishing the single-family dwellings;

(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3);

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

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(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing 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 the property one year after the enactment. The appraisal also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) When Metro, a city or a county has issued a final decision authorizing one or more single-family dwellings under this section on the portion of the property located within the urban growth boundary, the claimant may seek other governmental authorizations required by law for that use, and a land use regulation enacted by a public entity that has the effect of prohibiting the use does not apply to the review of those authorizations, except as provided in section 11 of this 2007 Act. If Metro is reviewing a claim for a property, and a city or a county is reviewing a claim for the same property, Metro and the city or county shall coordinate the review and decisions and may:

(a) Provide that one of the public entities be principally responsible for the review; and

(b) Provide that the decision of each of the public entities is contingent on the decision of the other public entity.

(10) The only types of land use that are authorized by this section are the subdivision or partition of land for one or more single-family dwellings, or the establishment of one or more single-family dwellings on land on which the dwellings would not otherwise be allowed.

SECTION 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public

entity shall complete a tentative review no later than 240 days after the effective date of this 2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

(2) If Metro, a city or a county has not made a final decision before the effective date of this 2007 Act on a claim filed for property located, in whole or in part, within an urban growth boundary, the public entity with which the claim was filed shall send notice to the claimant within 90 days after the effective date of this 2007 Act. The notice must:

(a) Explain that the claimant is entitled to seek relief under section 9 of this 2007 Act;

(b) Identify the information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) Within 120 days after the date the public entity mails notice under subsection (2) of this section, a claimant must notify the public entity if the claimant intends to continue the claim and must file the information required in the notice. If the claimant fails to file the notice and required information with the public entity within 120 days after the date the public entity mails the notice, the claimant is not entitled to relief under section 9 of this 2007 Act.

(4) A public entity that receives a notice from a claimant under subsection (3) of this section shall review the claim, the record on the claim, the notice received from the claimant and the information required under subsection (3) of this section to determine whether the claim demonstrates that the requirements of section 9 of this 2007 Act are satisfied. The public entity shall complete a tentative review no later than 120 days after receipt of the notice from the claimant and shall provide written notice to the claimant, the department and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 180 days after receipt of the notice from the claimant.

(5) If a claimant filed a claim that is subject to this section after December 4, 2006, the claim must have included a copy of a final land use decision by the city or county with land use jurisdiction over the property that denied an application by the claimant for the residential use described in the claim. If the claim was filed after December 4, 2006, and did not include a final land use decision denying the residential use described in the claim, the claimant is not entitled to relief under section 9 of this 2007 Act.

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(Development Standards; Transferability)

SECTION 11. (1) A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.

(2) Before beginning construction of any dwelling authorized under section 6 or 7 of this 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

(3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:

(A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or on land within a ground water restricted area; or

(B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.

(b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.

(4) If an owner is authorized to subdivide or partition more than one property, or to establish dwellings on more than one property, under sections 5 to 11 of this 2007 Act and the properties are in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of the properties if that property is less suitable than the other properties for farm or forest use. If one of the properties is zoned for residential use, the owner may cluster some or all of the dwellings, lots or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on the property zoned for residential use.

(5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11 of this 2007 Act, regardless of how many properties that person owns or how many claims that person has filed.

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of this 2007 Act runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

(a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 of this 2007 Act remains a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law; and

(b) A dwelling or other residential use of the property based on an authorization under section 6, 7 or 9 of this 2007 Act is a permitted use and may be established or continued by the claimant or a subsequent owner, except that once the claimant conveys the property to a person other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner must establish the dwellings or other residential use authorized under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance.

(7) When relief has been claimed under sections 5 to 11 of this 2007 Act:

(a) Additional relief is not due; and

(b) An additional claim may not be filed, compensation is not due and a waiver may not be issued with regard to the property under sections 5 to 22 of this 2007 Act or ORS 197.352 as in effect immediately before the effective date of this 2007 Act, except with respect to a land use regulation enacted after January 1, 2007.

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable development interests between the jurisdictions of the public entities that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

(9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or 9 of this 2007 Act and an authorization to use the property provided by a waiver under section 6, 7 or 9 of this 2007 Act:

(a) Is not affected by the death of the claimant if the death occurs on or after the effective date of this 2007 Act; and

(b) Passes to the person that acquires the property by devise or by operation of law.

BALLOT MEASURE 37 CLAIMS MADE AFTER THE DATE OF ADJOURNMENT SINE DIE OF THE 2007 REGULAR SESSION OF THE SEVENTY-FOURTH LEGISLATIVE ASSEMBLY (Generally)

SECTION 12. (1) A person may file a claim for just compensation under sections 12 to 14 of this 2007 Act and ORS 197.352 after the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly if:

(a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(b) The person's desired use of the property is a residential use or a farming or forest practice;

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(c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 197.352 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(3) Relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.

(4) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130.

(Procedures for Actions on New Claims)

SECTION 13. (1) A person filing a claim under section 12 of this 2007 Act shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation.

(2) A claim filed under section 12 of this 2007 Act must be filed with the public entity that enacted the land use regulation that is the basis for the claim.

(3) Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under section 12 of this 2007 Act in an amount not to exceed the actual and reasonable cost of reviewing the claim.

(4) A person must file a claim under section 12 of this 2007 Act within five years after the date the land use regulation was enacted.

(5) A public entity that receives a claim filed under section 12 of this 2007 Act must issue a final determination on the claim within 180 days after the date the claim is complete, as described in subsection (9) of this section.

(6) If a claim under section 12 of this 2007 Act is filed with state government, as defined in ORS 174.111, the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the claim must be filed with the chief administrative office of the public entity, or with an individual designated by ordinance, resolution or order of the public entity.

(7) A claim filed under section 12 of this 2007 Act must be in writing and must include:

(a) The name and address of each owner;

(b) The address, if any, and tax lot number, township, range and section of the property;

(c) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(d) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the public entity to identify the specific land use regulation that is the basis for the claim;

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(e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(f) An appraisal of the property that complies with section 12 (2) of this 2007 Act.

(8) A claim filed under section 12 of this 2007 Act must include the fee, if any, imposed by the public entity with which the claim is filed pursuant to subsection (3) of this section.

(9) The public entity shall review a claim filed under section 12 of this 2007 Act to determine whether the claim complies with the requirements of sections 12 to 14 of this 2007 Act. If the claim is incomplete, the public entity shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by subsection (8) of this section and:

(a) The missing information;

(b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(10) If a public entity does not notify a claimant within 60 days after a claim is filed under section 12 of this 2007 Act that information or the fee is missing from the claim, the claim is deemed complete when filed.

(11) A claim filed under section 12 of this 2007 Act is deemed withdrawn if the public entity gives notice to the claimant under subsection (9) of this section and the claimant does not comply with the requirements of subsection (9) of this section.

SECTION 14. (1) A public entity that receives a complete claim as described in section 13 of this 2007 Act shall provide notice of the claim at least 30 days before a public hearing on the claim or, if there will not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

(a) All owners identified in the claim;

(b) All persons described in ORS 197.763 (2);

(c) The Department of Land Conservation and Development, unless the claim was filed with the department;

(d) Metro, if the property is located within the urban growth boundary of Metro;

(e) The county in which the property is located, unless the claim was filed with the county; and

(f) The city, if the property is located within the urban growth boundary or adopted urban planning area of the city.

(2) The notice required under subsection (1) of this section must describe the claim and state:

(a) Whether a public hearing will be held on the claim, the date, time and location of the hearing, if any, and the final date for submission of written evidence and arguments relating to the claim;

(b) That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the public entity; and

(c) That judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond.

(3) Except as provided in subsection (4) of this section, written evidence and arguments in proceedings on the claim must be submitted to the public entity not later than:

(a) The close of the final public hearing on the claim; or

(b) If a public hearing is not held, the date that is specified by the public entity in the notice required under subsection (1) of this section.

(4) The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

(5) A public entity shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections (3) and (4) of this section.

(6) A public entity shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The public entity shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located.

SECTION 15. In addition to any other notice required by law, a county must give notice of a Measure 37 permit for property located entirely outside an urban growth boundary to:

(1) The county assessor for the county in which the property is located;

(2) A district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within one-half mile of the property; and

(3) The Department of Land Conservation and Development, the State Department of Agriculture, the Water Resources Department and the State Forestry Department.

JUDICIAL REVIEW

SECTION 16. (1) A person that is adversely affected by a final determination of a public entity under sections 5 to 11 or 12 to 14 of this 2007 Act may obtain judicial review of that determination under ORS 34.010 to 34.100, if the determination is made by Metro, a city or a county, or under ORS 183.484, if the determination is one of a state agency. Proceedings for review of a state agency determination under sections 5 to 11 or 12 to 14 of this 2007 Act must be commenced in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue. A determination by a public entity under sections 5 to 11 or 12 to 14 of this 2007 Act is not a land use decision.

(2) A person is adversely affected under subsection (1) of this section if the person:

(a) Is an owner of the property that is the subject of the final determination; or

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(b) Is a person who timely submitted written evidence, arguments or comments to a public entity concerning the determination.

(3) Notwithstanding subsection (1) of this section, judicial review of a final determination under sections 5 to 11 or 12 to 14 of this 2007 Act or ORS 197.352 is:

(a) Limited to the evidence in the record of the public entity at the time of its final determination.

(b) Available only for issues that are raised before the public entity with sufficient specificity to afford the public entity an opportunity to respond.

OMBUDSMAN

SECTION 17. (1) The Governor shall appoint an individual to serve, at the pleasure of the Governor, as the Compensation and Conservation Ombudsman.

(2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:

(a) Analyze problems of land use planning, real property law and real property valuation; and

(b) Facilitate resolution of complex disputes.

SECTION 18. (1) For the purpose of helping to ensure that a claim is complete, as described in section 13 of this 2007 Act, the Compensation and Conservation Ombudsman may review a proposed claim if the review is requested by a claimant that intends to file a claim under sections 12 to 14 of this 2007 Act and ORS 197.352.

(2) At the request of the claimant or the public entity reviewing a claim, the ombudsman may facilitate resolution of issues involving a claim under sections 5 to 22 of this 2007 Act.

MISCELLANEOUS

SECTION 19. (1) If an owner submits an application for a comprehensive plan or zoning amendment, or submits an application for an amendment to the Metro urban growth boundary, and Metro, a city or a county approves the amendment, the owner is not entitled to relief under sections 5 to 22 of this 2007 Act with respect to a land use regulation enacted before the date the application was filed.

(2) If an owner files a petition to initiate annexation to a city and the city or boundary commission approves the petition, the owner is not entitled to relief under sections 5 to 22 of this 2007 Act with respect to a land use regulation enacted before the date the petition was filed.

SECTION 20. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by sections 5 to 22 of this 2007 Act. The Department of Land Conservation and Development is authorized to retain persons to review the appraisals.

SECTION 21. (1) Except as provided in this section, a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

(2) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse

acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under sections 5 to 22 of this 2007 Act by using the procedure provided in ORS 105.623 to 105.649.

(3) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.

(4) A default judgment entered after December 2, 2004, does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004.

SECTION 21a. For the purposes of sections 5 to 22 of this 2007 Act, a document is filed on the date the document is received by the public entity.

SECTION 21b. For the purposes of sections 5 to 22 of this 2007 Act, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.

SECTION 21c. If any part of sections 5 to 22 of this 2007 Act is held to be unconstitutional or otherwise invalid, all remaining parts of sections 5 to 22 of this 2007 Act shall not be affected by the holding and shall remain in full force and effect.

SECTION 22. (1) The Compensation and Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on moneys in the Compensation and Conservation Fund shall be credited to the fund. The fund consists of moneys received by the Department of Land Conservation and Development under sections 5 to 22 of this 2007 Act and other moneys available to the department for the purpose described in subsection (2) of this section.

(2) Moneys in the fund are continuously appropriated to the department for the purpose of paying expenses incurred to review claims under sections 5 to 22 of this 2007 Act and for the purpose of paying the expenses of the Compensation and Conservation Ombudsman appointed under section 17 of this 2007 Act.

CONFORMING AMENDMENTS

SECTION 23. ORS 93.040 is amended to read:

93.040. (1) The following statement shall be included in the body of an instrument transferring or contracting to transfer fee title to real property except for owner's sale agreements or earnest money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.** THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST

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FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.**"

(2) In all owner's sale agreements and earnest money receipts, there shall be included in the body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.**"

(3) In all owners' sale agreements and earnest money receipts subject to ORS 358.505, there shall be included in the body of the instrument or by addendum the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY."

(4) An action may not be maintained against the county recording officer for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section.

(5) An action may not be maintained against any person for failure to include in the instrument the statement required in subsection (1) or (2) of this section, or for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section, unless the person acquiring or agreeing to acquire fee title to the real property would not have executed or accepted the instrument but for the absence in the instrument of the statement required by subsection (1) or (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire fee title to the real property against any person other than the person transferring or contracting to transfer fee title to the real property.

SECTION 24. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express a legislative intent in the enactment of this 2007 Act.

SECTION 25. This 2007 Act shall be submitted to the people for their approval or rejection at a special election held throughout this state as provided in chapter _____, Oregon Laws 2007 (Enrolled House Bill 2083).

NOTE: **Boldfaced** type indicates new language; *[brackets and italic]* type indicates deletions or comments.

Explanatory Statement

Ballot Measure 37 (2004) requires governments to pay landowners or forgo enforcement when certain land use regulations reduce their property values. This measure modifies Measure 37 to give landowners who have filed Measure 37 claims the right to build homes as compensation for land use regulations imposed after they acquired their properties.

Claimants may build up to three homes if allowed when they acquired their properties.

Claimants may build up to 10 homes if allowed when they acquired their properties and they have suffered reductions in property values that justify the additional home sites.

This measure protects farmlands, forestlands and lands with groundwater shortages in two ways.

First, subdivisions are not allowed on high-value farmlands, forestlands and groundwater-restricted lands. Claimants may not build more than three homes on such lands.

Second, claimants may not use this measure to override current zoning laws that prohibit commercial and industrial developments, such as strip malls and mines, on land reserved for homes, farms, forests and other uses.

Also, this measure expands homebuilding rights under Measure 37 in two ways.

First, it extends homebuilding rights to surviving spouses whose claims are not eligible for compensation under Measure 37.

Second, it allows claimants to transfer their homebuilding rights to new owners, a right not clearly provided by Measure 37. The new owners must exercise their homebuilding rights within 10 years.

Claimants will be notified of their options to build homes under this measure within 120 days after this measure takes effect.

Claimants who have received land use waivers under Measure 37 are entitled to complete developments under the provisions of Measure 37 if they have established vested rights to do so.

To streamline the approval process for small claims, this measure provides that those who choose to apply for up to three homes need only show they had the right to build the homes they are requesting when they acquired their property.

To validate larger claims, this measure requires those who choose to apply for four to 10 homes to show they had the right to develop the homes they are requesting when they acquired their property and that they have suffered a loss of value from prior regulations that justifies the number of homes requested. Appraisals are required to establish such reductions in value. The costs of appraisals and other costs of preparing claims may be added to the calculation of reduced values, up to \$5,000 per claim.

This measure establishes an ombudsman to help landowners who request assistance with their claims.

This measure modifies Measure 37 for compensation claims that arise from land use regulations in the future. It authorizes such claims based on regulations that limit residential uses of property or farm and forest practices, requires documentation of reduced values and provides for proportionate compensation when such reductions in value occur. Property owners will have five years to file claims over regulations enacted after January 1, 2007.

This measure will be effective 30 days after approval by the voters.

(This impartial statement explaining the measure was provided by the 2007 Legislative Assembly.)

Measure 49 Arguments

Legislative Argument in Support

The people of Oregon want Measure 37 to be fixed.

That was the clear message delivered to the Legislature this year.

Hundreds of Oregonians from around the state traveled to Salem for nine public hearings to describe the chaos and confusion created by Measure 37.

Here's what they told the Land Use Fairness Committee:

- Measure 37 is **not** working for farm families and small land owners who wish to build homes on their property.
- Big developers have been exploiting Measure 37 to pave the way for large subdivisions and strip malls on lands now reserved for farming and forestry.

Those big developments diminish our most valuable natural-resource lands, deplete scarce water supplies and overwhelm local roads, schools and public safety services.

Even worse, Measure 37 has pitted neighbor against neighbor, with more than 270 lawsuits pending in Oregon courts.

Most of the 369 Oregonians who traveled to Salem to share their concerns asked us to fix Measure 37, suspend it or repeal it outright. Many told us they had voted for Measure 37 but wish now that they could change their vote or change the measure to do what they had intended. Not one person told us they had voted against the measure and now wish they had voted for it.

This input convinced us to come back to you, the voters, with a proposal to address Measure 37's flaws.

Our proposal – Measure 49 – does **not** repeal Measure 37. Instead, it establishes a balance in our land use system to protect the rights of landowners and their neighbors. It protects the right of farm families and other landowners to build homes on their property and protects the lands and resources that make Oregon a special place to live, work and raise a family.

Measure 49 is now in your hands. We hope you agree that Measure 49 offers a better way to protect and preserve the best of Oregon for all of us.

Committee Members:

Senator Floyd Prozanski
Representative Brian Clem
Representative Greg Macpherson

Appointed by:

President of the Senate
Speaker of the House
Speaker of the House

(This Joint Legislative Committee was appointed to provide the legislative argument in support of the ballot measure pursuant to ORS 251.245.)

Argument in Favor

The Bowerman Family asks for your YES vote on Measure 49.

Our family arrived by covered wagon in Oregon in 1845 with a vision of raising future generations in the natural splendor of this rich and beautiful land. Much has changed in the 160 years since then, but one thing remains constant: our family's deep commitment to the care of Oregon.

We have worked as farmers, homemakers, teachers, shopkeepers, woodworkers, and more. We have lived and continue to live in all regions: the Willamette, Rogue and John Day Valleys; Portland, Medford, Bend, Eugene, Fossil and other towns. We know from family history that our grandparents and great-grandparents treasured and nurtured their relationship with the land. Our present generation carries on this family tradition.

We are convinced that Measure 37 must be fixed or it will wreak havoc on the productivity and beauty of our state; will effectively dismantle Oregon's commitment to growth management; and will have severe detrimental consequences for our children and grandchildren.

We have studied Measure 49 thoroughly. We are convinced it is absolutely necessary to correct the unintended consequences of Measure 37. All Oregonians must work together to preserve our special quality of life for future generations.

Please join us, vote YES on Measure 49.

Signed:

Barbara Bowerman, Fossil

Jon Bowerman, Wheeler County

Jay Bowerman, Deschutes County

Tom Bowerman, Lane County

Kristine Bowerman, Lane County

Jayson Bowerman, Deschutes County

Tracy Bowerman, Bend

McKenzie Bowerman, Oakridge

Danielle Bowerman, Oakridge

Will Bowerman, Fossil

Elizabeth Bowerman, Redmond

(This information furnished by Tom R. Bowerman.)

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Argument in Favor

A Message from Four Oregon Governors

Dear Fellow Oregonian:

We come from different political parties, different parts of Oregon, different occupations, and we each had the privilege of serving Oregon as Governor during very different times.

For all our differences, however, we share a love of Oregon. We appreciate the legacy we have been given, and understand the tremendous responsibility we have to protect that legacy and pass it long.

Oregon is loveable – and livable – because Oregonians have actively engaged in protecting that legacy. That's why we have the bounty that other states have lost:

Measure 49 Arguments

- Majestic forests that offer beauty, recreation and a livelihood for many communities.
- Irreplaceable farmland that supports a rich and varied agricultural economy; and
- A balance that protects Oregon's unique assets and the property rights of Oregonians.

That is why we come together to ask you to vote Yes on Measure 49.

Measure 49 will fix the flaws in Measure 37 – flaws that threaten the Oregon we love. Measure 37, passed in 2004, has opened the door to massive development that will destroy the farmland, forestland and water resources we have today.

Measure 49 will deliver what Oregonians had in minds when they voted on Measure 37: a balance that protects Oregon's farms, forests, and water and allows individual property owners to build more than one home on their property.

Measure 49 will also deliver something bigger: a workable land use policy that will allow us to keep our precious Oregon assets – the things that make Oregon special – and be fair to property owners.

Please join us in voting Yes on Measure 49.

Governor Vic Atiyeh (1979 – 1987)
Governor Barbara Roberts (1991 – 1995)
Governor John Kitzhaber MD (1995 – 2003)
Governor Ted Kulongoski (2003 – present)

(This information furnished by Theodore Kulongoski.)

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Argument in Favor

Measure 37 is a Mess. Measure 49 Will Clean It Up.

Measure 37 was sold as a way to allow a landowner to build a few homes to their property – for their kids or to fund their retirement – if they could do so when they bought the land.

Since its passage, over 7,500 claims for development have been filed covering about 730,000 acres of the state. Most of the claims are for 10 or fewer houses. (Up to that amount is allowed under Measure 49).

But most of the acreage covered by M37 claims is for enormous development: huge housing subdivisions, strip malls and big box stores. Almost all of this large-scale development is on Oregon's prime farmland, in forests and along water – where it just doesn't belong.

Measure 37 has also created incredible confusion and unfairness in every corner of the state.

**Rules should be the same for everyone.
But that's not how Measure 37 is working.**

Nobody has been able to figure out Measure 37's flawed language, so it is interpreted differently, county by county, property by property.

Measure 49 clarifies the rules and makes them consistent throughout the state.

**Measure 37 also destroys the rights of some,
while giving a bonanza to others.**

For example, M37 left out the right of "transferability." That means some people who want to build a few homes on their land – for their kids or to fund their retirement – cannot transfer the rights to own those homes to their children or a new owner. Even a surviving spouse whose name doesn't appear on the

deed since the beginning of ownership cannot proceed with a Measure 37 claim.

Measure 49 allows transferability of development rights for kids and surviving spouses.

Measure 49:

Makes the rules consistent for everybody.
Strengthens rights of small individual property owners.
Protects farmland, forests water and our quality of life from the abuses of Measure 37.

**Clean up the mess!
Vote YES on 49**

(This information furnished by Elizabeth Kaufman, Yes on 49 Campaign.)

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Argument in Favor

How does Measure 49 work? It's really pretty simple.

Measure 37 – passed in 2004 – has created chaos for Oregon's unique natural beauty and for landowners who thought they could do what they want with their own property. There are different rules for every property, different interpretations of its vague language in every county, and the flaws of Measure 37 allow massive subdivisions, commercial and industrial development in places they simply don't belong.

Measure 49 takes this chaos and makes things straightforward, consistent and balanced for property owners and all of Oregon.

Here is how it works:

- **Measure 49 protects the property rights of small individual landowners by immediately allowing them up to 3 houses on their property, if the law allowed it when they bought their land.** And it will pass those rights on to a surviving spouse or to someone who purchases the property from the current owner – something that Measure 37 left out and needs to be fixed.
- **Additionally, property owners can build up to 10 houses if they can document a decrease in property value equal to the value of the additional houses – just as Measure 37 originally promised.** (Three homesites – clustered on one portion of large properties – is the limit for high-value farmland, and forests or places with limited water supplies.)
- **Measure 49 limits large development – in order to protect Oregon's farmland, forests and water.** That means stopping the abuse of Measure to develop huge housing subdivisions, strip malls, big-box stores, and mining operations where they are not allowed by zoning.

The development interests who stand to make huge profits from Measure 37 are the ones opposing Measure 49. They will try their best to confuse the issue, claiming that Measure 49 is complicated. But as you can see, it is quite straightforward.

For more information, go to www.yeson49.com and read the entire ballot measure.

Vote Yes on 49

(This information furnished by Emily Jackson, Yes on 49 Campaign.)

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Measure 49 Arguments

Argument in Favor

Measure 49: Fact vs. Fiction

Does Measure 49 Repeal Measure 37?

No. Measure 49 fixes the major flaws and loopholes of Measure 37 that have both frustrated landowners with modest claims and threatened our farmland, forest, and water supplies with claims for large subdivisions, strip malls, billboards, and gravel pits. Measure 37 remains law—Measure 49 simply makes amendments to restore balance and deliver what Measure 37 promised.

Will Measure 49 wipe out almost all current Measure 37 claims, and eliminate all protection from future regulations?

Absolutely not. Measure 49 allows claimants to move forward with development of up to 3-10 homesites and guarantees the ability to file claims for future changes in residential use of property, and farm and forest practices. The claim that the government will come to take your home is patently false.

Will people with valid Measure 37 claims have to start over?

No. Within 120 days of passage of Measure 49, claimants will receive a simple form from the state asking them to choose between the 'fast track' up to three homesites or—if they can prove property value loss, backed up with an appraisal—4 to 10 homesites. Then, the claimant may proceed with development.

Are Oregon businesses are specifically targeted by Measure 49?

Oregon land use laws require that local governments provide land for commercial and industrial development. That requirement will continue. Measure 49 simply prohibits claims for industrial and commercial development not allowed by zoning.

Did the Legislature draft Measure 49 without holding public hearings?

Measure 49 was the result of dozens of hours of public hearings over several months, with testimony from hundreds of individual Oregonians.

If Measure 37 is left unmodified, can more claims be filed in the future for large subdivisions, strip malls, billboards, and more?

If left unchanged, Measure 37 claims can continue to be filed indefinitely for large development not allowed by current zoning. Measure 49 closes this loophole.

(This information furnished by Laura S. Imeson, Yes on 49.)

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Argument in Favor

Yes on Measure 49 – Protect Our Home: Oregon

I live on a farm in Washington County, amidst some of the best farmland on earth—where perennial tall fescue is grown for grass seed, filberts for Christmas stockings, sweet corn for the farmers market, and alfalfa to feed beef cows.

After Measure 37 passed, the first claims seemed reasonable: One neighbor wanted to divide her property into thirds. Another wanted to build one house on 10 acres.

But then the “other” claims came. Within just 3 miles of my farm, there are 54 Measure 37 claims to build a potential 1761 homes – most in an area designated “ground water restricted.”

Imagine moving combines, trailer loads of nursery stock, and large agricultural equipment over our narrow winding roads, amidst the flood of more vehicles commuting to jobs and school. Who will pay for road improvements? How will we provide water to 1761 homes?

This kind of random, intense development will have a devastating impact on highly productive farmland.

And who “benefits?” Not the small property owner. Within Washington County, 88% of the Measure 37 home sites are requested by just 20% of claimants.

Meanwhile, most farm families cannot file Measure 37 claims, though their land has been in the same family for 50 years. Yet their economic livelihood will be severely impacted, if not destroyed.

Nearby elderly widows try to file modest Measure 37 claims, but are denied because they were never on the deed with their husbands.

Other families can't profit from their Measure 37 claims, because development rights aren't transferable.

Measure 49 re-balances Measure 37.

It provides relief to those who want to build a home or two on their rural property.

It helps the elderly claimants wanting to provide for their retirement or a place for their children.

And, by limiting the size of development, we keep the impact to the community and reasonable and manageable.

Vote YES on Measure 49

David Papworth

(This information furnished by David Papworth.)

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Argument in Favor

Do you want to really protect Property Rights? Then Vote Yes on Measure 49!

I am a retired forester, a former contributor to Oregonians In Action and I strongly support private property rights.

But when the interests behind Measure 37 sold it to Oregon, they talked about protecting the rights of small property owners to build a few houses on their land, if it was permitted by the law when they bought the property.

Well, the timber and development industries that have filed claims to build massive subdivisions, commercial and industrial projects on protected farmland and forestland are doing great under Measure 37.

But Measure 37 left many small, individual landowners in the cold.

The flawed language of Measure 37 didn't spell out the ability to transfer development rights from one person to another – even to a surviving spouse! And it left the actual process for securing property rights vague, confusing and different from county to county, and city to city.

- **Measure 49 guarantees “transferability” of rights** to a surviving spouse and if you sell your property to someone else.
- **Measure 49 provides an “express lane” for individual owners**, immediately allowing them up to three houses on their property outside urban areas.

Measure 49 Arguments

- **Measure 49 also provides a fair, simple process to build up to 10 homes** by documenting an equivalent loss in value – as long as the extra houses are not on prime farmland or forestland and don't threaten limited water supplies. (In those cases, property owners can still get up to three homesites if that was allowed when they bought their land.)
- **And Measure 49 protects the property rights of neighbors**, by not allowing massive subdivisions, industrial or commercial development where it just doesn't belong.

**Measure 49:
Fair for Property Owners. Right for Oregon.
Ken Faulk, Benton County**

(This information furnished by Ken Faulk.)

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Argument in Favor

Measure 49 Will Stop the Abuses of Measure 37

Measure 37 was supposed to help small landowners – not large developers.

But the claims for development filed during the first two years of Measure 37 tell a different story.

For every claim filed by small landowners seeking to build one to three homes on their property, there have been four claims filed for subdivisions, for commercial and industrial projects, and for developments that claimants have not yet specified what will be built.

These numbers come from a hard count of Measure 37 claims by Portland State University's Institute of Portland Metropolitan Studies. The numbers show:

- Claims filed by landowners known to be seeking one to three homes: 1,821 claims on 62,860 acres.
- Claims known to be seeking housing subdivisions: 2,753 claims on 319,322 acres.
- Claims on land now reserved for Oregon's farms and forests: 4,580 claims on 487,898 acres.
- The ten largest subdivisions alone would carve out 34,850 home sites on 41,837 acres.

We shouldn't allow developers and speculators to take advantage of Measure 37 in this way.

We shouldn't allow our prime farm and forest lands to be paved over for massive subdivisions.

Measure 49 offers a better way:

- It offers fast track approvals for the over 1,821 land owners who have filed claims to build one to three homes on their property.
- It offers a reasonable compromise for thousands of land owners who filed claims for larger developments. These land owners can opt for three homes or seek up to ten homes on land that is not reserved for high-value farming or forestry and is not threatened with a shortage of groundwater.
- It closes loopholes in Measure 37 that will otherwise allow speculators and developers to destroy the most productive lands in our state.

Give small landowners what they were promised by Measure 37. Stop the abuses by developers and speculators.

Vote Yes on Measure 49.

(This information furnished by Brian Rae, Yes on 49 Campaign.)

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Argument in Favor

A Message from U.S. Senator Ron Wyden

Protect Oregon's Future.

Respect Oregon's Past.

Please Vote Yes on Measure 49

I've had the honor of representing Oregon in the United States Senate for almost 12 years. Throughout my service, I have been acutely aware that the decisions I make have an important impact on the future of our state. And, I've tried to make sure those decisions reflect the values of Oregon, and the legacy that has been passed on to all of us.

This fall we face a state ballot measure crucial to our future. And, I'm asking you to join me in voting Yes on Measure 49 because it is so important to protecting our priceless Oregon heritage.

Measure 37 articulated a principle that Oregonians believed in: respect for people's private property rights. But the way it did that had unintended consequences – and we now can see the results. The level of development – and the kind of development it has unleashed – will destroy our farmland, forests and special places in a way that the voters did not intend. That has been demonstrated by the bipartisan outpouring of Oregonians who have called for a fix.

Measure 49 does not repeal Measure 37 – it restores the balance by allowing small individual property owners greater freedom to build, if the law allowed it when they bought their property. But it does that in a way that also protects our future by respecting our past: the legacy that is our Oregon.

There are very few decisions that will have a greater impact on our state, our children and our grandchildren. My decision is to vote Yes on Measure 49. I hope yours will be too.

(This information furnished by Senator Ron Wyden.)

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Argument in Favor

**Polk County Farm Bureau
for Measure 49**

If you want the "little guy" to get a fair shake, vote "Yes" on Measure 49.

Over 42% of claims for development under Measure 37 seek 1-3 homesites.

Measure 49 gives these claims a green light and transferability. That is what Oregon voters had in mind in 2004 when they approved Measure 37.

Measure 49's limits are needed. Nearly 58% of Measure 37 development claims are for large housing subdivisions, nearly 3,800 of them right on farm and forest land. The proposed subdivisions average 134 acres each; and over 60% are in the Willamette Valley.

Measure 49 Arguments

These subdivisions threaten farms. How? Go to Oregon Department of Agriculture's website, <http://www.oregon.gov/ODA/NRD/m37.shtml>, and see for yourself. ODA's maps show 969 Measure 37 subdivision claims scattered throughout the heart of vibrant farm areas of Marion, Clackamas, and Washington counties alone -- Oregon's TOP THREE producing farm counties.

These subdivisions would be an economic and environmental disaster for the Willamette Valley.

Measure 49 gives Oregon voters a chance to say, "Wait a minute! I didn't intend Measure 37 to undermine Willamette Valley agriculture, or to ruin the Valley's beauty."

Measure 49 allows what Oregon voters intended --some development for the little guy, but preserving our farmland:

- 3 homesites if the claim is on high value farm or forest land, or in a restricted groundwater area. These homesites must be clustered at one end of the property and can only be 5 acres each, so they have the least impact on large swaths of farmland;
- 4-10 lots if a claim is on any other type of land, based on proof of loss of property value - backed up by an appraisal.

Under Measure 49, every Measure 37 claim goes forward. But Measure 49 sets limits that we can live with.

Measure 49 fixes the wrongs of Measure 37. Vote "YES" on Measure 49.

Thank you, from the heart of the Willamette Valley.

(This information furnished by Paul Thorp, Polk County Farm Bureau.)

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Argument in Favor

The League of Women Voters of Oregon

Urges YOU to VOTE YES On Measure 49

The League of Women Voters believes that **Measure 49** is a **fair** and **balanced** solution to the problems created by Measure 37.

The League of Women Voters believes our 35-year-old land use planning system has provided good homes and good jobs while protecting our agricultural industry. We also believe in protection of private property rights balanced by consideration of public health and environmental protection. **Measure 49 supports these values.**

We should protect **agricultural jobs** by protecting agricultural land. We should protect **tourism jobs** by protecting Oregon's special places. We should protect our communities and limited tax dollars from expensive **urban sprawl**.

Measure 49 allows valid claimants **and their spouses** to build up to 3 homesites on their long-owned property or to **transfer** these rights to their kids or others, something Measure 37 does not do. Claimants may build up to ten homesites if they can prove lost value.

Measure 49 protects the rights of **neighbors** by **stopping large subdivisions** and **industrial or commercial developments** where they don't belong.

Measure 49 balances people's **rights: Vote YES on Measure 49!**

Join the

The League of Women Voters of Oregon

In Voting

YES

On Measure 49!

The League of Women Voters is a grassroots nonpartisan, political organization that encourages informed and active participation in government.

(This information furnished by Marge Easley, President, League of Women Voters of Oregon.)

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Argument in Favor

Frontline Fire Fighters say:

Help Us Protect Your Life and your Property. Vote YES on Measure 49.

Our job comes down to one word: protection.

- We are here to protect your life and the life of your family if there is a fire.
- We also protect you in the case of a medical emergency, motor vehicle accident, natural or manmade disaster, and many other emergency situations that may exist.
- And once we make sure you are safe, we protect your home, your business and your property.

The kind of development that Measure 37 will allow will make it more difficult to do our job. That is why Oregon's Professional Fire Fighters support Measure 49, and hope you will too.

As it stands right now, Measure 37 is poised to build large swaths of housing far away from services like fire and police protections. And dealing with that isn't as simple as saying "Well, just put a fire house there!"

- Many Measure 37 developments are in places without enough water.
- Sometimes they are in places where it would be very expensive to extend fire protection – more than local property taxpayers could handle.
- And many of these developments are in places at high risk for wildfires and forest fires – dangerous for residents, and dangerous for fire fighters.

Measure 49 will let people build, but with a little common sense attached. And we can tell you from personal experience, common sense is one of the best fire prevention tools there is.

Join Oregon's Professional Fire Fighters in Voting Yes on 49! Endorsed by Oregon State Fire Fighters Council

(This information furnished by Kelly Bach, President, Oregon State Fire Fighters Council.)

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Measure 49 Arguments

Argument in Favor

Measure 37 in Southern Oregon: Subdivisions and Riverside Gravel Pits

In Jackson, Josephine and Klamath Counties – claims for Measure 37 development include proposals for enormous subdivisions on farmland, in forests and in areas with severe water problems.

Here are just some proposed Measure 37 developments in southern Oregon. For more information, call your County Planning Department.

Location: Old Stage Road, Gold Hill

of acres: 346

Current zoning: exclusive farm use

Intent: Subdivision 340 into one-acre lots
[Contains mapped wetland]

Location: Pompadour Dr, Ashland, Jackson County

of acres: 958

Current zoning: exclusive farm use

Intent: Subdivision into 958 one-acre lots for residential development

Claimant: Krouse Ranch, Inc.

Location: Along Applegate River, North Applegate Rd, Grants Pass

of acres: 195

Current zoning: exclusive farm use

Intent: Aggregate excavation and removal

Claimant: Hill

Location: Along Applegate River, Hwy 238, Jackson County

of acres: 102

Current zoning: exclusive farm use

Intent: Aggregate excavation and removal

From Jackson County staff reports: "The property is within a mapped sensitive wildlife habitat area, a wildfire hazard area, affected by the Applegate River 100-year floodplain, and activities will be visible from a designated outstanding scenic roadway" -- conditional use permit filed through Copeland Sand and Gravel, Inc.

Location: Pinecrest Drive, Josephine County

of acres: 183

Current zoning: forest use, rural residential

Intent: Subdivision into 1-acre parcels; commercial uses

Location: Lower Klamath Lake Road, Klamath Falls, Klamath County

of acres: 4,100

Current zoning: exclusive farm use, farm-forest mixed use

Intent: Subdivision into 17,859 parcels.

Location: Gerber Road, Bonanza, Klamath County

of acres: 6,611.28

Current zoning: exclusive farm use, farm-forest mixed use, forest use

Intent: Subdivision into 1-acre lots.

Location: Paygr Road, Merrill, Klamath County

of acres: 837

Current zoning: exclusive farm use

Intent: 800 one-acre lot subdivision.

These three proposed Measure 37 subdivisions alone in Klamath County would total 25,270 new homesites.

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Liz Kaufman, Yes on 49 Campaign.)

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Argument in Favor

Vote Yes on Measure 49 Save Our Beautiful Applegate River Valley from Mining

We are residents of the scenic Applegate Valley in Southern Oregon. Recently, we joined together to form SAVE (Save Applegate Valley Environment) to fight three proposed aggregate/gravel mines along and in the middle of the Applegate River.

The owners of the properties had tried to develop these mines before, but Oregon laws protected the river from these dangerous proposals. Now the owners have filed Measure 37 claims for special rights to get these land use laws waived.

That's why we desperately need Measure 49.

These industrial aggregate (gravel) mines will have a devastating impact on our valley and community. Their application states there will be 12 inbound and 12 outbound trucks every hour. That's 220 truck trips per day for up to 10 years from just one mine!

220 truck trips per day for 10 years on our narrow, winding North Applegate Road.

There are many more problems:

Emergency vehicle access and response times – what will happen when emergency vehicles encounter huge haul trucks on our narrow winding road?

Our kids and school bus routes – what about the safety of school buses and our kids' who walk and bike along the roadway.

Property values – our property values will be in jeopardy if these mines operate. Who will be next?

Healthy River Systems – The Applegate is designated Essential Salmon Habitat for the Endangered Coho Salmon

Problems like these are why we have rules to protect communities and families – rules that Measure 37 eliminates in every part of Oregon.

Oregon voters never intended Measure 37 to destroy natural areas like the Applegate Valley with mining operations.
That's why we need Measure 49 to clarify and fix Measure 37.

Measure 49 provides fairness to small property owners and prevents commercial and industrial development such as aggregate mining.

Please help us save our beautiful Applegate Valley. Vote Yes on Measure 49!

(This information furnished by Sean Jeans-Gail, Yes on 49 Campaign.)

This space purchased for \$500 in accordance with ORS 251.255.
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Argument in Favor

THE WILLAMETTE VALLEY: LAND OF FARMS OR SUBDIVISIONS?

Measure 37 was sold as a way for a property owner to build a few homes on their land for their kids or their retirement – if they could do so when they bought it.

But Measure 37 has also brought claims for development for enormous subdivisions destroying high-value farmland.

For example, while Marion County was the top agricultural county in Oregon in 2006, Measure 37 claims could bring in

Measure 49 Arguments

more than 251 new subdivisions. Once we lose this farmland, we never get it back.

Here are just a few of the 2,259 Measure 37 claims filed across the entire Willamette Valley:

Location: Groundwater limited area, Liberty Road South, Salem
of acres: 215

Current zoning: exclusive farm use

Intent: Subdivision into 80 lots, each with individual groundwater well

Location: Quinaby Road NE, Salem

of acres: 156

Current zoning: exclusive farm use

Intent: Residential subdivision and commercial uses

Location: 3500 Buena Vista Rd S, Salem

of acres: 136

Current zoning: exclusive farm use

Intent: subdivide into 1 acre to 5 acre lots

Claimant: Ankeny Gun Club

Location: Cadle Road, Rickreall

of acres: 462

Current zoning: exclusive farm use

Intent: Commercial retail use – shopping mall

Location: Highway 22, Yamhill County

of acres: 7,647

Intent: Subdivisions

Location: Highway 99W, Newberg

of acres: 69

Current zoning: exclusive farm use

Intent: Subdivision into one-acre or smaller lots for residential and commercial lots

Location: Niederberger Road, Dundee

of acres: 15

Current zoning: rural-residential

Intent: 5-acre retail shopping center, residential subdivision

Location: Salmon River Highway, Polk County

of acres: 219

Current zoning: farm-forest mixed use

Intent: Highway-oriented commercial, light-industrial, and residential subdivisions

Location: Dallas, Polk County

of acres: 82

Current zoning: exclusive farm use

Intent: gas station, grocery, 1-acre residential dwellings, church, retirement home

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Jamie Hogue, Yes on 49.)

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Argument in Favor

ANOTHER FAMILY FARMER URGES YOU TO VOTE YES ON 49

Our family lives near Dayton on a family farm established in 1923. Our family...my husband and I, our two children, and my husband's parents farms over 1,000 acres. We grow Marionberries, filberts, table beets, grass seed, and radish seed.

We had friends and even family who voted for Measure 37 having been mislead into believing that it simply would allow elderly landowners to add a home or two to their land.

What they found is that Measure 37 really benefited real estate developers, not small property owners.

We worry about the loss of valuable farmland if Measure 37 isn't fixed. If farmers have to compete with developers, farmers will lose.

There are Measure 37 claims for 25 new housing subdivisions within seven miles of our farm. All those new houses are a threat to our ability to farm.

We've got a few neighbors now and have to be very cautious. We try to be quiet and when we're out early or late, we try to stay away from their houses. But it's just not practical to farm next to housing subdivisions. Farming is noisy, dirty and sometimes smells. We get used to it as farmers, but others find it offensive. If enough people move out to farmland and object, our right to farm laws will disappear.

Development like this hurts all of us: we're already too dependent on imported oil. Are we also going to have to depend on imported food because we run out of farmland? It just doesn't make sense.

Measure 49 is a reasonable compromise that will protect farmland. We won't have to worry about massive development putting farmers out of business.

Measure 49 will preserve our future and provide an opportunity for our kids to continue on the family farm.

PLEASE JOIN US IN VOTING YES ON MEASURE 49

**Pieper & Tom Sweeney
Nancy & Sam Sweeney
Dayton, Oregon**

(This information furnished by Pieper Sweeney.)

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Argument in Favor

The family farmers and ranchers of Oregon Farm Bureau ask you to vote yes on Measure 49

Oregon's family farm organization is Farm Bureau

Anyone can use the phrase "family farm." Many do because it evokes good feelings, as it should. Oregon's heritage and future are both inextricably linked with family agriculture. From serving as a pillar of the state's economy, to providing one of the most diverse varieties of fruits and vegetables and grains and livestock in the world, to providing beauty and wildlife habitat and countless environmental benefits, Oregon family farmers and ranchers remain a vital thread in the fabric of Oregon.. With membership that includes over 8,000 farm and ranch families across all 36 Oregon counties and with roots dating to 1919, Oregon Farm Bureau represents farm families in Oregon like no other organization does or could.

When Oregon Farm Bureau arrives at a policy position, such as our strong support for Measure 49, it is because family farmers and ranchers across the state have come together and discussed the issue in an open and democratic process and decided this is what is needed for the overall well-being of family agriculture.

It is not a coin flip, or a couple people sitting in a room, or knee-jerk ideological reaction. Oregon Farm Bureau is known for its open and deliberative decision-making process, and that's what gives our lawmakers and you the voter confidence that when you see our name it means something. It means farmers from all 36 counties have had input into the resulting stance.

Family agriculture's survival rests on a foundation made up of land, water, and labor available for agriculture and a regulatory

Measure 49 Arguments

environment that encourages family agriculture. Measure 49 helps us maintain a fair, balanced approach to being caretakers of the first and foremost of these needs: Our irreplaceable farmland.

Please join the family farmers and ranchers of Oregon Farm Bureau in supporting Measure 49.

(This information furnished by Dave Dillon, executive vice president, Oregon Farm Bureau Federation.)

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Argument in Favor

Oregon Farm Bureau Young farmers & Ranchers Support Measure 49

We are young farmers and ranchers who work Oregon's farmland. We grow crops and livestock to produce a sustainable source of food, fiber and energy.

Many of our parents and grand parents farmed our land and we hope to see future generations have the opportunity to continue to work Oregon's wonderful farmland.

For farming and ranching to be sustainable a land base must be preserved. Development from Measure 37 claims threatens to damage Oregon's farming industry forever by taking thousands of acres of farmland permanently out of production by paving them over for subdivisions.

Much of our farmland is in water-limited areas. We work hard to conserve water to allow enough water for crops, livestock and wildlife. Large housing subdivisions don't belong in areas where there is already not enough water.

Agriculture and housing subdivisions don't go well together. Our work can be dirty and noisy. We often work all night during the harvest season. It just makes sense to keep rural land for agriculture.

There is a better way: Measure 49 allows a few homes to be built on land if owners could do so when they bought it. Measure 49 limits large developments so that housing subdivisions aren't replacing our precious farmland. We support this balance between private property rights and the need to protect our farmland.

Help protect farming in Oregon. Vote Yes on Measure 49.

(This information furnished by Troy Hadley, Chair, Oregon Farm Bureau Young Farmer & Rancher Committee, Oregon Farm Bureau.)

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Argument in Favor

THE NATURE CONSERVANCY RECOMMENDS YES ON 49

The Nature Conservancy is a leading conservation organization working in Oregon and around the world to protect ecologically important lands and waters for nature and people. We're working to pass Measure 49 because the health and vitality of communities and natural areas in Oregon is at stake.

BALANCED AND RESPONSIBLE

Oregon families love our state's natural beauty. It's essential to our quality of life. Measure 49 will preserve what's special about Oregon.

Measure 49 restores a balance to Oregon. It enables private landowners to use their property for their families. It also prevents huge housing projects, malls and other big developments where they don't belong.

HEALTHY FISH AND WILDLIFE

Oregonians know that healthy habitats are essential for wild animals and plants to thrive.

Measure 49 restores our ability to protect our streams, lakes, woods, grasslands and beaches – and to ensure the investments we make in critical habitats will produce lasting benefits for fish and wildlife.

CLEAN AND PLENTIFUL WATER

Throughout Oregon, water for drinking, irrigation and wildlife is a precious resource. A major flaw in Measure 37 allows new developments to drill wells and deplete groundwater where water supplies are already limited.

Measure 49 will prevent such developments from diminishing clean water sources that are essential for Oregon families, farmers, fish and wildlife.

OUR NATURAL LEGACY

Forests, farmland and natural areas are disappearing throughout the world. In Oregon we take pride in protecting these assets. Will we preserve our natural resources for future generations, or will we let inappropriate development encroach on nature? That's the fundamental question you will decide November 6.

The Nature Conservancy urges you to vote YES for Measure 49.

Russell Hoeflich, Oregon Director
Will Neuhauser, Chair, Oregon Board of Trustees
Robert S. Ball, Vice Chair
Robert Gootee, Chair Emeritus
Tom Imeson, former Chair
D. Carter MacNichol, former Chair
Liz Cawood, Executive Committee
Peter McDonald, Executive Committee
E. Randolph Labbe, Executive Committee

(This information furnished by Russell Hoeflich, The Nature Conservancy.)

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Argument in Favor

The Association of Oregon Rail and Transit Advocates
(AORTA) urges a **YES** vote on Measure 49.

Measure 49 helps fix problems with Measure 37.

In 2004 voters were told Measure 37 was meant to allow individual property owners to build a few houses on their land. Most voters did not realize they were also allowing "timber" companies and developers to create huge subdivisions and commercial developments on prime farm and forest lands far beyond our urban growth boundaries.

Measure 37 requires local governments to either pay for claimed loss of value or waive current land use regulations on the property. Measure 37 provides no money for strapped local governments to compensate these massive claims. Cut services or raise taxes to pay claims? Not likely! Without the changes proposed in Measure 49, there is nothing to stop these developments and this will produce the kind of sprawl that Oregonians have consistently opposed.

Measure 49 Arguments

Washington County alone has 902 claims totaling over \$750 million. 700+ claims involve 55,206 acres, most for urban density subdivisions well outside the Urban Growth Boundary!

For scattered, massive subdivisions, far from existing development, the only practical way to travel is by car. Sprawl increases the costs of nearly all services: police, fire, roads, water, sewers, social services, transit, etc. Because development fees will never cover all these costs, **this increases your taxes**. Sprawl forces more people to drive longer distances, creating more traffic.

AORTA is a citizen organization founded in 1976 to encourage balanced, environmentally sound, fiscally responsible, safe transportation. We recognize that our economy and environment suffer from a poorly functioning transportation system. How we manage our growth and land use can positively or negatively affect the travel options we can afford our citizens. Information at: www.aortarail.org.

Fix Measure 37: Fairness without costly sprawl. YES on Measure 49

(This information furnished by Robert Krebs, president, Association of Oregon Rail & Transit Advocates (AORTA).)

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Argument in Favor

Measure 49 will protect farmland and forests across Oregon. **BUT IT'S IMPORTANT FOR PORTLAND TOO!**

If you live in Portland, you should care about Measure 49. Why? Because the abuses of Measure 37 aren't just a threat to rural Oregon: they threaten what makes Portland a great place to live.

In Portland and Multnomah County, there are currently 187 claims covering 4,024 acres, including:

- **A Wal-Mart in Sellwood**
The claim is for commercial development, and the owner has said he wants to put in a Wal-Mart- over neighborhood objections.
- **Subdivisions on Sauvie Island**
Multiple developments would destroy productive farmland for housing subdivisions and a boat moorage on one of our true local treasures.
- **Housing Subdivisions on Environmentally Protect Land**
Measure 37 exempts property owners who develop their land from dozens of laws that protect our neighborhoods, including noise reduction and limits on stormwater pollution. Many Measure 37 claims are in Portland's most environmentally sensitive areas- like along Johnson Creek in SE Portland.
- **Billboards, Billboards, Billboards!**
There are over 54 Measure 37 claims that would put billboards in every conceivable spot in Portland. "Measure 37 has opened the door to the uglification of Oregon. Voters can help to close that door by voting for Measure 49."
The Oregonian, 8/16/07

And do you like your local Farmers Market? Then you definitely want to vote Yes on 49!

One of the greatest threats of Measure 37 is overdevelopment of otherwise protected farmland near urban areas – the very places that provide the local produce and agricultural products that are sold at our local Farmers Markets.

WE MUST ACT NOW: The abusive Measure 37 development around Portland will change forever our ability to drive a few minutes and experience the wilderness, quiet rivers and landscapes that define our special quality of life.

If Measure 49 doesn't pass this November, this development cannot be stopped.

Keep Portland a Great Place to Live. VOTE YES ON 49

(This information furnished by Benjamin Unger.)

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Argument in Favor

Support Locally-Owned Businesses

Please vote "YES" on Measure 49

Dear Fellow Oregonian,

We own a small business in the Sellwood neighborhood of Portland, near Milwaukie. Our business is just one of dozens in the area that benefit from local patrons and, in turn, support the community. If big-box retailers came to Sellwood, they would put independently-owned businesses like ours out of business.

Not too long ago, a property owner in the area tried to develop a Wal-Mart in Sellwood/Milwaukie—he even announced a 99-year lease with the company. Fortunately, local residents worked to turn back the development because it didn't meet local zoning standards.

Now the property owner has filed a Measure 37 claim for a Wal-Mart big-box store so that he doesn't have to play by the zoning rules.

Abusing Measure 37 to break zoning rules, subsidize the world's largest corporation and put local stores out of business simply isn't right. Is this the kind of impact we want to allow on our communities?

Measure 37 was promoted as a way to help an elderly widow build a couple houses for her kids. What Measure 37 has unleashed is a slew of claims for billboards all over Portland, more strip malls and big-box stores, and housing subdivisions on the best farmland in the Willamette Valley.

Measure 49 will fix the flaws and loopholes of Measure 37 to prevent claims for strip malls and large subdivisions where they don't belong.

We need to pass Measure 49 this November, before it's too late and developers go forward with big-box stores, like Wal-Mart, where they simply don't belong.

Please protect neighborhoods and independent businesses—vote "YES" on 49.

CJ Hackett, co-owner Christopher Nakayama, co-owner
Video Lair, Portland, Oregon

(This information furnished by Christopher Nakayama, Video Lair.)

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Measure 49 Arguments

Argument in Favor

**Clackamas County:
The most number of Measure 37 claims.
And the most claims that don't even tell us what kind of
development we would be getting.**

Clackamas County has the highest total number of Measure 37 claims for development filed – about 1,052 total on about 37,000 acres

According to Clackamas County, if fully developed and incorporated:

- This land area is equivalent to the size of the second largest city in the metro region.
- Assuming just one household per acre, Clackamas County would grow by more than 25%.
- This would add almost 400,000 vehicle trips per day.

55% of the claims are on Exclusive Farm Use land, which would eliminate 20,000 acres from agriculture production.

Clackamas County has the highest number of claims with 'unspecified' development intent. These seek to waive all or many zoning and environmental restrictions, allowing the property to be used for any industrial or commercial purpose, even mines, landfills, or retail stores, if held long enough by the current property owner.

Examples of claims for development requested in Clackamas County include:

Location: South Herman Road, Molalla
187 acres

Current zoning: exclusive farm use
Intent: Strip mine.

Location: South Steiner Road/Beaver Creek, Clackamas County
281 acres
Current zoning: exclusive farm use
Intent: Subdivision

Location: South Elisha Road, Canby
286 acres
Current zoning: exclusive farm use
Intent: Subdivision into approximately one-acre lots

Location: Colton, Clackamas County
20 acres
Current zoning: forest use
Intent: Residential subdivision, RV park, rock quarry, logging

Location: Northeast of Molalla, Clackamas County
931 acres
Current zoning: exclusive farm use, forest use, farm-forest use
Intent: 305-lot subdivision

Location: South Springwater Road, Oregon City
146 acres
Current zoning: exclusive farm use
Intent: 185+ lot (or maximum density) subdivision
Claimant: Emmert

Information provided according to most recent data available from public agencies.

**We can still limit large development –
protect farmland, forests and water.**

Vote yes on 49. Before it's too late.

(This information furnished by Elizabeth Kaufman.)

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Argument in Favor

**A SPECIAL MESSAGE FROM
CONGRESSMAN EARL BLUMENAUER
CONGRESSMAN PETER A. DEFAZIO
CONGRESSWOMAN DARLENE HOOLEY
CONGRESSMAN DAVID WU**

Dear Fellow Oregonian,

We are asking you to join us in voting YES on Measure 49.

Serving in the United States Congress offers an interesting perspective on our home, Oregon. We get to see our state both through our eyes as proud Oregonians, and through the eyes of our colleagues from other parts of the country. Through both sets of eyes, we treasure enormously what makes Oregon unique.

It is all too easy to take our special quality of life for granted. But we are constantly reminded of it as people from other states look at our farms, our forests and our clean water and see what they have lost. In Oregon, we have protected our natural heritage, and can hope to pass it on to our children and grandchildren.

Measure 49 is essential to protecting that legacy – and we must act now. It will prevent the rampant development that has been unleashed by Measure 37, which threatens the things that make Oregon the place we treasure – and which goes forward if we don't stop it this November.

But it is important to note that while Measure 49 fixes the flaws of Measure 37, it does not repeal it. As elected officials, we also work hard to hear the voices of our fellow citizens. Voters said quite clearly that they wanted to help the individual property owners that the original Measure 37 campaign talked about – folks who wanted to build a few houses on their land if the law would have permitted it when they bought it.

Measure 49 not only protects property owners' rights to do that, it strengthens them at the same time that it protects our farmland, forests and water. It brings balance back to the system, and does the right thing for Oregon's future.

Please join us in voting YES on Measure 49.

(This information furnished by Earl Blumenauer, Member of Congress.)

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Argument in Favor

Marion County Farm Bureau urges you to vote YES on Measure 49. Marion County Farm Bureau is dedicated to promoting and protecting our diverse agricultural interests in our county and state.

At \$585,255,000 Marion County has the highest annual agricultural commodity sales of any county in Oregon.

Under Measure 37 much of Oregon's prime farmland is threatened with over development. Measure 49 will allow us to protect prime farmland from sprawl development that threatens our state's quality of life.

Moreover, Measure 49 balances the needs of families who wish to build a reasonable number of homes in a way that minimizes conflicts. Measure 49 focuses on the needs of Oregon families while protecting our best farmland.

Measure 49 helps sustain our best farmland, which is necessary to provide safe, fresh and local food for today and the future.

Measure 49 Arguments

Marion County Farm Bureau urges you to vote YES on Measure 49.

(This information furnished by Larry Wells, Marion County Farm Bureau.)

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Argument in Favor

SAVE OUR WATER – YOURS COULD BE NEXT

VOTE “YES” ON MEASURE 49

Measure 37 threatens local water supplies.

Property owners in our area already have water problems. Wells often must be deepened or replaced. Marion County has designated much of the area as a “Sensitive Groundwater Overlay” zone. Water-restricted areas are not suitable for large developments.

But that’s exactly what Measure 37 is opening the door to. In our community, a subdivision for forty-two home sites has been proposed and is moving forward on groundwater limited farmland in the south Salem hills.

Because we are groundwater-limited, the Measure 37 claimant (Leroy Laack) was required to prepare a Hydro Review of groundwater adequacy – to prove that the subdivision’s 42 wells wouldn’t harm existing wells.

And even though the Hydro Review was failed by an independent water expert hired by Marion County, the subdivision development is allowed to go forward.

This is why we need Measure 49. Measure 49 only allows up to three home sites in areas with limited groundwater.

Even then, neighboring wells might be harmed. But three is a lot better than the 42 wells the Measure 37 claimant wants to drill. And if we don’t act now, by passing Measure 49 this November – it will be too late – the subdivision will be developed.

We represent more than thirty homeowners who support the Keep Our Water Safe Committee. They’ve contributed much time and effort to fight this serious threat to our groundwater.

Many of our neighbors voted for Measure 37. Now they regret that decision and strongly support Measure 49. They’ve seen how Measure 37 takes away the rights of existing property owners.

(This information furnished by Brian Hines, Keep Our Water Safe Committee.)

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Argument in Favor

DO YOU EVER DRIVE TO THE OREGON COAST?

One of the great pleasures in Oregon is driving to the Coast, through the rolling fields, the coast range and the natural wonder that is Oregon.

It’s not just the destination – it’s the journey.

But unless we fix Measure 37 now, that journey will be changed forever, with peaceful hills and fields replaced by massive housing subdivisions and strip malls developed through Measure 37 claims. See for yourself at www.yeson49.com/maps.

Here’s a small sampling of the hundreds of Measure 37 development projects from timber companies, developers and others ...along the road to the Coast.

...ALONG HIGHWAY 26

West of Highway 26, Manning
331 acres zoned for forest use
Intent: Subdivision into five-acre lots

Highway 26, Buxton
1,163 acres zoned for forest use
Intent: Subdivision into five-acre lots

South of Highway 26, Banks
89 acres zoned for forest use
Intent: 100-lot subdivision

...ALONG HIGHWAY 18

Highway 18, southwest of McMinnville
349 acres zoned exclusive farm use
Intent: Subdivision for residential and commercial uses

Northwest of Highway 18, Willamina
117 acres zoned farm-forest use
Intent: Subdivision into 23 five-acre lots

Otis, Lincoln County
182 acres zoned forest use, exclusive farm use, other
Intent: Unspecified development

Southwest Yamhill County
445 acres zoned for forest use
Intent: Unspecified development

South of Highway 18, east of Lincoln City
1,175 acres zoned for forest use
Intent: Subdivision into 40 to 80 acre residential lots

...ALONG HIGHWAY 20

East of Highway 20, Philomath
417 acres zoned for forest use
Intent: Subdivide into 83 residential lots

Eastside of Highway 20, Toledo
61 acres zoned for forest use
Intent: Subdivide into 19 lots

Highway 20, east of Toledo
190 acres zoned for forest use and exclusive farm use
Intent: Subdivision

Highway 20, east of Toledo
37 acres zoned for exclusive farm use
Intent: Subdivision into 16 lots

**Remember, if Measure 49 doesn’t pass now,
there will be nothing to stop this
and other disfiguring development!**

(This information furnished by Shannon Mills.)

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Argument in Favor

OUR SOUTH WILLAMETTE VALLEY:
LAND OF FARMS OR SUBDIVISIONS?

There is wonder in every part of Oregon.

But there is no part of Oregon that offers a better example of the great tradition that makes this state special - The southern part of the Willamette Valley has it all: incredible diverse agriculture and forestland. Spectacular wilderness, wild rivers, and a sportsmen’s paradise.

Every one of these things is under direct threat from the uncontrolled development that has been unleashed by the

Measure 49 Arguments

abuses of Measure 37. It's yet another example of why Measure 49 is so important.

And we're just in the nick of time – Unless we pass Measure 49 this November, it will be too late and this development, and more, will go forward. We won't be able to stop it.

Here are just a few examples:

Location: Creswell, Lane County
546 acres
Current zoning: exclusive farm use
Intent: 157-lot subdivision

Location: Highway 20, Corvallis
135 acres
Current zoning: exclusive farm use
Intent: 220-lot subdivision

Location: Dimple Hill, Corvallis
160 acres
Current zoning: forest use
Intent: 74-lot subdivision

Location: North end of Dimple Hill Road, Corvallis
100 acres
Current zoning: forest use
Intent: 50-lot subdivision

Location: Ingram Island Road, Benton County
803 acres
Current zoning: exclusive farm use
Intent: Subdivision

Location: Gap Road, Harrisburg
656 acres
Intent: 250+ lot subdivision

Location: Diamond Hill Drive, Harrisburg
1,102 acres
Intent: 1,102-lot subdivision

Location: Marcola Road, Springfield
900 acres
Current use: farm and ranchland
Intent: 180-lot subdivision

Location: along Willamette River in Eugene
1400 acres
Intent: 300 unit subdivision, commercial use

Location: Lorane Highway, Eugene
315 acres
Intent: 65-lot subdivision

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Ashley Miller.)

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Argument in Favor

Measure 49 stops the nightmare for neighbors – like me and you.

I am not against my neighbors in the rural farming portion of Lane County using their land to build a few homes.

Which is why I didn't think Measure 37 was such a big deal when it passed in 2004. I assumed that it would allow limited and reasonable alternatives for the state's property owners.

So imagine my surprise when I found out that a Measure 37 claim would be used to put 157 new homes on 515 acres just beyond my backyard, with no consideration for water sources,

transportation infrastructure, pollution or the neighbor's property rights

I was shocked again when I found out that the owner of the property got the green light to move ahead, optioned the property to out-of-town developers and moved away to a new home in Eastern Oregon.

We never thought this would happen here. People around the state need to know that, unless we pass Measure 49, our nightmare could become theirs.

Measure 49 means that developers like this would only be able to build three homesites unless they prove that zoning actually devalued their property – in which case they could get up to ten.

Without the modifications that Measure 49 provides, Measure 37 is an invitation for development where it doesn't belong.....next time it could happen next to your home.

And for those who say they want a different solution? We don't have time. If we don't fix Measure 37 now – at this November's election, this kind of massive development of subdivisions will go forward all across rural Oregon. We won't be able to stop it.

**Support measured growth—Join me in voting
“YES” on 49!**

Kristi Holaas, Creswell

(This information furnished by Kristi Holaas.)

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Argument in Favor

**Benton and Linn County Farmers and Ranchers
ask you to vote
Yes on Measure 49.**

In order to Save Our Farmland please vote yes on Measure 49.

Measure 49 restores balance to the quality of life and helps protect our farm family's way of life.

Your “Yes” vote on Measure 49 would undo the disastrous consequences of Measure 37, which represents a grave threat to our farm- and forest-land economy. Measure 49 will limit waivers to residential use — no commercial or industrial.

A surprising amount of farm and forest land in Benton and Linn Counties is threatened by measure 37 claims. Land that is uniquely productive and growing diverse products for our farm families. The prime forest land in the Coast Range and The Cascades worth billions to our economy and employment for thousands.

Measure 49 does not repeal Measure 37. But it does fix the flaws of 37: delivering on the promises made to small individual property owners while preventing the most egregious abuses of huge housing subdivisions, commercial and industrial development, destruction of prime farmland and forests, and threats to water supplies that families depend on.

Measure 49; our chance to protect what is special about Benton and Linn Counties.

Up to three houses will be allowed on high-value farm and forestland and in groundwater-limited areas. Claimants must follow existing land-use regulations. Every Measure 37 claimant could build one house, regardless of location. Waivers would be transferable under Measure 49.

The 2007 Legislature, after numerous public hearings statewide, worked hard to address the concerns of Oregonians. Measure 49 is the result of their efforts and deserves a “Yes” vote from everyone who values the land that supports us all.

Measure 49 Arguments

Protecting the rights of Benton and Linn County farm families.

(This information furnished by Paul Korash, Benton County Farm Bureau.)

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Argument in Favor

My Vote for Measure 37 was a Mistake

In 2004, I voted for Measure 37 because I thought it was a vote for the little guy. But now I know that I made a terrible mistake.

I voted for Measure 37 because I understood it was for families to provide for immediate family members. I didn't know it was going to allow big timber corporations to turn forestland that doesn't even have a home on it into large subdivisions.

That's NOT what I voted for. And now I'm experiencing it first hand.

My husband and I live on 44 acres of productive farmland in Linn County. We grow grass seed and hay and raise goats. We also grow a variety of vegetables that we sell to local restaurants. Our house has been on this special spot of land since the 1880's.

Our land is bordered by one of the thirty-one Measure 37 claims filed by Timber Services Inc. This large timber company wants to take 4000 acres of Linn County forest land and turn it into large housing subdivisions.

Subdivisions are not good neighbors for farms. We're very concerned about the impact on our groundwater. Increased traffic around animals and farm equipment is a public safety concern. Productive timberland should remain as a natural resource, not converted to subdivisions just because a timber company can make more money as a developer.

Measure 37 goes too far. It has opened the door to massive development on some of our most valuable land.

And if we don't fix it this November, it will be too late – development will begin and we won't be able to stop it.

Measure 49 will fix Measure 37, protecting rights of small property owners while preserving valuable farm and forestland for future generations.

Please join us in voting YES on Measure 49!

Jan & Pete Boucot

(This information furnished by Jan Boucot.)

This space purchased for \$500 in accordance with ORS 251.255.
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Argument in Favor

Like Oregon Cherries and Pears?

Measure 37's attack on the Hood River Valley

Measure 37 was sold as a way for a property owner to build a few homes on their land for their kids or their retirement – if they could do so when they bought it.

Measure 37 has brought so much more – claims for development for enormous subdivisions destroying high-value farmland. Of course, once we lose farmland to development – we never get it back.

Here are just some of the over 7,500 Measure 37 claims filed – threatening the viability some of our state's most productive farmland – our cherry and pear orchards.

23.5% of all land zoned exclusive farm use in Hood River County is under a Measure 37 claim. (source: Hood River County Planning Department "Hood River County Summary of Measure 37 claims")

Location: Redwood Road, Hood River

of acres: 137

Current zoning: exclusive farm use

Intent: 338-lot subdivision

Location: Webster Road, Hood River

of acres: 52

Current zoning: exclusive farm use

Intent: 212-lot subdivision

Location: Eastside Road, Hood River

of acres: 273

Current zoning: exclusive farm use

Intent: 360-lot subdivision, other residential and commercial development, a golf course

Location: Billings Road, Parkdale

of acres: 250

Current zoning: exclusive farm use

Intent: 648 quarter-acre lot subdivision, four 20-acre lots

Location: Baseline Drive, Parkdale

of acres: 171

Current zoning: exclusive farm use

Intent: 286-lot subdivision

Location: Punch Bowl Road, Dee

of acres: 152

Current zoning: exclusive farm use

Intent: 347-lot subdivision

Location: Ackerman Road, Odell

of acres: 30

Current zoning: exclusive farm use

Intent: 128-lot subdivision

Location: Lacy Drive, Pine Grove

of acres: 188

Current zoning: exclusive farm use

Intent: 216 quarter-acre lot subdivision, 30 1-acre lots, 16 5-acre lots

Location: Wells Drive, Van Horn

of acres: 39

Current zoning: exclusive farm use

Intent: 126-lot subdivision

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Bryan Shanafelt.)

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Argument in Favor

This voter made a mistake, urges "YES" on 49

I moved to the Hood River Valley three years ago because of its vibrant agricultural character and natural beauty. As a New Jersey transplant, I appreciate how Oregon has intentionally preserved local farming and agriculture.

States like New Jersey cannot compare to Oregon— they lost most farmland long ago.

But I also recognize that families should have certain land rights, including transferring property to family members and

Measure 49 Arguments

the ability to sell a reasonable portion for investment. Thus, I voted for Measure 37 in 2004.

But now I see how I was mistaken.

Just look at the vast amounts of farmland and forests specified for subdivisions and other inappropriate development demanded in the more than 7,500 claims filed under Measure 37.

Farmland and forests in Oregon are the major target for this development – nearly 600,000 acres of it.

Timber companies who want to become land speculators, and other large-scale developers seeking commercial gain—not the families I thought I was helping—stand to gain from much of this proposed development.

Measure 49 lets us achieve what people intended—to help families.

It allows up to three homesites to be built on land if the owners could do so when they bought it. It enables these types of claims to proceed immediately to the regular development process.

Interests of big business and land speculators who simply want to make a fast buck should not undo what makes the Hood River Valley, and Oregon, unique and economically viable.

Let's not lose the beauty of this region and our way of life to profiteering.

Join me in voting “YES” on 49. Let's get it right!

Michelle Rabin, Hood River County

(This information furnished by Michelle Rabin.)

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Argument in Favor

**And under the category of
“You’ve got to be kidding me...”**

There are thousands of Measure 37 claims that threaten our farmland, forests, water and neighborhoods. But some are even more outrageous than others. Just some examples:

Location: Falls City, Polk County, 62 acres
Current zoning: farm-forest mixed use
Intent: Go-cart track, motorcycle track, mud bog, “defensive driving education”

Location: French Prairie Road NE, St. Paul, Marion County
293 acres
Current zoning: exclusive farm use
Intent: Operation of a gun-club/rifle range/paintball park, residential subdivision

Location: SW Vandermost Rd., Beaverton, Washington County
132 acres
Current zoning: exclusive farm use
Intent: Landfill expansion, transfer station addition

Location: Wilson River Highway, Washington County
Current character of area – residential
Intent: Storage of cargo containers and tractor trailers, outdoor parking of five or more vehicles

Location: South Nowlens Bridge Road, Molalla, Clackamas County, 25 acres
Current zoning: exclusive farm use
Intent: Private Paintball Park, playgrounds, and campgrounds

Location: Directly adjacent to a Girl Scouts camp, Wallace Creek Rd, Springfield, 158 acres
Current zoning: exclusive farm use
Intent: Subdivision into 31 lots
Compensation demanded: \$2.45 million

Location: Deschutes and Crook counties
of acres: N/A
Intent: Installation of electricity transmission towers up to 80 feet tall
Compensation demanded: Crook: \$74,906,000.00; Deschutes: \$168 million

ROCK BLASTING

At least 25 M37 claims were filed statewide asking for quarries or mining operations, including: (source: PSU/IMS database)

Location: NW Bacona Road, Washington County, 305 acres
Current zoning: forest use
Intent: rock quarries/rock pit

Location: Lava Bed Drive, Parkdale, Hood River County
51 acres
current zoning: Forest use
intent: mineral extraction

Location: Jacksonville Reservoir Road, Medford, Jackson County, 157 acres
current zoning: Forest use
intent: Mine sand, rock, shale, gold from property

Location: North Widow Creek Road, Otis, 113 acres
Current zoning: exclusive farm use
Intent: Crush, screen, process rock

(Information provided according to most recent public data available.)

(This information furnished by Terri Steenberg.)

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Argument in Favor

PROTECT OREGON'S HUNTING HERITAGE VOTE YES ON 49

In Oregon we are blessed with wildlife habitat that sustains big game like elk, deer, cougar, black bear, and big horn sheep. **Unfortunately, poorly-planned development allowed by Measure 37 threatens to destroy and hamper access to much of the critical winter range that this wildlife needs to survive.**

Measure 37 claims span 750,000 acres across Oregon—on mostly forest and farmland. Over 4,000 subdivisions could result from these claims, permanently destroying the habitat that big game needs to survive.

If we don't act to fix the flaws of Measure 37, we'll lose much of the big game that make Oregon's outdoors so unique. Here are just a few of the claims that Measure 37 loopholes have unleashed:

- A highway rest area, public tourism center, and RV campground with gift shop, convenience store and restaurant on open space conservation in Southern Oregon;
- Subdivisions and commercial development on open space conservation land in Jefferson County;
- Commercial development and subdivisions on over 6,000 acres in Jackson County;
- **Loss of protected big game habitat to residential development** on over 800 acres in Union County;

Measure 49 Arguments

- 142 condos, town homes, and houses on open space conservation land in Douglas County.

The Oregon Division of the Izaak Walton League of America supports Measure 49 because it provides the responsible conservation necessary to sustain healthy wildlife populations for future generations. Measure 49 will protect the habitat that sustains our big game and other wildlife from development into housing tracts, strip malls, and big box stores, while protecting Oregon families' rights to build a few homes on their land.

Please Protect Oregon's Hunting Heritage by Voting
"YES" on Measure 49

(This information furnished by Dawn A. Olson, Oregon Division, Izaak Walton League of America.)

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Argument in Favor

Union County Farm Bureau asks you to vote yes on Measure 49

Union County Farm Bureau is made up of over 180 farming and ranching families. We are part of Oregon Farm Bureau which has roots back to 1919 and which represents over 8,000 farm and ranch families across Oregon. We're an organization that works to find positive solutions to the challenges facing family agriculture in Oregon.

Measure 49 is a road map to get us past the current conflict. Right now there is conflict and confusion, and seemingly endless court cases over competing interpretations of the law. This kind of uncertainty undermines communities, families, and certainly small businesses as we all plan our futures.

Measure 49 brings back some much-needed balance and certainty. The questions under the current situation are as endless as the lawsuits. Measure 49 answers those questions and it resolves other issues that otherwise will likely be battled out in the courts. Measure 49 will help us move past these conflicts and get on with our lives and businesses.

Maintaining Oregon's family farm land is key to the quality of life of all Oregonians. The ground being worked by farm and ranch families across our great state is a major economic driver for our local communities. Family agriculture also fuels jobs in transportation, at our ports, in processing, marketing, and retailing in every corner of Oregon both urban and rural.

Family farming provides social benefits and environmental advantages including wildlife habitat. We're proud of the many contributions we make to the quality of life in Oregon. But ultimately, family agriculture can't exist without land to farm.

Measure 49 helps move us past the conflicts. Please join us in voting yes on Measure 49.

(This information furnished by Matt Insko, president, Union County Farm Bureau.)

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Argument in Favor

NORTHEAST OREGON –ANOTHER COLORADO?

Measure 37 was sold as a way for a property owner to build a few homes on their land for their kids or their retirement – if they could do so when they bought it.

But Measure 37 has also brought claims for development for enormous housing subdivisions, strip malls and even big-box stores - destroying high-value farm and ranchland, as well as forests, and in areas with severe water problems.

Here are a sample of the hundreds of Measure 37 claims for massive development across northeastern Oregon.

You can help stop this inappropriate development before it's too late – by voting YES on Measure 49.

Location: Meachum, Umatilla County

of Acres: 14,265

Intent: Subdivision into one-third-acre lots for residential and commercial development

Location: Milton-Freewater, Umatilla County

of acres: 18

Current zoning: exclusive farm use

Intent: Commercial use by "large retailer"

Location: Highway 11, Milton-Freewater, Umatilla County

of acres: 19

Current zoning: exclusive farm use

Intent: "Big-box" retail

Location: North Powder River Lane, Union County

of acres: 2,482

Current zoning: exclusive farm use

Intent: 450-lot subdivision

Location: Clear Creek Road, Baker County

of acres: 16,078

Current zoning: exclusive farm use

Intent: Unspecified development

Location: Lakeshore Drive, Joseph, Wallowa County

of acres: 586

Current zoning: Rural Residential

Development Intent: Higher density residential development

Location: Wallowa Lake Highway, Joseph, Wallowa County

of acres: 1,600

Intent: Subdivision

Claimant: RY Timber Company

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Christine Lewis.)

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Argument in Favor

Protect Eastern Oregon – Vote Yes on 49

My name is Gary Rhinhart and I live in Pendleton Oregon. I am a fourth generation dryland wheat farmer on lands homesteaded in 1860 by my family.

In my service to the Umatilla Basin Watershed Council and Umatilla County Planning Commission, I have listened carefully to many citizens. Many are concerned that Measure 37 was not intended to provide for large developments. I believe the true intension was to permit long time landowners to construct a single-family home on their property.

Measure 49 Arguments

There are multiple claims for large development filed on exclusive farm use lands that adjoin my farm. Many others are in the same situation.

We must consider the impact to all property owners and their right to preserve an existing way of life.

The consequences of Measure 37 raise numerous concerns for the citizens of Oregon. I understand that the people want the right to do as they wish with their own property. It is just not that simple.

Development belongs inside urban growth areas – which will continue to happen if we fix Measure 37 by passing Measure 49. Large-scale development outside urban areas requires infrastructure expansion – like roads, fire and police protection, and schools – that will create tremendous cost burdens for our cities and counties.

In addition, there are environmental impact and safety threats from development to already fragile systems:

- Large-scale developments may be proximate to salmon and steelhead bearing water quality limited streams.
- Adequate groundwater is not always available to support additional wells.

And, underdeveloped rural roads are intended for limited use and are not suitable for increased demand without compromising public safety standards.

Thirty years ago, Oregon was a courageous leader. We promised to protect its precious land resources for future generations. It is our responsibility to ensure that the legacy continues.

I urge you to join me in voting YES on Measure 49 and restore balance and fairness.

(This information furnished by Gary W. Rhinhart.)

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Argument in Favor

WHAT ARE TIMBER COMPANIES UP TO?

Who really benefits from Measure 37?

8 of the top 14 contributors to the 2004 Measure 37 Campaign were timber companies that then filed M37 claims ((Money in Politics Research Action Project report, 4/19/2007) to eliminate existing forests and replace them with:

A sample includes:

Stimson Lumber Company
Location: Lincoln, Tillamook, Clatsop, Columbia, Washington counties, 50,552 acres zoned forest use
Intent: Residential subdivisions

Powers Ranch Company
Location: Curry and Coos counties
11,629 acres zoned forest use, exclusive farm use, other
Intent: Residential subdivisions

Timber Service Company
Location: Linn County, 7,006 acres
Intent: Residential subdivisions, lodging, recreational

South Coast Lumber Company
Location: Curry County, 2,000 acres
Intent: Unspecified development

RY Timber Company
Location: Joseph and Wallowa counties, 1,600 acres
Intent: 160-lot subdivision

Morgan & Engel Inc.
Location: Douglas County, 1,328 acres
Intent: 173-lot residential subdivision

Davidson Industries
Location: Lane County, 1280 acres
Intent: Unspecified development

Avison Lumber Co.
Location: Clackamas County
1,166 acres zoned forest use, mixed use, exclusive farm use
Intent: 385-lot residential subdivision

Menasha Corporation
Location: Coos and Douglas counties, 942 acres
Intent: Residential subdivisions

Rosboro Lumber Company
Location: Lane County, 894 acres
Intent: Unspecified development

Miami Corp.
Location: Lincoln County, 689 acres
Intent: Unspecified development

L & H Lumber Co.
Location: Douglas County, 404 acres
Intent: 200-lot residential subdivision

Aaron U. Jones (owner of Seneca Jones Timber Co.)
Location: Deschutes Co., 400 acres zoned exclusive farm use
Intent: 121-lot subdivision

Indian Hill, LLC
Location: Josephine County, Jackson County
318 acres zoned forest use
Intent: Unspecified development

Zip O Log Mills
Location: Lane County, 314 acres
Intent: Unspecified development

(This information furnished by Michael Dennis.)

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Argument in Favor

YES ON 49

MEASURE 49: PROPERTY RIGHTS WE CAN ALL SUPPORT

MEASURE 49:

- ALLOWS ANY PERSON WHO QUALIFIED FOR A MEASURE 37 CLAIM TO DEVELOP UP TO THREE HOMESITES;
- ALLOWS UP TO TEN HOMESITES IF JUSTIFIED BY THE PROVEN LOSS IN VALUE CAUSED BY REGULATIONS WHICH PREVENTED DEVELOPMENT;
- DOES NOT PERMIT COMMERCIAL OR INDUSTRIAL DEVELOPMENT;
- PROTECTS EXISTING FARMLAND BY ENCOURAGING CLUSTERING OF HOMESITES.

Measure 49 corrects the problems in Measure 37.

Measure 37 currently:

- Allows people who bought property in the 1970's to now build anything they want, anywhere they want, regardless of current zoning laws;
- Gives no rights to the neighbors who are harmed by the unexpected development;
- Removes any predictability regarding what kind of land use can end up right next to you.

Measure 49 Arguments

In Marion County alone, over 473 Measure 37 claims filed could eat up over 26,000 acres. Many of these claims are for large housing subdivisions. Some of these claims are for gravel mines and industrial use.

PEOPLE WHO VOTED FOR MEASURE 37 DID NOT EXPECT:

- Their wells to be threatened;
- The entire landscape in which they live or farm to be changed dramatically;
- To discover they have no say in the matter and be told by County Commissioners their concerns have no merit;
- Their taxes would be raised to pay for the roads, schools, etc., needed for these new developments.

Statewide, 7,500 claims have been filed involving 750,000 acres. This includes the demolition of the pear orchards in the Hood River Valley, billboards on state highways, and destination resorts next to national scenic monuments.

FRIENDS OF MARION COUNTY urge a "Yes" vote on M 49.

Friends of Marion County
P.O. Box 3274
Salem, OR 97302
<http://www.FriendsOfMarion.org>

(This information furnished by Roger Kaye, Friends of Marion County.)

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Argument in Favor

Sauvie Island - Yes on Measure 49

Just downriver from Portland, 24,000-acre Sauvie Island is a unique rural area and community. The northern half is a wildlife area managed by the Oregon Department of Fish & Wildlife. The southern half includes thousands of acres of beautiful prime farmland -- a vital resource -- adjacent to an urban area.

Sauvie Island is famous for its wildlife and year-round outdoor recreation. Its woodlands, waterways, beaches, and vegetable markets have so much to offer. It is a favorite place for birdwatchers and waterfowlers, runners and dog walkers, bicyclists, boaters and kayakers, photographers and painters, nature lovers, hikers, runners, boaters and anglers, U-pick enthusiasts, and, of course, family pumpkin picking outings.

Sauvie Island nourishes body and soul, people and wildlife. It's an amazing place, one of Oregon's treasures -- worth saving from over-development.

Measure 49 -- Remedy for an Emergency

Measure 37 development claims have already been filed on more than 750 acres of Sauvie Island -- and more will follow if Measure 37's mistakes aren't corrected.

Sauvie Island, as you know and enjoy it, could become a fond memory as subdivisions take the place of farms and open spaces, and large houseboat developments change the face of our waterways.

Measure 37 harms communities and needs to be fixed - now.

Measure 49 offers the smart compromise. Farmlands may have a few additional houses but will not become subdivisions.

A YES vote on Measure 49 will help remedy the enormously expensive impacts of Measure 37 on Sauvie Island and throughout Oregon.

Protect your property and community from over-development - **VOTE YES on Measure 49.**

(This information furnished by Gary Kish; Donna Matrazzo, Sauvie Island Conservancy.)

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Argument in Favor

Jefferson County Farm Bureau Supports a Yes on 49

Jefferson County is the home of specialty seed crops. We raise 80% of the "baby carrot" seed for the US and 40% of the world seed crop. We are also home to 80% of the mint tea leaf production in the US and 25% of the world production.

- **Farming is an industry and our farm ground is our store front.**
- **We have long term farm plans for our crops.**
- **We don't turn on a switch everyday and say it is time to farm.**
- **They aren't making anymore farm ground...once a farm is gone it will never be back.**

We can deal with Mother Nature, farm prices and practices...but we must have farm ground to stay in business. A critical mass is necessary. In Oregon there are seven recognized farm areas for high value crops: Willamette Valley, Gorge, Southern Oregon, Union, Malheur, Klamath and Jefferson County's North Unit area in Central Oregon. **These are precious areas that raise different crops and over time have adapted to what crops they raise and will continue to adapt as long as there is farm ground.**

Do you want sprawling subdivision as the new crop in the country or do you want to protect the farm ground and keep agriculture viable for another 150 years?

Oregon was founded on it agriculture and timber so now is the time for Oregonians to make a choice to keep Oregon viable for farming, ranching and forestry and reap the benefits of the vistas and views when driving throughout Oregon as well as enjoying the seasonal local crops from your own farmers.

The impacts of M37 are real and if M49 isn't passed to fix the fatal flaws the 7,500 claims will just be the start...farmers that didn't file claims will be able to as the critical mass disappears to keep farming viable.

(This information furnished by Mickey Killingsworth, Secretary-Treasure, Jefferson County Farm Bureau.)

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Argument in Favor

Oregon AFSCME Council 75 represents over 23,000 working people across Oregon. We have members in both state and local government and the private sector and care deeply about the nature and fate of Oregon. We represent the city and county planners across the state and the folks that protect citizens from ill-planned and short-sighted development.

AFSCME —the American Federation of State, County and Municipal Employees—supports the middle ground solution that Measure 49 represents. It continues to protect the property rights of individual landowners but stops the "get-rich-quick" schemes of large-scale development with no regard for the communities they exploit.

Measure 49 is a solution to the problems caused by the unintended consequence of 2004's Measure 37. Local governments are overwhelmed with the daunting problems caused by Measure 37. There have been over 7,500 claims

Measure 49 Arguments

under Measure 37 across the state, which affects more than 750,000 acres of Oregon and could cost Oregonians \$15 billion if all those claims are paid out. Measure 37 has become about timber companies creating condominiums instead of replanting our natural resources and rock blasting operations too close to homeowners. These were never mentioned when we voted for Measure 37. Let's protect the rights of individuals—but not give a windfall of profits to timber companies and land speculators.

Measure 49 protects Oregon's farmers and farmland. While it allows farmers to construct homes on their property, it controls development that would endanger limited water supplies and the livelihood of those farmers.

Measure 49 does NOT allow big box stores and large housing subdivisions to exploit a law meant to protect the small individual landowner.

Measure 49 DOES allow small individual landowners the right to build three houses on their property if it was allowed at the time they purchased the property.

Please vote YES on Measure 49 and protect Oregon.

(This information furnished by Joe Baessler, Oregon AFSCME Council 75.)

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Argument in Favor

YES ON 49!

DON'T BE FOOLED AGAIN BY MEASURE 37 ADVOCATES!

IF MEASURE 49 PASSES, TAXPAYERS AVOID...

- Billions in demands for payment
- Massive tax debt for street and water system improvements
- Huge subdivisions, industrial and commercial development in inappropriate locations
- Damage to sensitive lands and watersheds
- Destruction of irreplaceable farm and forest land.

SUPPORT OF MEASURE 49...

- Allows for compatible land uses and fast-track approval of small developments
- Protects water availability
- Protects neighbors of claimants from harmful development
- Honors voter's intent to give development rights to family members
- Protects working farms and families
- Protects forest land from destruction
- Prevents the loss of millions of dollars in vital farm and forest income
- Preserves property values through stable zoning and regulation
- Provides method for determining loss of land value for purposes of compensation
- Brings land use fairness back to all Oregonians.

REMEMBER...

IF MEASURE 49 FAILS, MEASURE 37 AUTOMATICALLY WILL GO INTO EFFECT...

- Creating unfair land classes and special privileges for a few
- Creating huge financial burden on taxpayers
- Requiring payment of billions or permitting the destruction of our environmental assets
- Allowing return to Wild West days of NO land use protection
- Causing the loss of property values and incomes.

MEASURE 37 HOLDS ALL OREGONIANS HOSTAGE!

Measure 37 forces the public to either pay up or put up with harmful development.

Measure 49 is the antidote.

We can't afford to let greed destroy the Oregon we are proud to call home!

Preserve Oregon - The Land of Eden!

Paid for by CityWatch of Salem, a land-use watchdog organization since 1994.

P O Box 3602

Salem, Oregon 97302

(This information furnished by Mary L. Kamppi, CityWatch of Salem.)

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Argument in Favor

Vote Yes for Measure 49

**Measure 49 will be fair to everyone,
and still protect Oregon's farm land,
forest lands and natural areas for
future generations.**

WE ARE YOUR
LINN & BENTON
COUNTY
NEIGHBORS

**Kathy Butler
Mary D. Deems
T. R. Deems
Bodie Dickerson
Dale Dickerson
Janet Doerfler
Al Dorgan, President Local 7150 USW
Glenda Fleming
V. Roger Gaither
Julia May Garland
Sharon Gisler
Loyd Henion
Peter Kenagy, Kenagy Family Farm, Inc.
Gordon L. Kirbey, Jr
Wendy Kirbey
Sharon Konopa, Albany City Councilor
Steve Konopa
Cory Koos
James Lawrence
Linda J. Lawrence
Dick Olsen, Albany City Councilor
Gloria M. Olson
Marilyn Peterson
John Puma
Donald W. Rea
Elizabeth N. Rea
Dan Thackaberry, Farmer**

(This information furnished by Sharon Konopa, Linn-Benton Yes on 49, PAC.)

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Measure 49 Arguments

Argument in Favor

NORPAC FOODS SUPPORTS BALLOT MEASURE 49

As a food processor in Oregon, NORPAC has a long tradition of land stewardship and support of sustainable management of farm land. We believe in and support a strong statewide land use planning system. The direction of Ballot Measure 49 is consistent with these long held principles. Measure 49 is a better choice for Oregon's agricultural economy because it will help restore our commitment to protection of world class productive farm lands that are important to our future productivity.

- It will keep more farm land available to grow the most prolific diversity of high-quality fruits and vegetables anywhere in the world.
- It will provide more stability for farmers and neighbors whose future plans were suspended pending development decisions on nearby lands.
- Passage allows Oregon to focus on new ways to maintain farm land and to help family farmers meet the challenges of producing safe and wholesome food of the highest quality.
- Measure 49 respects Oregonians' sense of fairness about the lost use of property while reducing conflicts with rural farm land.
- It will also limit the most egregious development schemes. Though it does not fix all the predictable ills of Measure 37, it is a much better choice for Oregon than living with a poorly conceived law that breaks our commitment to being good stewards of our natural resource heritage.

George Smith, President & CEO
NORPAC Foods, Inc.

(This information furnished by George Smith, CEO, NORPAC Foods Inc.)

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Argument in Favor

You Can't Pave it Over Every Generation.

Vote Yes on Measure 49 and help drag Oregon out of the morass caused by the misleading promises and failed policy behind Measure 37.

Since its passage three years ago, Oregon has been besieged by over \$15 billion dollars in demands to develop over 750,000 acres of forest and farmland throughout the state. Out-of-state developers and large timber companies have subverted the will of the people and are using Measure 37 to coerce the state into caving to their unreasonable demands. Under Measure 37, the state would go bankrupt using your tax dollars to pay these unreasonable demands. Instead, it has waived the laws that protect the property values of all Oregonians.

As a wise elder once said "you cannot pave it over every generation." Our clean water, forests, and high-yield farmland are legacy for future generations. These land speculators see \$\$\$\$ where most Oregonians see a legacy that we are known for nationwide.

Measure 37 was intended to help small landowners build a house or two on their land and pass these homes on to their family members. Instead, greed has plagued the system and the pride of this state: rich agricultural lands, working forests, and pristine coastline are being exploited. Developers are seeking to do so on-the-cheap while everyone else suffers.

There is light at the end of the tunnel – Measure 49. Many people who voted for Measure 37 have seen this light. The property owners who just wanted to build a home for their family will get that and the true hardships will be cured. Help set us on the right course to fix this mess. Help protect your property rights and the legacy of forests, farmlands, and groundwater for the future. Vote YES on Measure 49.

Endorsed by Pat Wheeler (Friends of Polk County) and Mitzi Wheeler (Friends of the Molalla River).

(This information furnished by Jonathan Graca, Hood River Valley Residents Committee.)

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Argument in Favor

Protect the Public Treasury & Ensure Just Compensation

Using the Constitution, the biggest Measure 37 backers encouraged voters to provide just compensation to landowners when government enacts land use regulation. What does it mean to be justly compensated? And how do we determine a reduction in value when community-based laws benefit and burden us all?

Claimants have demanded huge sums of money based on inconsistent and unfair calculation methods. In turn, the state has failed to confirm whether these demands accurately reflect the loss in value and has been providing claimants exactly what they have demanded!

The voters' intended to provide for **true** hardships. Instead, Oregon faces demands for billions of dollars without proof of loss. Many Measure 37 claimants have chosen to exploit the new law by demanding subdivisions, strip malls, gravel pits and unsustainable development on farm and forest land. These demands threaten to overtax water supplies, pave valuable farm land and increase fire risk.

Time and again, the highest courts of this nation have rejected the notion that land use laws have reduced property values. As top economists have shown, the public collectively bears the burdens and enjoys the benefits of a community-created land use system. In many cases, we actually enjoy an **increase** in value. The problem with Measure 37 is that it allows compensation for a select few at the expense of many and fails to preserve your right to a livable community. This harms our constitutional right to ensure that government does not giveaway all our resources from the public treasury by waiving laws that protect Oregon as a whole.

Measure 49 provides a uniform and accountable system for calculating compensation and a relief valve for true hardships and stops those who seek to abuse Measure 37. Vote yes to set Oregon back on track towards livability, just compensation and fairness for all!

Endorsed by Pat Wheeler (Friends of Polk County) and Mitzi Wheeler (Friends of the Molalla River).

(This information furnished by Jonathan Graca, Hood River Valley Residents Committee.)

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Measure 49 Arguments

Argument in Favor

Mayors and city leaders from throughout Oregon, urban and rural, Democrat and Republican, **support Measure 49.**

Measure 49 helps protect cities from massive developments outside of city limits.

Measure 49 fixes “unanticipated consequences” of Measure 37, allowing individuals to build homes, but limiting huge developments.

Measure 49 restores balance by helping small property owners.

Measure 49 is right for Oregon

Create certainty. Protect your city

Vote YES on Measure 49

A list of Mayors who support Measure 49:

Harold L. White, **Mayor of Aumsville**
Rob Drake, **Mayor of Beaverton**
Charles C. Tomlinson, **Mayor of Corvallis**
Jim Fairchild, **Mayor of Dallas**
Kitty Piercy, **Mayor of Eugene**
Richard G. Kidd, **Mayor of Forest Grove, Oregon**
John McArdle, **Mayor of Independence**
Dale De Long, **Mayor of Island City**
James W. Lewis, **Mayor of the City of Jacksonville**
Judie Hammerstad, **Mayor of Lake Oswego**
Lori Hollingsworth, **Mayor of Lincoln City**
James Bernard, **Mayor of Milwaukie**
Thomas C. Bauman, **Mayor of Mt. Angel**
Alice Norris, **Mayor of Oregon City**
Virginia Carnes, **Mayor of Pilot Rock**
Craig Dirksen, **Mayor of Tigard**
Brad Boyd, **Mayor of Sisters**
Charlotte Lehan, **Mayor of Wilsonville**

(This information furnished by John McArdle, City Leaders of Oregon PAC.)

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Argument in Favor

The Oregon Chapter of the American Institute of Architects represents individuals from throughout the state who depend on development and construction. We believe Measure 37 has been an attack on the orderly development that is important for the quality of life enjoyed by Oregonians. Measure 49 restores balance between the rights of individual property owners and the broader welfare of the community.

MEASURE 49 RESTORES STABILITY OF PROPERTY VALUES

Would you buy a home if you knew that someone could build anything they wanted next door? Many Oregonians now face the shadow of uncertainty created by potential uncontrolled large developments adjacent to their homes and neighborhoods. Property owners who are now exempt from any regulations can impact the value of your home and entire neighborhood. Before Measure 37, land use regulations provided stability for our property values. Measure 49 will restore reasonable controls on inappropriate large commercial and residential development.

MEASURE 49 IS FAIR TO ALL PROPERTY OWNERS

Measure 49 grants special rights to longtime property owners while halting the land rush into Oregon's farmlands and natural areas. Most large Measure 37 claims have been from large

timber, mining, and development interests who are interested in large scale development without environmental regulation. These large companies are poised to reap huge rewards while taxpayers foot the bill for roads and infrastructure to support uncontrolled development.

RESTORE THE VISION THAT HAS MADE OREGON SPECIAL

Oregon architects strive every day to create vibrant urban areas, liveable communities, and sustainably designed buildings. We owe much to an earlier generation of leaders from across the political spectrum who created Oregon's visionary land use planning laws. Measure 37 has been a wrecking ball to that vision. Measure 49 creates fairness to property owners while preserving Oregon's system of land use planning that has become a model for the nation.

PLEASE JOIN US IN VOTING YES ON MEASURE 49

American Institute of Architects Oregon Chapter

(This information furnished by Tom Pene, AIA, President, American Institute of Architects Oregon Chapter.)

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Argument in Favor

**American Heart Association/
American Stroke Association
Urges You to Vote “YES” on 49
Protect Public Health**

How and where Oregon communities grow has an obvious impact on our future. It also has a significant impact on our health.

Poorly-planned growth caused by Measure 37 forces people to drive everywhere—even for simple errands. Clackamas County alone estimates an increase of at least 400,000 vehicle trips a day from the far-flung development proposed through Measure 37 claims.

Poorly-planned sprawl development due to Measure 37 means more driving and less walking and biking, which correlates to higher rates of obesity and heart disease. The American Heart Association/American Stroke Association supports well-planned communities because it knows that residents will be healthier as a result.

**Unchecked development unleashed by the
flaws of Measure 37 undermines zoning laws
that protect our health.**

Protecting public health is an important consideration of the rules that govern how we plan for growth. Reducing the need for automobile trips means a healthier future for us, our children and grandchildren.

**Measure 49 will help promote active healthy
communities and prevents development that could
hurt public health.**

**Protect Oregonians' Health
Vote Yes on Measure 49**

*(This information furnished by John Valley, American Heart Association/
American Stroke Association.)*

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Measure 49 Arguments

Argument in Favor

Washington County Farmers and Foresters Urge a YES Vote on Measure 49

As farmers and foresters, we treasure Oregon's scenic forests, wildlife habitats and open green spaces. We take pride in the diversity of crops grown throughout Oregon and we are proud to provide Oregonians with locally grown agricultural products.

But all that could change if the fatal flaws of Measure 37 are not fixed. Instead of growing crops and timber, our resource lands are destined to become massive subdivisions.

Here are the facts we are facing in Washington County:

- 902 Measure 37 claims have been filed.
- 73,899 acres are covered by these claims (115 square miles).
- Claims on 56,287 acres are for housing subdivisions (the equivalent of 5 Beavertons).
- Claims for development cover 70,370 acres of existing farmland and forests.
- Stimson Lumber Co. has submitted claims for subdivisions that would be larger than the city of Forest Grove.

These facts show us that Measure 37 allows much more large-scale development than we were told as voters in 2004.

This is destructive to commercial agriculture not only in Washington County, but throughout the state as well. Other Willamette Valley counties particularly hard hit by Measure 37 are Benton, Lane, Linn, Marion, Polk and Yamhill. These six counties face claims on 167,000 acres (nearly the size of two Portlands). Across the state, Measure 37 claims will take hundreds of thousands of acres of farm and forest land permanently out of production.

Measure 49 is our last chance to protect Oregon's farms and forests from the large-scale commercial and residential development allowed under Measure 37.

Please join us in protecting Oregon's quality of life and natural resources by voting YES on Measure 49.

Keith Fishback, farmer
Eric T. Sahnou, farmer
David A. Vanasche, farmer
Marie P. Finegan, farmer
Larry Duyck, farmer
Edmund Duyck, farmer
Terry Peters, farmer
Tad VanderZanden, President, Washington County Farm Bureau

(This information furnished by Tad VanderZanden, President, Washington County Farm Bureau.)

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Argument in Favor

Measure 37 and the Oregon Coast: Ouch!

Here are just a few claims for development that would change the Coast— forever.

HIGHWAY 101 – NORTH/CENTRAL COAST

Astoria, Clatsop County, 203 acres zoned exclusive farm use
Intent: Single-family/multi-family residential and industrial development

Gearhart, Clatsop County, 25 acres zoned residential
Intent: Residential development onto beach, in violation of the Public Beach Law

Hallstrom Road, Tillamook, 137 acres zoned exclusive farm use
Intent: Subdivision in 100 residential lots

Otis (all of it) Lincoln County
182 acres zoned forest use, exclusive farm use, etc.
Intent: Unspecified development

North Widow Creek Road, Otis, 113 acres
Intent: Rock crushing operation along Widow Creek
less than 1 mile from Salmon River

Bayview Road, Waldport, 862 acres
Intent: Residential subdivision

HIGHWAY 101 - SOUTH COAST

These are among the largest development claims. Numerous small claims will likely make as large an impact or greater: building large homes or condos blocking scenic vistas or disrupting the character of local communities.

Cape Blanco, Port Orford
722 acres zoned beaches and dunes conservation, forestry grazing, shoreland protection
Intent: 150-lot subdivision, hotel, parking lots, two golf courses, equestrian park

Hwy 101, Gold Beach, 1,610 acres zoned forestry, grazing etc.
Intent: Residential subdivision, hotels, hospitals, commercial retail, destination resort

Sixes, Curry County, 3081 acres
Intent: Residential subdivision

Powers, Coos County
8604 acres zoned exclusive farm use, forest use
Intent: Subdivide into 864 lots

Along South Slough of Coos Bay, Cape Arago Highway, Charleston, 236 acres zoned forest use, farm-forest use
Intent: Residential development, retail, hotel

Coquille, Coos County
1231 acres zoned forest use, exclusive farm use
Intent: Subdivide into 10-acre residential lots

Sea Lion Caves, Florence
119 acres zoned park and recreation, natural shorelands
Intent: Residential and commercial development

Florence, including land along Siuslaw River and South Inlet Slough, 1,040 acres zoned forest use
Intent: Residential subdivision
Claimant: Davidson Industries (timber company)

**Stop the paving over of the Oregon Coast
before it's too late.
Vote Yes on Measure 49.**

(This information furnished by Elizabeth Carey.)

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Argument in Favor

Vote Yes on 49 – Protect Oregon

Oregon is facing what will go down as its biggest challenge in history—that of the random and unplanned development invited by Measure 37. That's why I, a fifth generation Oregonian, and my wife are supporting Measure 49.

Measure 49 doesn't repeal Measure 37 but we think it is the best compromise that can be expected. Without the modifications Measure 49 brings to Measure 37, it is just a matter of time

Measure 49 Arguments

before wide swaths of Oregon's forests, farmlands and watersheds are ruined.

We, along with our neighbors, face a typical scenario for people living next to Measure 37 claims.

A timber company that owns land adjacent to us is demanding to convert more than 300 acres of timberland—about a square half a square mile—into a subdivision. **This development, which we have no reason to doubt will proceed as laid out in the claim, will help destroy the rural Siltcoos watershed that also provides drinking water for the area.**

Timber companies decades ago encouraged counties to implement the forest use zonings that they now are seeking to have waived via Measure 37. The companies have benefited from both the ability to cut and sell timber, as well as from a reduced property tax rate associated with lands zoned for forest use.

Changing the rules of the game in this way is not what Measure 37 was supposed to be about. Measure 37 was advertised simply as a way to help individuals who wanted to build a few homes on their land—NOT AS A GREEN LIGHT FOR LARGE BUSINESS INTERESTS TO EXPLOIT OUR LANDS, OUR OREGON!

I urge you to consider the consequences of Measure 37. Please join us in voting "YES" on Measure 49. It restores a land use system that ensures balanced growth.

Rand and Kathryn Dawson, Westlake, Oregon

(This information furnished by Rand Dawson.)

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Argument in Favor

Association of Northwest Steelheaders,
Oregon Council of Trout Unlimited, and
Northwest Sportfishing Industry Association

VOTING "YES" ON 49 WILL SAVE SALMON AND STEELHEAD

Measure 37 threatens to degrade salmon and steelhead habitat throughout Oregon with poorly-planned development along our spectacular rivers, streams, and coastal estuaries.

Most of the 7,500 claims for development on 750,000 acres in Oregon are on forest and farmlands.

Measure 37 threatens the estuaries and streams that support salmon and steelhead fishing as part of Oregon's heritage. The flaws of Measure 37 have unleashed claims for:

- 150 housing units, a 250-room hotel, parking lots, and two golf courses at the mouth of the wild Sixes River—**threatening one of the greatest natural estuaries remaining on the Oregon Coast, adjacent to two state parks;**
- Development along the Nehalem River, Nestucca River, Sand Creek, the Little South Fork of the Kilches River, the Salmon River watershed, and the Siletz River;
- 1,040 acres—including **development along the Siuslaw River or South Inlet Slough**—by timber company Davidson Industries;
- 5,500 acres of **unspecified development at the confluence of the Deschutes and Crooked rivers with Lake Billy Chinook.**
- Just two claims for **20,000 housing units in the rural Klamath Basin**—exacerbating demand for water in a region already dealing with shortages.

Development of streamsidess makes fish more vulnerable to toxins, parasites and disease by increasing water temperatures and reducing water oxygen levels.

Habitat destruction caused by Measure 37 threatens fish runs that sustain commercial and sport fishing economies and that are at the heart of what makes Oregon special.

We can't let our salmon and steelhead fall prey to large subdivisions, and commercial and industrial development of our natural resource lands.

Protect our forests and water supplies that sustain our salmon and steelhead
VOTE "YES" on MEASURE 49

(This information furnished by Phil Donovan, Association of Northwest Steelheaders.)

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Argument in Favor

1000 Friends of Oregon Supports Measure 49

For over 30 years, 1000 Friends of Oregon has joined with citizens across the state to enhance the quality of life we all enjoy as Oregonians. We work to protect family farms and forests, conserve our natural resources and scenic areas, and build livable urban and rural communities.

Oregon has seen many changes over the years, but one thing remains constant: **what unites us as Oregonians is far stronger than what divides us.** Ranchers in eastern Oregon are as concerned about clean and adequate water supplies as residents of the Oregon coast. Those who live in central Oregon are just as worried about the effects of sprawl and unmanaged growth as are Portland-area residents.

That's why **Measure 49 is so crucial to Oregon's future.**

Measure 49 fixes the flaws of Measure 37. Measure 37 has given large timber companies special rights to turn thousands of acres of forestland into huge housing subdivisions. Measure 37 has given developers special rights to dig up precious farmland for strip malls, gravel pits and billboards.

Increased sprawl, traffic congestion, and loss of valuable farmland are NOT what voters had in mind when Measure 37 passed. That's not how Measure 37 was sold to voters.

That's why we need Measure 49. A YES vote on Measure 49 will fix the Measure 37 mess.

A **YES vote on Measure 49** gives Oregon a responsible, common sense approach to planning. It balances the interests of small landowners with those of their neighbors and the local community. Measure 49 will ensure the fairness Oregonians want.

As Oregonians, we are proud of our history of responsible land use planning. A **YES vote on Measure 49** continues the Oregon legacy for our children and grandchildren.

Please join 1000 Friends of Oregon in voting YES on Measure 49!

(This information furnished by Bob Stacey, 1000 Friends of Oregon.)

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Measure 49 Arguments

Argument in Favor

Douglas County's family farmers ask you to vote yes on Measure 49

Real family farmers say yes on 49

The phrase "family farm" is being used a lot in the debate over preserving Oregon's farms, forests, and water. Only one organization represents the breadth and depth of Oregon's family farms, and that's Farm Bureau. With Oregon roots back to 1919, Farm Bureau is a true grassroots organization representing nearly 328 farm families in Douglas County and over 8,000 farm families statewide.

Measure 49 fixes flaws

Measure 49 takes a comprehensive approach to addressing the major issues that Measure 37 left unaddressed. These include transferability, clarifying that a spouse at the time of purchase of the land in question has rights even if he or she was not named on the deed, and it allows a reasonable number of homes to be built. Without Measure 49, simple questions like these will clog the courts and go unanswered for years to come.

Measure 49 protects our Oregon home

We are a state where the family farm remains the rule. Measure 49 protects that heritage by allowing reasonable numbers of homes to be built but not big-box stores or strip malls. Oregon's family farmers are able to provide economic benefits like tens of thousands of jobs, quality of life benefits such as open space and ready availability of a wide variety of fresh fruits and vegetables close to town, and environmental benefits such as wildlife habitat. The key ingredients that allow farmers to continue providing these benefits include land, water, labor and reasonable regulatory and marketplace conditions. The first ingredient is land.

Restore balance by voting yes on Measure 49

Measure 49 answers questions left by flawed initiative petitions of the past. It answers those questions in a way that balances the need for land in agriculture with the needs of families who wish to build homes on their land.

(This information furnished by Rick Epp, president, Douglas County Farm Bureau.)

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Argument in Favor

Religious Leaders Support Measure 49

Oregon's farmlands, forests and natural areas are central to our state's livability, prosperity, and uniqueness. **Measure 49 is a much-needed corrective to the flaws of Measure 37, so that Oregon's lands may continue to be a blessing to future generations.** As people of faith, we believe that the land is a gift from God, entrusted to our care and stewardship for the benefit of the common good.

The principles of many great faith traditions call us to love our neighbors as ourselves and to care for the Earth. Therefore, the actions of an individual landowner should not jeopardize the health and well-being of neighbors and communities. In Oregon, land use planning has evolved as a system to ensure fairness while protecting the values that bring us together.

If left unmodified, Measure 37 will cause scattered islands of incompatible uses in prime farm, forest and natural areas, making it difficult for many family farmers to stay in business, as well as threatening water supplies and wildlife habitats.

Measure 49 keeps the intent of Measure 37 by clarifying and streamlining the process for small-scale residential development, and closing the loopholes in Measure 37

that allow unchecked large-scale development. Without Measure 49, widespread development within exclusive farm, forest, and natural areas will establish the conditions and precedent for more development, thereby further undermining our land use planning system.

The quality of life in Oregon has never been more in the balance. We urge a "YES" vote on Measure 49.

David A. Leslie, Executive Director, Ecumenical Ministries of Oregon

The Rev. Kent Harrop, President of the Board, Ecumenical Ministries of Oregon, McMinnville

The Oregon Center for Christian Values

(This information furnished by Jenny Holmes, Ecumenical Ministries of Oregon.)

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Argument in Favor

PROTECT THE CHARACTER OF OUR COMMUNITIES

VOTE "YES" ON 49

Dear Oregon Voters,

We join in the support of Measure 49 because it is our responsibility to uphold the mission of the Architecture Foundation of Oregon. That mission states that we "advocate the enhancement of our built environment, the livability of our communities, and preservation of our rich architectural heritage."

Support of Measure 49 is one of the clearest and most expedient ways we can uphold this mission.

Measure 49 will enhance our built environment by clarifying the right of families to build homes on their property.

Measure 49 will sustain the livability of our communities by protecting the **forests, farmlands and rivers** that surround our large and small cities, **making Oregon the unique and special place that we all cherish.**

Measure 49 will preserve our rich architectural heritage by protecting the settings in which many of Oregon's architectural treasures exist.

Please vote Yes on Measure 49.

Sincerely,

ARCHITECTURE FOUNDATION OF OREGON

Arthur W. Johnson, President

Jonah Cohen, AIA

Carol Mayer-Reed, FASLA

Omid Nabipoor

G. Jane Jarrett, Executive Director

Board of Directors:

Martha Peck Andrews, FAIA

Gaafar Gaafar

Linda Barnes, FAIA

Jacklyn L. Hallock

Kathy Shaloo Berg, AIA

Patrick C. Harrington

Philip Beyl, AIA

Neal Huston, AIA

Tom Braden

Kevin Johnson, AIA

Tom Cody

Nawzad Othman

Linda Czopek

Steve Poland, AIA

Kent Duffy, FAIA

Bart Ricketts

Bart Eberwein

Kurt Schultz, AIA

Susan Stevens Emmons

Richard Spies, AIA

www.lookaroundoregon.com

Measure 49 Arguments

(This information furnished by Arthur W. Johnson and Gloria Jane Jarrett, Architecture Foundation of Oregon.)

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Argument in Favor

Please join Lane County farm and ranch families and vote yes on Measure 49

At the base of the Willamette Valley, Lane County farms produce many of Oregon's most treasured products: hazelnuts, berries, dairy, grass seed, tree fruit, wine and many more.

What makes these products possible is the same thing that contributes greatly to Oregon's quality of life: Minimizing conflicts over land uses. With clear ground rules and a fair process, we can avoid creating conflict. That approach is part of our heritage.

Unfortunately, the unanswered questions created by Measure 37 are sparking more and more conflicts. More court challenges. More disputes between neighbors. More uncertainty. The rules are not at all clear, and there are so many unanswered questions that many more conflicts are certain to arise. Without a fix, these conflicts will plug the courts for years to come. Without a fix, countless Oregonians won't have the certainty they need to make plans for their families, their homes, and their small businesses.

Luckily, we have Measure 49. Measure 49 addresses these unanswered questions. It clarifies the ground rules and the qualifications. Also important, it allows a reasonable number of homes to be built in agricultural areas without destroying the land base that farm and ranch families depend on. We could wait years for the courts to sort through all these disputes, but we don't have to wait. Measure 49 puts the power to fix these problems in your hands. You have the power to vote yes and fix what's wrong.

Over 400 farm and ranch families make up Lane County Farm Bureau. Our purpose is to ensure that family agriculture continues to be a vital part of Oregon life. That vitality depends on the availability of farm ground, and minimizing conflict in and around farm zones. Measure 49 helps us accomplish all of these.

Please join us in voting yes on Measure 49.

(This information furnished by Donna Corwin, president, Lane County Farm Bureau.)

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Argument in Favor

Oregon's Conservation and Environmental Community Urge a "YES" Vote on 49

Oregonians share a steadfast commitment to the **responsible stewardship** of Oregon's natural legacy. After all, we only have one Oregon, one home, to defend.

To **defend our home**, please join us in voting "YES" on 49.

Measure 49 protects Oregon's farms, forests, and water supplies, as well as the rights of families to build a few homes on their own property.

It fixes flaws in Measure 37 that allow large housing subdivisions, big-box stores and strip malls where they don't belong.

For example, a Measure 37 claim has been filed at the mouth of the wild Sixes River—perhaps the greatest natural estuary remaining on the Oregon Coast. The claim threatens wild salmon and steelhead habitat with 150 housing units, a 250-room hotel, golf courses, and parking lots on land in a beach and dune conservation area.

Other examples include the claim to place a pumice mine inside the Newberry National Monument, as well as claims for massive development on Steens Mountain, Mt. Hood, along many rivers and streams and up and down the Oregon Coast.

Go to www.yeson49.com and see the literally **hundreds** of examples like these, across the state, in which **Measure 37 is being abused by speculative developers and timber companies in ways that will permanently rob our children of their natural legacy.**

While most areas of our country have lost farmland, forests and natural areas to development, Oregon has preserved the places that make our state special. Measure 49 is a critical chance to restore balance to Oregon and our last chance to save many of these areas for future generations.

Yes on Measure 49. Protect Our Home – Oregon.

Audubon Society of Portland
Environment Oregon
Friends of the Columbia Gorge
Kalmiopsis Audubon Society
Oregon Conservation Network
Oregon Environmental Council
Oregon League of Conservation Voters
Oregon Sierra Club
Oregon Shores Conservation Coalition
WaterWatch of Oregon

(This information furnished by Sybil Ackerman, Oregon Conservation Network.)

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Argument in Favor

Central Oregon: How would you like to grow?

That's the question on this November's ballot.

Measure 37 has generated claims for large subdivisions and commercial development across swaths of Central Oregon where they are currently not allowed.

Measure 49 amends Measure 37 by limiting this large development: It allows landowners who want to add a few homesites to do so, if they could when they bought their land. And in an area with water shortages, it's just common sense to grow more gradually.

Measure 49 also prohibits using a Measure 37 claim to site an industrial or retail commercial development.

Subdivisions and strip malls? Or farmland, forest and deserts? You decide

Here are just a few of the claims for development Measure 37 would bring to Central Oregon:

Location: Knott Road, Bend, Deschutes County, 223 acres
Current zoning: exclusive farm use

Intent: Resort with horse ranches, golf course, 60 to 80-lot residential subdivision

Location: West Evergreen Avenue, Redmond, 815 acres
Current zoning: exclusive farm use

Intent: Destination resort, including residential units, lodging, commercial development, sewage treatment facilities.

Measure 49 Arguments

Location: French Road, Prineville, 1,741 acres
Current zoning: exclusive farm use
Intent: 2,640 half-acre lot subdivision

Location: Newsome Creek Road, Post, Deschutes County
15,464 acres
Intent: 3,092-lot subdivision

Location: 1200 Bull Boulevard, Prineville, 4,404 acres
Current zoning: exclusive farm use
Intent: Subdivide into 1,003 residential lots

Location: Ashwood, Jefferson County, 6,240 acres
Intent: Destination resort, including residential subdivision and commercial development.

Location: Lake Billy Chinook, Jefferson County, 5,512 acres
Intent: Unspecified development

Location: Belmont Lane, Madras, Jefferson County, 752 acres
Current zoning: exclusive farm use
Intent: 244-lot subdivision

Location: Maupin, Wasco County, 1,051 acres
Current zoning: exclusive farm use
Intent: Surface mining, "dude ranches," hunting and fishing lodges, conference areas, residential subdivision, etc.

Location: Dufur Valley Road, The Dalles, Wasco County
4,074 acres
Current zoning: exclusive farm use
Intent: Subdivision into 200 20-acre "ranchettes"

(Information provided according to most recent data available as of Aug 20, 2007.)

(This information furnished by Lynn Greenwood.)

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Argument in Favor

Help Protect Our River.
Vote Yes on Measure 49.

As retirees, my husband and I live in Oregon's beautiful Illinois River Valley where we enjoy the quiet and rural character of the area. We live along the Illinois River, and we cherish its clean waters and friendly community. Here, people can still swim, and salmon and steelhead still spawn.

We live here because unlike many parts of the country, Oregon has preserved its forests, farmland and land along rivers and water. That's important to us and to future generations. We never imagined that Oregon would lose this. But now a proposed development through Measure 37 on the Illinois River will forever undo this special place.

And if we don't fix it now – this November – it will be too late.

A local resident is proposing to build a commercial enterprise with a store, parking lot, and arena on his property by the river. The state has approved the claim because of Measure 37. This project threatens to generate fecal pollution and fertilizer directly into the Illinois River, threatening the recreational opportunities families enjoy and the wildlife habitat native fish need to survive.

And public drinking water may be threatened as well: our city's public water intake is directly downstream from this proposed development.

Our story is not unusual. Many Oregonians like us support the rights of families to build a home or two on their land – and that is protected with Measure 49. But we oppose the excesses and

abuses of Measure 37 that allow commercial business uses where they don't belong.

Help keep our rivers and drinking water clean! Please support Measure 49.

Thank you,

D. Hover-Kramer

(This information furnished by Dorothea Hover-Kramer.)

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Argument in Favor

**Developers make the profits –
and taxpayers get stuck with the bill.**

**Measure 49 will keep large developers from
shifting their costs to taxpayers.**

We all value public services in our communities – from reliable police and fire protection to safe roads, sanitation and water supplies.

And we all pay for those services through local property taxes and user fees. We are willing to pay our fair share. But we expect others to pay their fair share as well.

Under Measure 37, that's not going to happen.

Our cities and counties can barely afford to keep our police and fire departments properly equipped, our bridges and roads in good repair, and our water and sewer systems up to basic standards for health and safety.

New subdivisions and sprawling developments will make things worse.

**If we continue to allow large developers to use
Measure 37 like a bulldozer over our rural lands, they'll
make a quick profit, but we'll end up footing the bill –
either in higher taxes or fewer services.**

- Think of the costs of building safe new roads to far-flung housing developments on what is now farm and forest land.
- Think of who pays when our cities and counties have to add police and fire coverage to reach distant housing tracts.
- Think of who loses if we have to extend water and sewer lines to new developments and can't maintain the systems we have now.

Balance growth is important: We want to enjoy livable communities. But we want to make sure that all of us can afford to pay for the services that our communities require.

**Measure 49 will rein in developers who are pushing for
massive subdivisions on hundreds of thousands or acres
of what is now rural land.**

**Measure 49 will discourage expensive, large
developments that shift costs to us taxpayers.**

**Measure 49 will keep our communities livable and
affordable – before it's too late.**

Vote Yes on Measure 49.

(This information furnished by Rachel Grant.)

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Measure 49 Arguments

Argument in Favor

To produce and publish sound evidence on the question of whether land-use regulations in general cause economic loss in land value, the Gray Family Fund at Oregon Community Foundation funded two independent studies

The first was the June 2007 report by two OSU professors, Jaeger and Plantinga, *How Have Land-use Regulations Affected Property Values in Oregon* concludes: "Our analysis of Oregon land value data finds no evidence of a generalized reduction in value caused by Oregon's land use regulations, a result that is consistent with economic theory and with research in the economics field". Other excerpts are:

"Land values (adjusted for inflation) have generally risen since the introduction of Oregon's land use planning system in 1973, both for rural lands zoned for farm use and forest use and for developable lands both inside and outside the urban growth boundaries". --- "The data presented here do not, therefore, support the belief that Oregon's land-use system has systematically reduced the value of restricted properties... Oregon's land-use planning system is not intended to limit the amount of development that occurs, but rather it is intended to influence the location of development in ways that are consistent with various land-use planning goals".

The second study published in June 2007 by the Georgetown University Environmental Law and Policy Institute, Washington, D.C. – *Property Values and Oregon's Measure 37* – reached similar conclusions:

"A comparison of statewide agricultural land values in Oregon and (California and Idaho) shows that Oregon experienced comparable, and generally somewhat higher, rate of appreciation as its neighbors, again despite Oregon's stricter regulation of rural development".

These research studies have convinced me to urge a Yes vote for M-49 to help preserve our state's nature and health. Please vote Yes and thank you.

John D. Gray
Retired Chairman, Omark Industries; Developer of
Salishan, Sunriver, Skamania Lodge and Johns Landing

(This information furnished by John D. Gray.)

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Argument in Favor

The Gray Family Fund of the Oregon Community Foundation funded work by the Institute of Metropolitan Studies, Portland State University, to compile, analyze and publish information about the number, type, and county of 7,462 Measure 37 claims filed between December 2004 and March 12, 2007. This information may be reviewed at <http://www.upa.pdx.edu/lms/currentprojects/m37/index.php>.

All claims show the number of acres affected and the county. The vast majority of claims also show how the land is zoned, and the kind of land division the claimant demands. Estimates of what all the 7,462 claims will do, based on the proportion of claims which do specify zoning and division type, shows the following:

3,153 claims (42%) seek 1-3 home sites.

4,309 claims (58%) seek subdivisions on farm and forest land averaging between 128-154 acres.

61% of the farmland subdivision claims are in Willamette Valley, mostly on "high value" land.

Measure 49 fixes Measure 37 in at least two ways. First, M-49 helps the "little guy" by approving 1-3 lot claims without proof of loss, and by giving transferability which M-37 did not. Second, M-49 limits subdivisions on high value land and in groundwater restricted areas to 3 lots. On other lands M-49 limits subdivisions to 4-10 lots, based on proof of loss which must be shown by an appraisal.

These and other facts have convinced me to support M-49. If you want to modify M-37 to help the little guy and to limit big subdivisions on Oregon's best farm and timber land. I urge you to vote Yes on M-49.

John D. Gray
Retired Chairman, Omark Industries
Developer – Salishan, Skamania Lodge,
Sunriver and Johns Landing

(This information furnished by John D. Gray.)

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Argument in Favor

**When our forests are gone, we'll never get them back.
Protect our forests.
Vote Yes on Measure 49.**

Forests have always been a special part of Oregon's natural heritage, and they can continue to be a special part of Oregon's future – if we vote Yes on Measure 49.

When properly managed, forests provide habitat for fish and game, year-round recreation and jobs that sustain local communities.

But claims filed under Measure 37 threaten to turn tens of thousands of prime forest land into housing subdivisions and commercial projects, each of which will require roads, water lines and utilities that will magnify their impacts on the land.

**Once our forests are gone, we will never get them back.
We have seen that happen in other parts of the country.
We don't want to see it happen here.**

Measure 49 will protect private forest lands for both recreation and forestry.

Forest land owners are given new protections under Measure 49 to protect their investments far into the future. When we are fair to forest owners, we provide greater incentives to manage our forests for sustainable yields and maximum benefits for all Oregonians.

That's the reason we provide special designations for forest land.

Measure 49 will keep those designations in place and protect our forests for generations to come.

**Protect our forests. Protect our future.
Vote Yes on Measure 49.**

(This information furnished by Carly Jean Birkey.)

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Measure 49 Arguments

Argument in Favor

Farm families in Clackamas County ask you to vote yes on Measure 49

Sandwiched between a thriving metropolis on the valley floor and the forested slopes of the Cascades, Clackamas County agriculture is a great example of why Oregon needs Measure 49.

Clackamas County is an integral part of the Portland metro area and home to about 375,000 Oregonians. Complementing that urban character is a thriving family farm economy. Farm families in our county produce nearly \$400 million in sales each year, not including off-farm businesses like transportation, processing, marketing, restaurants, and retail. Blessed with some great soils, Clackamas County is the second most productive agricultural county in Oregon.

Clackamas County is a virtual who's who of beloved Oregon products. Strawberries, Christmas trees, blueberries and blackberries, ornamentals and shade trees, fresh vegetables, hazelnuts, wine, and many more Oregon farm favorites are grown here. Clackamas County is also home to tulip-filled fields, a sea of colors that so beautifully represents Oregon in calendars, posters, and cards.

How can Clackamas County be such a family farm success story? The farm answer is that we have the quality land, water, labor, and know-how to be successful. The public policy answer is balance. Oregon needs laws that emphasize balance among different kinds of uses for our irreplaceable land. With balance, family farming can continue to thrive for decades to come, in harmony with flourishing urban areas.

Measure 49 brings balance to the heart of our public policy. It allows a reasonable number of homes to be built in farming areas while protecting these areas from runaway development. A lack of balance breeds conflict. Conflict undermines the quality of life enjoyed by all who call this wonderful place home. By bringing balance, Measure 49 will reduce conflicts. We all benefit from that.

Clackamas County Farm Bureau has more than 650 farm families working together toward positive solutions. We ask you to join us in voting yes on Measure 49.

(This information furnished by Joe Casale, Jr., Clackamas County Farm Bureau.)

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Argument in Favor

Oregon's Fire Chiefs Urge You to Vote Yes on Measure 49

It may seem unusual that Oregon Fire Chiefs would weigh in on an issue like Measure 49. After all, what does firefighting have to do with who gets to build what buildings, and where?

The answer is: it matters a lot.

Our job is to protect the structures, and the people who live and work inside them. That job can be made much more difficult if those structures are not built with fire protection in mind. And even if those homes and businesses are well-built, they can be at risk if they are built in the wrong places.

That is what is happening with Measure 37. And **Measure 49 will help fix it.**

Many Measure 37 claims are for massive housing subdivisions on remote farm and forestland that are not appropriate from a fire protection standpoint.

- They are isolated from fire stations and other services.
- They are often in places at risk for wildfires.
- These areas have limited water supplies, and housing developments could drain them even further. It's very hard to put out a fire without enough water.

It would be very difficult, and in some cases perhaps impossible, to provide adequate fire protection for the kinds of large development Measure 37's loopholes are now allowing. And to the extent that we can, it will be very expensive – an expense that will be born by local property taxpayers.

Measure 49 will protect the rights of landowners to build a few houses on their land, if the law allowed them to when they bought it. But it will also help us protect you, by preventing the wrong kind of development in the wrong kinds of places.

Roy Hari
Fire Chief - retired, Marion County Fire District 1

Larry D. Eckhardt
Retired Fire Chief, Sheridan Oregon

(This information furnished by Liz Kaufman, Yes on 49 Campaign.)

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Measure 49 Arguments

Argument in Opposition

We urge you to read Measure 49 very carefully before voting.

Measure 49 is not what it appears to be.

Measure 49 passed by a single vote in the Oregon Legislature. It is poorly drafted and will lead to years of litigation and political infighting in Salem.

The Ballot Title Is Intentionally Misleading:

What you read on your ballot for Measure 49 was not written by the Attorney General or Secretary of State. It was not reviewed by the Oregon Supreme Court for neutrality and objectivity. The legislature used a rare political trick to draft the language using public opinion polls -- to find the most deceptive "political" language. Why? Because special interest groups don't want you to know what is really in Measure 49.

They Had To Mislead Voters To Hide The True Intent Of Measure 49

Measure 49 will allow state and local government to take your home and property without compensation, wiping out laws that require government to pay fair value for what it takes.

Measure 49 Repeals Your Vote On Measure 37

Section 4 of Measure 49 repeals your vote on Measure 37 and replaces it with a complex process for property owners, which experts say will not work, and opens property owners up lawsuits, fees, and years of frustration. The most offensive part is that Measure 49 was forced through the Legislature without a single public hearing!

Implementing Measure 37

Our job this session was to implement your overwhelming votes supporting Measure 7 and Measure 37 to protect property owners. The Legislature ignored your votes, invented a crisis, and sent you Measure 49 -- forcing you to vote a third time!

Measure 37 can be fairly implemented without stealing your property -- but Measure 49 is not the answer. Please join us in voting No on 49.

Senator Larry George Representative Bill Garrard

(This information furnished by Senator Larry George and Representative Bill Garrard.)

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Argument in Opposition

MEASURE 49 HURTS FAMILY FARMERS -- PLEASE VOTE NO

The **Oregon Family Farm Association PAC** asks you to vote NO on Measure 49.

Current Oregon law requires government to pay you fair value when it reduces the value or takes away your right to use your property -- a core protection for property owners. Measure 49 guts these basic protections for our property and life-savings.

Measure 49 is a radical change to state law that allows the government to take your property without any compensation.

We rely on our property for our livelihood, and unlike large corporate farms, every new regulation makes it harder to stay in business.

Corporate farmers and their lobbyists got loopholes for themselves in Measure 49 -- but small farmers and ranchers got left out and now face lawsuits and years of frustration if Measure 49 passes.

Voters asked the Legislature to implement Measure 37, instead they manufactured a fake crisis and crafted Measure 49.

There is no problem in Measure 37 that cannot be addressed by proper implementation by the Legislature. Oregon voters passed Measure 37 in 2004, and the Legislature refused to implement it in both the 2005 and 2007 Legislative Sessions. The politicians refused to implement Measure 37 in order to create a false crisis -- so they could justify Measure 49's radical changes.

Measure 49 will have a detrimental affect on family farmers:

Today, property owners have protection in state law. If Measure 49 passes, those protections will be gone. In addition:

- We will have to pay the government's attorneys and appraisers to get our property back;
- Those of us who have permits to build a house or two on our property will have those permits wiped out, and be forced to start all over;
- We will have to prove that we made \$80,000 per year in order to build a farmhouse to live in on our property.

MEASURE 49 HURTS FAMILY FARMERS -- PLEASE VOTE NO

(This information furnished by Matt Cyrus, Oregon Family Farm Association PAC.)

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Argument in Opposition

MEASURE 49 IS BAD FOR OREGON'S ECONOMY

I am a professional economist. In my career, I have served as an advisor for central banks, businesses, governments, and developing countries. It is my job to know how to balance economic growth with concerns about the natural environment.

Economists know that protection of property rights is central to the health of the economy and the environment.

Anyone who wants to take your property--whether a private party or a government--should compensate you at the market value of the property taken. Otherwise, uses of known value will be lost to uses of unknown, and untested value.

I have examined Measure 49 in detail. Under Measure 49, if your home or property is taken by a new government regulation, you will not receive fair compensation for the lost opportunities. Thus, there is no guarantee that the public use of your property has sufficient value to the Oregon economy to offset the uses that have been lost.

If government takes \$50,000 of your property for, say, open space or views, under Measure 49 you may receive far less than \$50,000, if you receive anything at all. If a private party wanted to buy your property for open space or views, it would have to pay fair market value for the land. Government should have to play by the same rules.

Measure 49 uses an arbitrary scheme to determine how much, if anything, you will receive in compensation for taken property. That scheme has almost nothing to do with the impact a new government action has on the value of your property. It does not employ accepted, valuation principles.

First year economics students learn that the economies of many countries around the world suffer because of poorly-protected rights to private property. Measure 49 contains policy errors in this regard that a first year economics undergraduate would not make.

Measure 49 Arguments

We should expect more from our elected leaders. Vote NO on 49.

(This information furnished by Randall Pozdena, Ph. D, Quantecon Incorporated.)

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Argument in Opposition

Oregon Sportsmen, Hunters, and Fishermen
Urge A No Vote On Measure 49

Dear Friends:

Measure 49 could cost Oregonians their whole life-savings when government takes their property without compensation. Measure 49 is unfair and terrible public policy.

Oregon sportsmen work closely with Oregon property owners to make sure we protect and promote wildlife and the protection of the environment – Measure 49 would completely undermine those collaborative efforts.

Furthermore, Measure 49 would open up our property owner partners to lawsuits from anybody in the entire United States... a disastrous (and expensive) provision in Measure 49.

Measure 49 is so poorly drafted that it would tie-up property owners in court for years.

Please vote against this extreme change in state law – Please vote no on Measure 49.

Sincerely,

Glenn Cloyd
President, Oregon Sportsmen Assn.

(This information furnished by Glenn Cloyd, President, Oregon Sportsmen Association.)

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Argument in Opposition

We are land use attorneys in Oregon. Combined, we have over 325 years of experience representing Oregonians.

We have each read Measure 49 and we all agree – Measure 49 is a dangerous proposal that will wipe out the property rights of those Oregon families who can least afford it.

In our careers, we have represented government, corporations, small businesses, environmental groups, farmers, ranchers, industries, developers, neighborhood groups, rural residents, urban residents, etc.

Measure 49 was drafted by legislators who know little about land use law or who have a special interest agenda. The Measure adds new provisions to Oregon law that fundamentally change the relationship between private citizens and state government, and weakens the rights of property owners in ways that are so unique and unfair that they seem unimaginable.

If Measure 49 passes:

- State and local government will be able to pass new land use regulations that destroy the value of your home and property without compensation;

- Property owners who have followed all of the land use rules and have received government approval to use their property will have their approval wiped out;
- Property owners in cities will have fewer rights than property owners in rural areas;
- If your property is taken and you demand compensation, you will have to pay your attorney, your appraiser, the government's attorney, and the government's appraiser, even if you win.

As the professionals who will have to make this new law work, we can only tell you that Measure 49 is not what it appears to be, will not work, and will do far more harm to Oregon property owners than good.

Please vote NO on Measure 49.

Mark Bartholomew - Medford
William Cox - Portland
James Dole - Grants Pass
Mark O'Donnell - Portland
John Pinkstaff - Portland
John Rankin - Sherwood
Michael Spencer - Klamath Falls
Robert Swift - Newberg
Meredith VanValkenburgh - The Dalles
Joe Willis - Bend
Jeffrey Wilson - Prineville

(This information furnished by Mark S. Bartholomew; William C. Cox; James R. Dole; Mark O'Donnell, O'Donnell & Clark LLP; John C. Pinkstaff; John A. Rankin; Michael L. Spencer; Robert E. Swift; Meredith D. VanValkenburgh, VanValkenburgh & Associates PC; D. Joe Willis, Attorney at Law; Jeffrey M. Wilson.)

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Argument in Opposition

The Oregon Cattlemen's Association
Asks You To Vote No On Measure 49

Measure 49 is about one simple issue: Should government be able to take your property without paying for it?

Measure 49 would allow Oregon's state, regional, and local governments to take your private property - and take your property with zero compensation for your loss. And if you demand your property back, you will have to pay the government's lawyers and appraisers to get it back – even if you win!

We believe that if government wants your property, then they must pay you for it. If you agree with us, please join us in voting No on Measure 49.

You will read rather unbelievable statements that Measure 49 will protect farmland, forestland, and groundwater – those statements are used to fool you. Politicians and special interests groups used polling to find out what words to use to best manipulate Oregon voters. Measure 49 is not about protecting those resources, it is about changing the law to allow government to take your property without compensation.

Nobody relies more on the protection of land and water than Oregon's ranchers and cattlemen. We are committed to conserve these resources and ensure that they last for generations – many of us are fourth and fifth generation ranchers.

Measure 49 undermines those efforts – if our property is not safe from government takings, then we cannot make long-term plans for future generations and we wipe out generations of ranchers. Measure 49 is a direct assault on Oregon's family

Measure 49 Arguments

farmers and ranchers and traditional agriculture.

Those that support Measure 49 may think that we can be replaced with mega-corporate farms, but we believe that small-scale, family-based agriculture is best for our state, our natural resources, and our environment.

Please reject the misleading campaign and help us protect Oregon agriculture for future generations. Vote No on Measure 49.

www.orcattle.com

(This information furnished by Kay Teisl, Oregon Cattlemen's Association.)

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Argument in Opposition

The Hood River Agriculture, Forestry, and Landowner's Association Asks You to Vote NO on Measure 49

We are all long time agricultural and forest property owners. Together we represent the vast majority of EFU land in Hood River County. We own orchards, vineyards, hay fields, and forest acreage. We raise kids and pears and apples and grapes and cherries and fir trees and cows. We are all farmers with "family farms." The next time you read in the newspaper about agriculture in the Hood River Valley, they are talking about us.

We are also unanimously opposed to Measure 49. Why? Because Measure 49 strips us of our most valuable commodity – the right to control how we operate our farms and use our land.

Today, foreign competition along with state and federal laws are slowly combining to put us out of business. In order for us to compete, we must be able to make changes to the way we use our land based on economics, not how pretty the view is or the soil type.

But Oregon's statewide, centralized land use laws, the only ones of their kind in the nation, prevent us from making changes based on economics.

To them, it is all about protecting "farmland." But no one cares about protecting the "farmer."

Measure 49 strips us of our property rights. It is a cruel blow to an industry that is already struggling to stay alive. If Measure 49 passes, we will be unable to diversify our operations, and to use our unproductive areas for higher economic uses, which allow us to keep farming on the productive parts of our farms.

We are proud to be Americans working in the natural resource industry. It is our hope that our children and grandchildren will continue our heritage. But Measure 49 and Oregon's ridiculous land use laws make that unlikely.

Please vote NO on Measure 49.

(This information furnished by John M. Benton, Sr., Hood River Agriculture, Forestry and Landowner's Association.)

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Argument in Opposition

Legislators ignored Oregon Voters too long and Measure 37 passed. A hidden agenda begins. First a "head fake" saying its finally past time to rework our land use laws and SB 82 in the 2005 session authorizes a volunteer task force of 10, "The Big Look Task Force". With questionable support by the state, the hard working task force appears wandering. In the process Department of Land Use Conservation, (DLCD) Governor's Office, Metro, and the Task Force are receiving facts indicating that the planning function is far more suspect than ever imagined. Extreme errors were cited in Metro Government Planning. Metro which governs 40% of Oregon's Population had apparently frivolously extended the Urban Growth Boundaries (UGB) especially along Mt. Hood Highway east of Gresham also Damascus to be important sources of tens of thousand of industrial and high technology jobs. (Metro's Title 4 map of Significant Industrial Lands). Then Oregon's DLCD "acknowledges" their plans to officially meet state goals. ODOT even jumps in and starts spending Federal Funding to pursue transportation studies for Metro's exuberance. This sets the stage for damage control. Promptly at the legislature Metro gets the legislature to delay its 5 year cycle requirement to review the urban growth boundary by adding another 2 years. I say no wonder they are clueless on how to fix their last mistakes let alone update the UGB. Then curiously the potential 'whistle blowing' Big Look Committee gets the axe. The weak excuse is that Oregon voters are not "sophisticated enough" to think about more than just M-37 (i.e. Task Force puts our intelligence on overload). Lastly, damage control makes sure that the land use committees in the House and Senate avoid even the routine land use problems normally addressed. Then, finally, in the late hours with problems swept under the rug, and under false pretenses of "clarifying", M-37 gets a 'hatchet' job renamed M-49.

Robert Butler, President, Butler Brokers Inc., Commercial Realtors

(This information furnished by Robert Butler, Butler Brokers Inc., Commercial Realtors.)

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Argument in Opposition

Measure 49 has never had a public hearing.

Measure 49 is so bad, legislatures would only vote for it if it was referred back to the voters.

Measure 49 is 24 pages of tricks and errors, including:

- If you are inside the UGB, you are guaranteed **0** lots (Section 9(2) "... may not exceed the lessor of...") (Section 9(6) "The reduction in fair market value..") (see financial formula!)
- If you are outside the UGB, you are guaranteed **1** lot (per application, not lots owned!) Section 6(2)(c)
- If your "highest and best use" is not residential, you will get **0** lots; for residential or otherwise. Section 7(8)
- If you try to use the financial formula, you will fail- it was designed that way! A CPA firm was hired to run many examples; highest value was **1** lot, usually **0** lots. Section 7(6) Out UGB Section 9(6) In UGB
- You can't use the financial formula if you are in "high value" farm or forest (90% of buildable Clackamas, Washington, Yamhill, etc) - OR if you are: Section 2(c)(A) "...water irrigation"

Measure 49 Arguments

Section 2(c)(D) "...five acres planted in wine grapes"

Section 2(e) "Land that is exclusive farm use zone and is at an elevation between 200 and 1000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and located within...." (5 million acres of viticulture areas!)

-Appraisal is required for financial formula. Few firms are willing, data is scarce, and you will be sued! Section 9(7)

-This Measure beefs up lawsuits against you; eliminates your right to collect legal costs- even if you win!

-see our website for other examples of disqualification!

www.fix49.com

Darrin Black
Matthew L. Green-Hite, CPA

(This information furnished by Matthew Green-Hite, Fix Measure 49.)

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Argument in Opposition

FAMILY OWNED TIMBER COMPANY OPPOSES MEASURE 49

Stimson Lumber is a family owned, Oregon based company, committed to protecting Oregon and the beauty of our state.

Our company has roots dating back to the 1850's. We are one of the oldest, continuously operating forest products companies in the United States. We are proud of our Oregon legacy.

Now, our company and our thousands of employees are being attacked for our opposition to Measure 49. Consider what Measure 49 will do:

- **Measure 49 takes away property rights from hard working Oregonians.**
- **Measure 49 allows government to reduce your land value.** It gives them unbridled authority to lower property values. That's just not fair.
- **Measure 49 is too extreme.** Not only does it take away rights recently given back to property owners, it takes away all future protection you might have from government taking the value of your land.
- **Measure 49 treats property owners different.** If you own farm or forestland, or if you live in an urban area, you have no rights under Measure 49.
- **Measure 49 had no public input in the Legislature.** Perhaps that's why it treats property owners unfairly.

Stimson has donated millions of dollars to charities, supports high school apprenticeship programs where we are located and operates a sustainable timber program, with the goal of protecting the environment. We would not be able to operate five Oregon mills, providing family wage jobs, unless we were stewards of Oregon's valuable timber resource land.

Measure 49 is complicated, it is cumbersome, and all it will do is create **more bureaucracy, less protections of private property and more confusion about land use regulations** in our state.

Please, join me and vote **NO on Measure 49.**

Andrew Miller, President
Stimson Lumber
Portland

(This information furnished by Andrew Miller, Stimson Lumber Company.)

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Argument in Opposition

The Oregon Association of REALTORS® asks you to please vote NO on Measure 49.

The Oregon Association of REALTORS® is the trade association for Oregon's REALTORS®, real estate professionals who help Oregonians achieve the American Dream of homeownership.

We believe that property ownership is the cornerstone of our democratic society. Property ownership allows people from all walks of life to build economic security for themselves and their families.

We believe that one of the primary responsibilities of the government is to ensure that property owners are treated fairly. **Measure 49 is very unfair to many property owners. Therefore, we are asking you to please vote NO.**

Measure 49 replaces Measure 37, the land use compensation measure that was passed by Oregon voters in 2004, and ruled to be constitutional by the Oregon Supreme Court. We did not support Measure 37, but we recognize the issues that led to its passage.

Measure 49 would eliminate most Measure 37 claims, even claims that have already received approval. Measure 49 ignores the many Oregonians who relied on the existing law and spent tens or hundreds of thousands of dollars merely following the law. This is not fair.

The Oregon Association of REALTORS® proposed a balanced five-point plan to the Legislature for dealing with Measure 37 that would have reduced its impact, while still being fair. Unfortunately, this balanced plan was rejected.

Even worse, the Legislature cut funding for the Big Look Committee, the non-partisan, non-political committee created to recommend improvements to Oregon's land use system. If Measure 49 passes, it is unlikely that there will be any improvements to Oregon's land use system for many years to come.

Please vote NO on Measure 49.

(This information furnished by Art Kegler, President, Oregon Association of REALTORS.)

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Argument in Opposition

MEASURE 49 WILL SHUT DOWN OUR WASHINGTON COUNTY U-PICK FRUIT FARM

Jossy Farms is a family run u-pick apple, peach and pear farm in Washington County. Every year we open our farm to thousands of customers who seek quality local produce.

Our 67 acre farm is zoned AF-5. This zoning allows for 5-acre parcels, with homesites on each parcel. Under current zoning, we can create 13 home sites, but we'd have to eliminate our u-pick farm.

When voters passed Measure 37, we were thrilled. Measure 37 allowed us to create smaller rural parcels that we could cluster together. By clustering our parcels, we could use a smaller portion of our property and leave the orchards in place for the

Measure 49 Arguments

next generation of Jossy's to offer fruit to the public.

But if Measure 49 passes, our claim will be wiped out, and our orchard will shut down.

Measure 49 is just the latest in a series of blunt instruments that show what is wrong with Oregon's land use planning laws. The current planning laws force us to tear out our orchards in order to divide our property. If we had more control over our property, like Measure 37 provided for us, we could create the lots for our family and keep the orchards intact as well.

It's a win-win for everyone, except for Measure 49 supporters. Small farmers like us, and every other farm family who want some control over their farm operations, are called "greedy developers" and "speculators" by the Measure 49 supporters who don't have the first clue about our business. It is totally unfair, and makes us mad.

We've been here for generations. We want to be here for generations to come. But Measure 49 and ill-conceived land use laws force us out of business. What a shame.

Please vote NO on 49.

(This information furnished by Robert Jossy and April Jossy, Jossy Farms.)

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Argument in Opposition

The Oregon State Grange, Rural Oregonians, and
Oregon Farmers Ask You To
Please vote No on Measure 49.

Tell the Politicians and Special Interests NO! – **we have already voted to protect our homes and property 3 times on statewide ballot measures since 2000.** How many more times do we have to say it - Stop Trying To Take Our Homes and Property!

Measure 49 is a deceptive Measure that makes dramatic changes to Oregon law.

Not only will Measure 49 allow government to take your home and property without compensation, if approved **Measure 49 will:**

- allow government to change the rules after you buy your property to take away rights that you paid for.
- allow you to be sued by anyone in the United States if you try and defend your property from government taking.
- force you to pay lawyers and appraisers to defend your property, and you will also have to **pay the government's lawyers and appraisers** who are trying to take your property from you, even if you win!
- change the rules for people who have already received approval to build a home or two on their property. Despite what Measure 49 supporters claim, Measure 49 will not let these people build a home or two on their property.
- require property owners in rural areas to make \$80,000 from farming for at least two years before they can build a farmhouse on their property.
- expose property owners in urban areas to huge financial danger – for example, if your non-conforming home or business is destroyed by fire, Measure 49 allows cities to stop you from rebuilding without compensation.

This is a short list of what is hidden inside Measure 49's complicated language. Measure 49 simply will not work for anyone. We deserve better.

Vote NO on Measure 49.

(This information furnished by Phyllis A. Wilson, President/Master, Oregon State Grange.)

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Argument in Opposition

**The Josephine County Farm Bureau
Asks All Oregonians to Vote NO on Measure 49!**

We are farmers and ranchers in rural Oregon. Oregon's land use laws affect everything we do with our land. A radical change like Measure 49 will only cause more grief, stress, and problems as farmers and ranchers in Oregon continue to work to make ends meet.

Measure 49 will make it nearly impossible for farm families to continue. Under Measure 49, a farmer who wants to build a home or two on his property for his kids is going to be faced with:

- New requirements just to build two or three homes on his property;
- Paying exorbitant fees to the government just to get permission for his kids to live on the family farm
- Lawsuits from people as far away from him as possible, who simply don't want family farms to continue in Oregon.
- Uncertainty and confusion as the courts try to make sense of 21 pages of legalese, mistakes and confusion

Family farms face enough uncertainty in this day and age. Measure 49 will only result in more heartache and frustration for farm families trying to make a living off the land. Current law makes it easier for family farms to be passed down through the generations. Measure 49's burdensome and confusing language will result in years of litigation – years that family farms simply do not have.

That is why the Josephine County Farm Bureau opposes Measure 49. Measure 49 is another attack on rural Oregon by extremists who do not approve of our way of life.

Please join the Josephine County Farm Bureau in voting NO on Measure 49.

(This information furnished by Bud Combe, Vice President, Josephine County Farm Bureau.)

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Argument in Opposition

**ATTENTION ALL FARMERS AND RANCHERS
The Jackson County Stockmen's Association
Asks You to Vote NO on Measure 49!**

Some farming groups think that Measure 49 won't hurt agriculture. Some farming groups don't know how to read.

Measure 49 is full of tricks and traps for everyone in Oregon, but there is a giant trap in Measure 49 waiting for Oregon's farmers and ranchers.

Section 12.(6) of Measure 49 says that any use of land as a result of a Measure 49 claim made after June 28th, 2007 is a non-conforming use.

This is a HUGE wolf in sheep's clothing.

Measure 49 Arguments

Imagine the Legislature passes a 50-foot streamside setback in 2009 for all agricultural uses. If that happened, farmers and ranchers would all file claims under Measure 49, seeking a "waiver" from the 50-foot setback rule. The state would grant the "waiver", which would then make the farmer or rancher's use of the property a "non-conforming" use.

In Oregon, a non-conforming use must be used continuously, otherwise you lose that use of your property. In the context of farming and ranching, this means that the property you received a waiver for must be farmed or grazed continuously. That means no crop or livestock rotation, otherwise you will lose the non-conforming use that Measure 49 established on your property.

And what happens if you lose the non-conforming use? That's right, you would have to abide by the 50-foot setback rule.

And under Measure 49, there is nothing you can do about it because under Measure 49, property owners can only make one claim. Ever.

Remember the attempt to "Fence In Oregon", and how much time and effort Oregon agriculture had to put in to defeat that awful idea.

The same people who backed that measure are backing Measure 49.

Do you have to guess why?

Please join the Jackson County Stockmen's Association and vote **NO** on Measure 49.

(This information furnished by Mike Daunehauer, Jackson County Stockmen's Association.)

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Argument in Opposition

WHY DID THE LEGISLATURE STOP THE OREGON ATTORNEY GENERAL AND THE OREGON SUPREME COURT FROM REVIEWING THE "OFFICIAL" BALLOT TITLE?

Be very careful when you read the "official" ballot title for Measure 49. Our colleagues are trying to fool you.

When you read the voters' pamphlet or look at your ballot, you see a ballot title for each ballot measure. The purpose of the ballot title is to give you accurate and unbiased information about the measure, so that you can make an informed choice with your vote.

The ballot title is normally prepared by the Oregon Attorney General. The public is then given an opportunity to comment on that ballot title.

At the request of a member of the public, the Oregon Supreme Court will then review the Oregon Attorney General's ballot title to make sure it is fair and accurate. If it is not, then the Court will ask the Attorney General to rewrite the ballot title.

This process has been in place for decades. It ensures that voters are not misled by politicized or inaccurate ballot titles.

With Measure 49, the legislature has completely ignored our tried and tested ballot title process. Instead of allowing the Oregon Attorney General, the public, and the Oregon Supreme Court to perform their normal roles, the legislature created its own ballot title for Measure 49.

The legislature then barred the Oregon Supreme Court and Attorney General from reviewing its ballot title, and it barred the public from challenging the ballot title.

Why did the legislature do this? Because legislative leaders were taking polls to determine what language would be most likely to convince voters to vote for Measure 49, not what was unbiased and accurate.

This is shameful. That's not what the ballot title is supposed to do. Before you vote, please study Measure 49 and don't rely on the politicized ballot title.

Representative Patti Smith
Senator Roger Beyer

(This information furnished by Senator Roger Beyer and Representative Patti Smith.)

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Argument in Opposition

HOW MANY TIMES DO WE HAVE TO TELL THE LEGISLATURE THAT OUR PROPERTY SHOULD NOT BE TAKEN WITHOUT JUST COMPENSATION?

How many times do we have to vote to protect our home and property? How many times until the legislature gets the message?

As ranchers, we face all kinds of threats to our livelihood. The one threat that we fear the most is the legislature.

After all, most legislators know absolutely nothing about our industry and the hard work we do to provide the best product we can to American consumers. But they make the laws that make the difference between whether we stay in business or lose our ranches.

In the last decade, Oregon voters have voted twice to protect private property from being taken by government without just compensation. These laws are very important to ranchers, as they guarantee that our rights to farm and ranch will continue on, provided our ranching operations comply with all health and safety regulations.

But now, a group of politicians want to overturn our votes once again. Measure 49 is their latest effort.

The worst part is, these same politicians refused to allow the public to testify on Measure 49. I guess they don't care about what we think.

We're really tired of being told that we don't know what we're voting for. Measure 49 is a bad law. Please vote no.

Grant County Stock Growers Association

(This information furnished by James Welsh, Grant County Stock Growers.)

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Argument in Opposition

As a law professor and former law school dean, I believe that property rights are an essential part of American society. The ability to purchase and use property in pursuit of a multitude of purposes drives our economy and provides Americans with the most freedom and the best standard of living in the world. Property rights provide for homes, places of employment and recreation, and for personal privacy. Private property is also the tax base which funds many public services.

Measure 49 Arguments

This does not mean that property rights are absolute. There must be a balance between the rights of private citizens to own and use their property and the rights of the public to be free from property uses that endanger health and safety. The public must also have the authority to purchase private property for public uses.

That balance currently exists in Oregon. Oregon law (ORS 197.352) protects property owners' rights to use their property in the way it could be used when it was acquired, but does not allow property owners to use their property in ways that would create a nuisance or endanger the public's health and safety.

Measure 49 destroys that balance. Under Measure 49, state and local governments will be able to enact land use regulations that take the property rights of every private property owner in Oregon without just compensation.

That means that your backyard can be declared "open space," your business property can be declared "wildlife habitat," and your farm can be declared a "scenic view."

There is nothing wrong with these choices if they are what the people of Oregon want. But it is wrong to demand that the property owner bear the entire cost to provide these choices. Under Measure 49, that is exactly what will happen.

Measure 49 is a significant change in Oregon law that will fundamentally weaken the property rights of every Oregon property owner.

Jim Huffman

(This information furnished by James L. Huffman.)

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Argument in Opposition

OREGON EMPLOYERS OPPOSE MEASURE 49

As some of Oregon's largest employers, we oppose Ballot Measure 49.

Our companies employ thousands of Oregonians throughout the state at family wages. Each of us has been in business for decades in Oregon.

Our employees serve on the local school board. They coach little league baseball. They sit by you at church. They shop in local stores. Their children go to public schools. They pay taxes.

In short, we are part of your community. Many Oregon communities were formed around our industries.

We believe that a fundamental key to a healthy economy is a respect for the ability of every citizen to own and use property.

Without this ability, our companies would not be successful, we would not have jobs for our employees, and we would be unable to serve our communities.

Measure 49 strikes at the heart of your ability to own and use your property. That is why we vigorously oppose it.

If Measure 49 is approved, the investments we make in our companies and our property are in jeopardy. **Measure 49 allows government to take our property and businesses without compensation. If our property is taken, so are the jobs we provide.**

What Measure 49 supporters fail to realize is that in a competitive global market, one regulation can wipe out an industry. Measure 49 makes it far more likely that such a regulation will be adopted.

So while Measure 49 supporters call us names and ridicule us for standing up for free enterprise and the right to use our property in the manner we could when we purchased it, we'll continue to do what we can to defend every Oregonian's right to own and use their property.

Please vote No on Measure 49.

Aaron Jones, President, Seneca Sawmill Co.
Michael Fahey, President, Columbia Helicopters
Robert Freres Jr., Freres Lumber Co.
Joan Austin, Executive Vice President, A-dec
Steven Swanson, Swanson Group

(This information furnished by Aaron Jones, President, Seneca Sawmill Co.; Michael Fahey, President, Columbia Helicopters; Robert Freres, Jr., Freres Lumber Co.; Joan Austin, Executive Vice President, A-dec; Steven Swanson, Swanson Group.)

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Argument in Opposition

ATTENTION SENIORS - MEASURE 49 WILL RAISE PROPERTY TAXES

One of the hidden dangers of Measure 49 is the impact it will have on your property tax bill.

Measure 49 allows government to pass new land use regulations that destroy the value of private property.

For example, in 2004, Metro proposed to designate nearly 80,000 acres of private land in the Portland Metropolitan area as "wildlife habitat." If Metro would have forced cities and counties in the region to adopt these designations, the property value of the thousands of private property owners who were affected would have been drastically reduced.

For the owners of the property, the impacts would have been devastating. Their property would have been taken with no compensation.

But you would have paid too. Your property taxes would have been raised to make up the difference!

That's what Measure 49 will do – allow government to take your neighbor's property without just compensation and force you to pay higher property taxes at the same time!

Measure 49 is a bad idea! For more information, go to www.oregonwatchdog.com.

(This information furnished by Jason Williams, Taxpayers Association of Oregon PAC.)

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Argument in Opposition

If there's only one thing that you remember about Measure 49, remember this: **If Measure 49 passes, state and local government can and will take your home and property without just compensation.**

Senator Ted Ferrioli, Senate Minority Leader
Representative Wayne Scott, House Minority Leader

(This information furnished by Senator Ted Ferrioli, Senate Republican Leader; Representative Wayne Scott, House Republican Leader.)

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Measure 49 Arguments

Argument in Opposition

In 1973, I voted for Senate Bill 100, the bill that created our statewide, centralized land use system.

I knew that SB 100 could allow state and local governments to take people's homes and property. I hoped that would not happen, but was persuaded to vote yes because of Section 24 in SB 100. This section directed the legislature to find a way to compensate property owners for any property that could be taken.

If you want to see for yourself, look at Section 24(4) of Senate Bill 100 (1973). Without that section, I would never have voted for Senate Bill 100.

In short, the legislature made a promise to Oregonians. If Measure 49 passes, that promise will be broken.

Measure 49 is an extreme response to your vote on Measure 37. If Measure 49 is approved, what we tried to prevent in Senate Bill 100 will occur – homes and property will be taken by state and local governments without just compensation.

Measure 49 supporters will tell you that Measure 49 will restore Oregon's land use planning laws. But these people weren't in the legislature in 1973, and apparently have never read Senate Bill 100, or choose to ignore what it says.

If Measure 49 passes, we are destroying the very balance that we tried to make when we created Senate Bill 100. That would be a terrible shame.

Vote NO on Measure 49.

Roger Martin
Former State Representative

(This information furnished by Roger Martin.)

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Argument in Opposition

MEASURE 49 HURTS NEIGHBORHOODS

Between 2000-2025, one million new people are expected to come to Oregon. In some parts of the state, we're already noticing the impacts:

- Long established residential neighborhoods are being dramatically changed, with skinny houses, condos, and rowhouses stacked into places that used to be open spaces or backyards;
- Traffic congestion on main roads is becoming unbearable, and parking spaces near home are impossible to find;
- New subdivisions are being built with big homes on small lots with no yards for kids and no privacy;
- Urban streets, water, and sewer infrastructure, designed for fewer residents, is being torn up and replaced (at taxpayer expense) to handle the new apartments placed in existing neighborhoods;
- Neighborhoods are being gentrified, as people on modest incomes can no longer afford the costs of living in areas where they grew up;
- Schools in suburbs are becoming overcrowded, as people look desperately for places where home prices are lower, there's a little more space, and traffic isn't as bad.

These impacts are partly the result of our existing land use system. **If Measure 49 passes, you can expect that these problems will only get worse.**

Measure 49 allows Metro, state government, and cities to take your home and property without just compensation. If Measure 49 passes, it will be nearly impossible to find a new home with a large yard, a home in the country, or something affordable for the working family.

If you live in town, look at the new developments being built. Do you see any that have a yard, or a place to play? Are you really being given a choice? Is there any balance? The people that brought you the current system that forces these developments are trying to get you to support Measure 49. Don't be fooled.

Protect your neighborhood, your property, and your choices. Vote No on Measure 49.

(This information furnished by James Karlock.)

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Argument in Opposition

Please vote NO on Measure 49

Here we go again

I live in Medford, in your typical suburban neighborhood. I am now retired, but for decades I served as a city and county employee. There are several property owners in my area whose property rights have been restored by Measure 37.

I am asking that you join me in voting NO on Measure 49 for several reasons. First, Measure 49 is a radical change from the current law. My neighbors simply ask that their property rights be restored, and I don't think that is asking too much. Measure 49 will take away those rights, which just isn't fair.

Second, Measure 49 is completely unworkable. It was written behind closed doors, without any public input. I am concerned that Oregon's dedicated public servants will not be able to apply Measure 49 because the measure is so poorly written.

When that happens, city, county and state employees often bear the brunt of the public's frustration for the mistakes of politicians. Given how poorly written Measure 49 is, I am afraid there will be many frustrated Oregonians.

Third, Oregon has a proud tradition of open and transparent government. But the process used to draft Measure 49 was anything but open or transparent. In fact, the public was never allowed to testify on Measure 49! If Measure 49 passes, I can guarantee that in the future the public will be excluded from the process. Oregonians cannot let that happen.

Finally, Oregonians have already spoken with one loud and clear voice on this issue. How many times are the politicians going to try to override the will of the people, and how many times are we – the people – going to have to reaffirm our vote before the politicians finally get the message?

Please join me in voting NO on Measure 49.

Ken Marshall, Medford

(This information furnished by Ken Marshall.)

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Measure 49 Arguments

Argument in Opposition

PLEASE, treat others the way you would like to be treated!

In 1921, President Harding, using the Homestead Act, created our private land. For over 35 years, this beautiful and pristine land, brimming with wildlife, has been home.

We are conservationists, having protected over 170 acres of this spectacular habitat. Our dream is to develop a small Eco Retreat Center for others to experience God's beauty, refreshment, solitude, and inspiration.

We join 7,000+ families, filing M#37, who have dreams for their land. We have invested our lives and thousands of dollars, expecting fair treatment, jumping every "hoop". Now, M#49 threatens to sweep it all away. Below are 3 reasons why we believe you should consider voting No.

1) In 1973, the State of Oregon made a promise to its citizens: When property rights are taken away, those experiencing loss will be fairly compensated. This never happened, until M#37. Now, M#49 further dishonors and buries those promises. When our Government does not honor its' word with any one group, we are all threatened.

2) M#49 supporters throw around the number of acres for proposed development, trying to create shock value. The truth is that Government owns and controls over one-half of all Oregon land. The truth is that the 7,000+ claims represent less than 1.25% of Oregon's land. Not mentioning this is like selling a car at so much a month, with no mention of the number of months or total price. Private landowners have a conscience: we care about a healthy, balanced, beautiful Oregon environment, without heaping more M#49 government restrictions.

3) We all need good development: Homes, food production, sanitation, medical/dental, clean water, etc. In our free society, there are always a few folks with low morals: people in development being no different. We all take off our shoes at the airport because of the few: we don't close the airports.

M#49 is a destroyer of integrity, incentive, and fairness. Thank you for caring!

(This information furnished by Jesse and Elaine Pattison.)

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Argument in Opposition

The Holtan Family Asks You to
Vote **"NO"** on Ballot Measure 49

My name is Eric Holtan. Our family farm is located in rural Yamhill County. Our farm has been in the Holtan family for three generations.

In 2003, my father became very sick, and my mother needed help taking care of my father and the family farm. My wife and I wanted to move to the farm to help my mother and father, but land use laws would not allow it.

My father passed away just after the November 2004 elections, that's when Oregonians changed the law to make it possible for families like mine to move back to the family farm. Measure 37 made it possible for us to build a home on the farm, and be there for my mother.

Measure 49 will change all of that, by making radical changes to the law. Measure 49 would make it nearly impossible for young families like mine to ever be able to move back to the family farm because of Measure 49's hidden costs:

- Measure 49 allows government to charge families any amount just to build one home.
- Second, Measure 49 allows anyone in the entire state of Oregon to file a lawsuit to stop family farms from passing on to future generations, forcing young families like mine to bear the cost of expensive attorneys, just because they want to preserve their family's farm!
- Finally, Measure 49's filing requirements are so burdensome that the cost of complying with Measure 49 would make it impossible for young families living on the family farm.

Measure 49 is a bad idea, and will change the law so dramatically that young families will never be able to move out to the family farm.

Please join my family in voting NO on Measure 49

(This information furnished by Eric Holtan.)

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Argument in Opposition

As a former Mayor and land use hearings officer I understand the frustration many citizens have with overbearing land use regulations and the Department of Land Conservation and Development.

I did not vote for Measure 37 but represent some Measure 37 claimants. In doing so, I have been appalled at how poorly citizens have been treated by the State (DLCD). I believe DLCD has deliberately violated the law and put elderly ordinary citizens, in a position where they have to sue the State in court for relief. Last May, DLCD, in collusion with a small number of legislators, concocted Measure 49 behind closed doors. They are now asking the voters to pass a measure that is flawed and will not work.

Measure 49 designates as high value farmland most properties in Central Oregon even though there are no water rights on the land or soils to support agricultural activity. Sagebrush and juniper as high value farmland? Nonsense!

Measure 49 penalizes innocent citizens who, in reliance on Measure 37 waivers, spent their hard earned resources to file land use applications. Measure 49 does not grandfather those persons in as has been done in the past. Instead, your fellow citizens will lose not only their rights but also their hard earned savings.

There is a better approach. The State can reform our land use system by allowing a certain level of rural development on lands that do not have high value for agricultural or forest uses or are in sensitive environmental areas. The State has rejected innovative measures and believes that the overbearing regulations that were the cause of Measure 7 and Measure 37 must stand. Do not be deceived. If Measure 49 passes, there will be no incentive for the State to initiate reform. Vote No on Measure 49 and force the State to initiate meaningful reform in our land use system.

Ed Fitch, Attorney at Law, Redmond

(This information furnished by Edward Fitch, Attorney at Law.)

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Measure 49 Arguments

Argument in Opposition

The Jackson County Farm Bureau Asks Oregonians to Please Vote NO on Measure 49

Please Do Not Hurt Oregon Agriculture!

Ballot Measure 49 is a radical departure from the current law in Oregon. Under current law, farm families can easily hand down the family farm through the generations.

But Measure 49 changes all of that. If Measure 49 passes, the ability of farms to stay in the family will be put in jeopardy. And all of Oregon agriculture will be seriously hurt.

Under Ballot Measure 49, if a farmer wants to pass his farm down to his children or grandchildren, anyone in the state of Oregon can sue the farmer to stop him! That means a farmer in Jackson County can be sued by someone all the way up in Portland, just because the farmer wants to build a home for his daughter or son on the family farm!

Farming is hard, honorable work. Do Oregonians really want to repay farmers with the threat of years of endless lawsuits?

When will the attack on rural Oregon ever stop?

Oregon's land use system is seriously broken. Measure 49 only makes things worse for those of us who make our living off of the land.

Many in Oregon's farming industry tried to tell the Legislature that Measure 49 would seriously hurt farming and farm families in Oregon, but the Legislature wouldn't allow **ANY** public comment on Measure 49 during the committee process.

Don't fall for the trickery behind Measure 49. If you take the time to read all 21 pages of the Measure, you will find out Measure 49 isn't all that it is cracked up to be.

Please join President Ron Bjork and the Jackson County Farm Bureau and vote NO on Measure 49!

(This information furnished by Ron Bjork, Jackson County Farm Bureau.)

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Argument in Opposition

MEASURE 49 MAKES PARENTS AND GRANDPARENTS CHOOSE Vote NO on Measure 49

As parents and grandparents, we are asking that you vote NO on Measure 49.

We are the proud parents of five children, and grandparents of five grandchildren. We have owned our property in Clackamas County since 1960. Recently we received permission under the current law to allow us to divide up our property so that we could give each child and grandchild a piece of our property to call their own.

More importantly, the current law allows us to keep our property in the family.

Measure 49 will not allow us to pass our property on to our children and grandchildren. Measure 49 is a drastic departure from current law. Under Measure 49, we may only be able to divide our property into two parcels – in addition to the parcel our home currently sits upon.

Measure 49 is so poorly written, no one can say with any certainty that Measure 49 would help us at all.

That means that we are going to have choose which of our children and grandchildren will get one of the two parcels that Measure 49 might allow.

We have already invested our life's savings into our property. Measure 49 will force us to re-file with the government, with no promise that we will get any relief whatsoever. Measure 49 allows the government to regulate virtually all the value of your property without providing any compensation. The only thing we are guaranteed is that under Measure 49, we stand to lose everything we have invested.

Measure 49 is a very bad idea. Measure 49 will force families like ours to make choices that the current law does not. There is no reason why the current law should be changed so radically and in such a way that penalizes families like yours and ours.

Please join us in voting **NO** on Measure 49.

Mr. and Mrs. Gerald Curry
Estacada

(This information furnished by Gerald Curry and Roberta Curry.)

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Argument in Opposition

Dear Oregonians:

Many constituents claim Legislator's don't think of the long term consequences of votes in the House of Representatives. Now it is your turn.

Think before voting. Measure 49 repeals the intent of Measure 7 struck down by an activist Supreme Court thwarting the will of the people. Measure 37's implementation was partially blocked by the Attorney General's February 24, 2005 legal opinion thwarting the will of the people. Our Democrat Governor talks about flawed language in his letter to your home but helped block fixes in the Legislature.

Think before voting. The ballot title, measure text, and explanation statement are not neutral or bipartisan in any manner as normally required by the law. The Democrat controlled House inserted this Measure into the Voters' Pamphlet based on a party line vote. Every House Republican opposed stacking the deck against the public. The Democrat controlled Joint Committee on Land Use Fairness amended what you read without a public hearing, with only three hours public notice, and on a pure Democratic party line vote. Check the public record at www.leg.state.or.us.

Think before voting. Rhetoric reigns. Chicken little claims the sky is falling as irreplaceable agriculture and forest lands are decimated. Fact or fiction? The public record shows the forest industry opposed the House bill creating this Measure. Farm organizations are on the public record as opposing the same. Federal records show Oregon farmers were subsidized \$74 million dollars in 2006. Farmers were paid not to plant crops on Oregon lands. State records show 500,000 acres in conservation reserves. Another 2.1 million acres sit fallow according to official State documents.

Think before voting. Do you own your home? Do you really own your land? Should citizens have property rights? Can a father allow his son to build a home for his children on the family farm? The governing elite and bureaucracy have said no. You should say No to Measure 49.

Respectfully,

Brian J. Boquist
State Representative

Measure 49 Arguments

(This information furnished by Brian J. Boquist, State Representative.)

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Argument in Opposition

Americans for Prosperity – Oregon Urges a “No” Vote on Measure 49

Measure 49 would allow the government to take your property without paying you for it.

The U.S. and Oregon Constitutions guarantee that you will be compensated if government takes your property. For almost 40 years, Oregon’s land use system has refused to recognize this simple Constitutional guarantee.

Under current law, if government takes an action that reduces your property value, they have to pay you. Measure 49 would undercut our own Constitution.

Measure 49 would allow government to take your property for the benefit of private companies – including out-of-state companies.

Please join us in voting “No” on Measure 49

Americans for Prosperity – Oregon
www.americansforprosperity.org
Oregon_AFP@yahoo.com

(This information furnished by Jeff Kropf and Matt Evans, Americans for Prosperity - Oregon.)

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Argument in Opposition

Laws that affect important public issues, like Measure 49, deserve the full protection of the legislative process. The people of Oregon may disagree as to whether Measure 49 is good or bad public policy, but public testimony before the Legislature assures the integrity of the process. In refusing to allow a single substantive public hearing on Measure 49, the Legislature violated a fundamental principle: the people’s business requires the input of the people.

Equally disturbing is the Legislature’s actions to prevent judicial review of the Measure 49 ballot title. The people of Oregon may contest a ballot title if, in a citizen’s judgment, the title is unfair (ORS 250.085). For Measure 49, the Legislature used a separate bill (HB 2640) to **FORBID** a challenge to the ballot title. Specifically, the Legislature stripped the Oregon Supreme Court of the power to review. This intentionally negates the people’s ability to contest a ballot title that, by any objective measure, does not fairly describe Measure 49.

All Oregonians should be concerned about the “jurisdiction stripping” provisions attached to Measure 49. It is fundamentally bad policy for the Legislature to strip away Court jurisdiction over a specific matter and prohibit Court review of a ballot title. It takes little imagination to see how the Legislature’s abuse of “jurisdiction stripping” provisions can lead to fundamental breaches in the rights we all enjoy as Oregonians.

Measure 49 has pros and cons depending on one’s perspective. However, the Legislature’s refusal to allow a discussion of the pros and cons and its prohibition of Court review for the ballot title is not consistent with what we must demand of our elected officials. The people’s business is too important to be held captive to partisan politics in Salem.

Vote NO on Measure 49 and send the Legislature a message that the integrity of the legislative process and judicial review must always be preserved for the people.

(This information furnished by Paul Hribernick.)

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Argument in Opposition

OREGON ORCHARDISTS ASK YOU TO VOTE NO ON MEASURE 49

We raise a diverse range of crops including pears, apples, and hazelnuts.

Although we don’t raise the same types of crops, we do have one thing in common: We all oppose Measure 49.

When you commit to planting an orchard, you commit to years of expenses before you get a crop. Like timber, our type of farming is a long-term investment. We consider all the risks when we make those investments in the future.

Measure 49 would grant the government the power to take the value and use of private property without compensation.

That risk would jeopardize future investment by family orchardists. We already make long term investments facing the uncertainty of global competition, changes in climate, and uncertain government labor policies. If government can take our property without compensation, the risk becomes too much.

Who would make long-term plans if you will lose your investment with the stroke of a bureaucrat’s pen?

That’s why we urge a No Vote on Measure 49!

What About Subdivisions and Farmland?

It is laughable that those supporting Measure 49 are talking about farmland and subdivisions.

These are the same people and special interest groups that have supported the state land use regulatory system, a system which has forced large scale development onto the prime farmland around Portland, Salem, Eugene, and Medford for over 30 years.

Measure 49 will force large scale developments onto prime farmland near cities and lock away unproductive areas, all at the expense of the property owner, Oregon agriculture, and those of you sitting in traffic.

Measure 49 undermines Oregon agriculture. Please Vote No on Measure 49.

Debra Laraway, apple grower, Hood River County
Phil Downing, hazelnut grower, Washington County
Frances Y. Benton, pear grower, Hood River County

(This information furnished by Debra Laraway, Laraway & Sons Inc.; Phil Downing, Downing Nut Farm; Frances Y. Benton, Benton Orchards.)

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Measure 49 Arguments

Argument in Opposition

THE ALBANY DEMOCRAT-HERALD CALLS THE YES ON MEASURE 49 CAMPAIGN "A PILE OF BALONEY"

The *Albany Democrat-Herald* said this about supporters of Measure 49: "The campaign for Measure 49 has begun, and if the start is any indication, you are in for a pile of baloney." *Albany Democrat-Herald*, August 10th, 2007.

Supporters of Measure 49 will say just about anything to scare you about Measure 37. Here are the facts about Measure 37:

1. There have been approximately 7,562 claims filed under Measure 37. (Source: Portland State University Measure 37 Database Website, <http://www.pdx.edu/ims/m37database.html>, last visited August 30th, 2007).
2. The amount of land that is subject to Measure 37 claims is approximately 1% of the land in Oregon. (Source: Portland State University Measure 37 Database Website, <http://www.pdx.edu/ims/m37database.html>, last visited August 30th, 2007). That means 99% of Oregon is unchanged by Measure 37.
3. The average home site created by Measure 37 is 13 acres. Source: Portland State University website, <http://www.pdx.edu/ims/m37.html>, last visited August 30th, 2007). 13 acres is roughly the size of 13 city blocks. These are the "massive subdivisions" that opponents keep talking about. Look around, have you seen these massive subdivisions?
4. Measure 37 doesn't allow any use that will endanger the public's health or safety. See ORS 197.352(3)(B). In order to make a Measure 37 claim, you must prove there is adequate water (you can't dry up your neighbor's wells), adequate sewer disposal (you can't pollute), adequate roads, adequate fire/police protection etc. All health and safety regulations must be complied with.

As the *Democrat-Herald* notes, "The idea now is to scare us about Measure 37's effects." *Albany Democrat-Herald*, August 10th, 2007. These are the tactics of Measure 49 supporters. Now that you know the facts, you shouldn't be scared.

(This information furnished by Ross Day, Director of Legal Affairs, Oregonians In Action.)

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Argument in Opposition

MEASURE 49 SIMPLY DOES NOT WORK!

Don't vote to penalize Oregonians who followed the law!

Thousands of your fellow Oregonians have spent a lot of money – some people have invested their entire life savings – following the current law, trying to get their property rights back.

These Oregonians have followed the rules, jumped through all the hoops the government put in their way, all just to get their rights back. Measure 49 threatens everything your fellow Oregonians have worked so hard for.

Under Measure 49, property owners who have received waivers to use their property under current law will have to re-file their applications, satisfy a whole new set of criteria, and run the risk of the government denying any relief whatsoever.

It's the language of the Measure that counts:

Supporters of Measure 49 claim that Measure 49 does not require any property owners to re-file anything. But a quick read of Measure 49 shows that Measure 49's supporters simply are wrong:

- Section 6(6)(d) requires claimants to re-file their claims using tougher new standards that weren't required under Measure 37
- Section 8(2)(b) requires the Department of Land Conservation and Development to identify the information that a property owner has to file under Measure 49
- Section 8(3) explains that a property owner must file the form requirement by the Department of Land Conservation and Development, along with any information required by the form.

By requiring new information, and new filings, Measure 49 puts at risk the investments of thousands of Oregonians who have done nothing more than follow the law and played by the rules.

Despite what supporters of Measure 49 are claiming, the fact is that Oregonians are going to have to go through the application process yet again if Measure 49 passes. This is simply not fair.

When you read Measure 49, it is easy to see that Measure 49 simply will not work.

Please vote NO on Measure 49.

(This information furnished by Frank L. Nims, President, Oregonians In Action.)

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Argument in Opposition

Don't Let Out-Of-State Corporations Take Your Property! Stop the Measure 49 Trojan horse!

Measure 49 will allow government to take your private property, without compensation, to benefit a single corporation.

They didn't tell you that in the misleading ballot title did they?

Here's what happens if Measure 49 passes:

Let's say that some local politicians want to help a big corporation. The big corporation says that it wants your property as a "buffer," the local politicians can pass a law or regulations that prohibits you from using your property – without one dime of compensation. You paid for the land with years of hard work, and the corporation gets all the benefits. The politicians pay you nothing for the use of your land... and you lose your life's savings.

That is why Measure 49 is so unfair.

That is why so much money is pouring in from corporations and their front groups to pass an Oregon ballot measure, its why Measure 49 was so controversial that it only passed the Legislature by a single vote, that is why the Legislature refused to hold even one public hearing to expose the real intent.

Measure 49 is a Trojan horse – it is what is hidden inside the measure that will steal the property and life work of thousands of real Oregonians.

Don't let them fool you with talk of farmland and groundwater – this Measure is about one thing, letting government take your property without compensation. The farmland talk is the "Trojan Horse" to get you to grant them the power to take your property!

Measure 49 Arguments

Please Read Measure 49 carefully, and we are positive that you will join us in voting **No on Measure 49**.

(This information furnished by Ashley Overman.)

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Argument in Opposition

PLANNING OFFICIALS ASK YOU TO VOTE NO ON 49

As planning commissioners/community planning organization presidents, we have a unique understanding of how zoning and planning works in our areas, and of Oregon's unique and controversial land use laws.

We have each examined Measure 49 in detail, and urge you to vote NO on this badly flawed measure.

Measure 49 erases what little control Oregon property owners maintain in their property. It allows state and local governments to take your property without just compensation.

We have seen countless examples in our duties as planning commissioners of property owners making perfectly reasonable requests to use their property which were not allowed by our current land use system.

It is very frustrating to have to tell a property owner that they can't do something that makes perfect sense.

If Measure 49 passes, we'll be doing that a lot.

Matt Green-Hite, Gladstone Planning Commissioner
David Jaques, Douglas County Planning Commissioner
Don Moore, Josephine County Planning Commissioner
Jerry Olsen, Estacada, Community Planning Organization President
Rich Raynor, Douglas County Planning Commissioner

(This information furnished by Matthew Green-Hite, CPA, Gladstone Planning Commission Chair; David Jaques, Planning Commission Chairman 12 years, Douglas County Planning Commission; Don Moore, Josephine County Planning Commission; Jerry Olsen, CPA; Rich Raynor.)

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Argument in Opposition

Please vote No on Measure 49.

Big Money Special Interests, Backed by Out-of-State Corporations are Supporting Measure 49...

...here are a few reasons we recommend a No vote on Measure 49:

#1 They Have Tried To Fool You:

The Oregon Legislature narrowly passed Measure 49 by one vote, but refused to allow even 1 public hearing on this very controversial bill. They also drafted a title for the ballot that was completely misleading, and then added a provision stripping Oregonians the fundamental right to appeal for a fair and unbiased ballot title.

#2 They Have Tried Mislead You:

The ballot title states that Measure 49 will protect farmland, forestland, and ground water. This is untrue. Look around, over the past 30 years Oregon's state land use laws has directed the building of subdivisions around Portland, Hillsboro, Salem, Albany, Eugene, and Medford on "prime farmland." That continues whether Measure 49 passes or not. Why would the Legislature need our statewide vote to protect groundwater?

It is condescending that they think they can mislead Oregon votes with a ballot title would insult us with this ballot title.

#3 What Do They Have To Hide??

Measure 49 makes a dramatic change to property law in Oregon. It would allow state and local governments to take your property without compensation. If you vote for Measure 49 you are surrendering the protections in current law for the property you own, or every property you or your children hope to own in the future.

Measure 49 is a radical change to state law that allows government to literally steal private property. We cannot give up such precious protections.

Please Vote No On Measure 49

(This information furnished by Frank Mills.)

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Argument in Opposition

Before voting on Measure 49, ask yourself these questions:

1. Why did the legislature refuse to hold even one public hearing on Measure 49 before they sent it to voters?
2. Why did the legislature reject the Oregon Attorney General's neutral and unbiased ballot title for Measure 49?
3. Why did the legislature refuse to allow the public to comment on the ballot title they prepared for Measure 49?
4. Why did the legislature refuse to allow the Oregon Supreme Court to make sure the ballot title for Measure 49 was not biased misleading or inaccurate? Every other ballot title can be reviewed by the Supreme Court, why not Measure 49's ballot title?
5. How is Measure 49 a "compromise" when the Measure was approved by the legislature along party lines? Why didn't the legislature pass a proposal that had broad, bipartisan support?
6. Why won't Measure 49 supporters tell you that any property owner in Oregon can be sued by anyone for wanting to put just one home on their property?
7. Why won't Measure 49 supporters tell you that under Measure 49, your home and property can be taken by the government without compensation, and if you try and get your property back, you will have to pay your attorney, your appraiser, the government's attorney, and the government's appraiser, even if you win your case?

Unfortunately, there are no good answers to these questions. **Which is part of the reason why we urge a NO vote on Measure 49.**

Measure 49 is no "compromise." It doesn't fix anything. It makes sweeping changes to Oregon law. Please reject Measure 49.

(This information furnished by David J. Hunnicutt, Stop Taking Our Property PAC.)

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Measure 49 Arguments

Argument in Opposition

As a former Mayor and land use hearings officer I understand the frustration many citizens have with overbearing land use regulations and the Department of Land Conservation and Development.

I did not vote for Measure 37 but represent some Measure 37 claimants. In doing so, I have been appalled at how poorly citizens have been treated by the State (DLCD). I believe DLCD has deliberately violated the law and put elderly ordinary citizens, in a position where they have to sue the State in court for relief. Last May, DLCD, in collusion with a small number of legislators, concocted Measure 49 behind closed doors. They are now asking the voters to pass a measure that is flawed and will not work.

Measure 49 designates as high value farmland most properties in Central Oregon even though there are no water rights on the land or soils to support agricultural activity. Sagebrush and juniper as high value farmland? Nonsense!

Measure 49 penalizes innocent citizens who, in reliance on Measure 37 waivers, spent their hard earned resources to file land use applications. Measure 49 does not grandfather those persons in as has been done in the past. Instead, your fellow citizens will lose not only their rights but also their hard earned savings.

There is a better approach. The State can reform our land use system by allowing a certain level of rural development on lands that do not have high value for agricultural or forest uses or are in sensitive environmental areas. The State has rejected innovative measures and believes that the overbearing regulations that were the cause of Measure 7 and Measure 37 must stand. Do not be deceived. If Measure 49 passes, there will be no incentive for the State to initiate reform. Vote No on Measure 49 and force the State to initiate meaningful reform in our land use system.

Edward Fitch, Attorney at Law, Redmond

(This information furnished by Edward Fitch, Attorney at Law.)

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Argument in Opposition

ISSUE: COMPENSATION

If Measure 49 passes, government can take your home and property without compensation.

Why? Because if Government takes your property, and you ask for it back, Measure 49 requires you to pay for two appraisals of the property. Section 12(2). Your appraiser is required to determine the fair market value that's been taken from you using an interest rate for a one-year Treasury Bill. Section 12(2).

Unfortunately, one-year Treasury Bills haven't been sold since 2001!

That means your appraiser can't calculate the value of your property that has been taken. Measure 49 makes it impossible to prove your case!

That's just the beginning. Measure 49 allows the government to charge you a "fee" to "review your claim." Section 13(3). That "fee" will include charges for the government's appraisers to review your claim, the government's lawyers to review your claim, the government's planners to process your claim, and the government's hearings officer to conduct a public hearing on your claim.

And all this because you dared to ask for your property back!

But that's not all. If government takes your property, and you file a claim to get it back, you will have to endure at least one government hearing on your claim, where anyone can show up and oppose you. Section 14(1). If the government decides to give you your property back, anyone who appeared at the public hearing (even if they just sent an e-mail) can sue you in the local court! Section 16(1).

It gets even worse. Even if you win, and the government gives you your property back, you will still have to pay your attorneys and appraisers and the government's attorneys and appraisers. Why? Because Measure 49 changes Oregon law to eliminate your right to recover your costs to get your property back! Section 4.

The point is simple. Nobody will have any protection for their home and property if Measure 49 passes.

Dale Riddle, Attorney at Law, Eugene

(This information furnished by Dale Riddle, Attorney at Law.)

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Argument in Opposition

ISSUE: WHY WAIVERS AREN'T TRANSFERABLE UNDER MEASURE 49

Supporters of Measure 49 are making claims about Measure 49 that are simply false.

Supporters of Measure 49 claim that Measure 49 makes "waivers" transferable

Read the text of Measure 49 and decide for yourself:

For Measure 49 claims made before June 28th, 2007, Section 11.(6) says:

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of the 2007 Act runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization.

Nowhere in this section does it say "Waivers are transferable". The term "waiver" is specially defined in Measure 49 in Section 2.(21). If the Legislature meant for "waivers" to be transferable, the Legislature would have said so. Instead, this section says that "authorizations" (i.e. permits) are transferable.

Permits are transferable under current law. Measure 49 does not change the current law to allow for "transferability of waivers".

For Measure 49 claims made after June 28th, 2007, Section 12.(6) of Measure 49 says

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130....When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130.

What this means is that property owners who file a Measure 49 claim after June 28, 2007, must establish the use of the property (i.e. build the house) before the property can be sold. This is exactly what supporters of Measure 49 say is the status of the current law.

Measure 49 does not change the current law, which means Measure 49 does nothing to change transferability.

When you take the time to read Measure 49, you realize that Measure 49 simply doesn't work.

Measure 49 Arguments

Ross Day, Attorney at Law, Tigard

(This information furnished by Ross A. Day, Attorney at Law.)

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Argument in Opposition

ISSUE: WHY MEASURE 49 WILL MAKE YOU PAY THE GOVERNMENT TO GET YOUR RIGHTS BACK

Supporters of Measure 49 are making claims about Measure 49 that are simply false.

But here is something the Supporters of Measure 49 **are not** telling you.

Under Measure 49, you are no longer able to recover your attorney fees. What is worse, under Measure 49, you may have to pay for the **government's** attorney fees and appraisals.

Read the text of Measure 49 and decide for yourself:

Section 4 of Measure 49 repeals your right to recover your attorney fees.

Section 8.(5) of Measure 49 allows the government to collect the "actual and reasonable cost of the review [of your claim]".

Section 13.(3) of Measure allows the government to "impose a fee for review of a claim filed under [Measure 49] in an amount not to exceed the actual and reasonable cost of reviewing the claim."

Under Measure 49, not only do you lose your right to recover attorney fees, but the government can actually **charge you** for the cost of reviewing your claim – which will include, undoubtedly, the cost of having the government's lawyers review your claim.

Also, under Measure 49, the government will be able to charge you for other costs like land use planners and the government's own appraisal. The government's appraisals alone will cost thousands of dollars that the government can make you pay for under Measure 49 before you can get your right to do anything on your property.

When you take the time to read Measure 49, you realize that Measure 49 simply doesn't work.

Please vote **NO** on Measure 49

Eric Winters, Attorney at Law, Wilsonville

(This information furnished by Eric C. Winters, Attorney at Law.)

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Argument in Opposition

ISSUE: WHY THE GOVERNMENT WILL NEVER PAY YOU COMPENSATION FOR TAKING YOUR PROPERTY

Supporters of Measure 49 are making claims about Measure 49 that are simply false.

Supporters of Measure 49 claim that it entitles you to compensation when government takes your property, if you can prove the value of what they've taken.

The problem is that Measure 49 creates a formula that makes it impossible to prove how much the government has taken from you.

Read the text of Measure 49 and decide for yourself:

Section 7.(6) says:

"The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the **claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest;**" and,

"Interest shall be computed under this subsection using the **average interest rate for a one-year United States Government Treasury Bill on December 31 of each year** of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period."

This formula won't work because one-year Treasury Bills haven't been sold since 2001. Second, by limiting the amount of decrease to a single year after its adoption the market won't have adjusted to reflect the regulation's long term impact.

Under Measure 49 your loss is limited to one year's decrease in value, even if you have owned the property for 30 years. But even that won't work because you can't calculate your loss.

In plain English, you get nothing.

When you take the time to read Measure 49, you realize that Measure 49 simply is not as advertised.

Vote **NO** on 49

Sean Smith, Attorney at Law, Cottage Grove

(This information furnished by Sean Smith, Attorney at Law.)

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Argument in Opposition

ISSUE: MAKING PROPERTY OWNERS RE-FILE THEIR MEASURE 37 APPLICATIONS

Supporters of Measure 49 are making claims about Measure 49 that are simply false.

Supporters of Measure 49 claim that current Measure 37 claimants will not have to re-file applications under Measure 49.

Read the text of Measure 49 and decide for yourself:

Section 8.(2)(b) of Measure 49 requires the Department of Land Conservation and Development to identify the information that a property owner has to file under Measure 49.

Section 8.(3) of Measure 49 explains that a property owner must file the form requirement by the Department of Land Conservation and Development, along with any information required by the form.

But the worst part is this. Not only do you have to re-file your claim, but Measure 49 significantly changes the rules that you must meet, meaning many Measure 37 claimants will lose their claim.

By requiring new information, and new filings, Measure 49 puts at risk the investments of thousands of Oregonians who have done nothing more than follow the law and played by the rules.

Despite what supporters of Measure 49 are claiming, the fact is that Oregonians are going to have to go through an application process yet again if Measure 49 passes.

When you take the time to read Measure 49, you realize that Measure 49 simply doesn't work.

Measure 49 Arguments

Please vote **NO** on Measure 49

Cameron Krauss, Attorney at Law, Glendale

(This information furnished by Cameron Krauss, Attorney at Law.)

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Argument in Opposition

ISSUE: WHY THE "1 TO 3 HOME EXPRESS LANE" DOESN'T WORK

Supporters of Measure 49 are making claims about Measure 49 that are simply false.

Supporters of Measure 49 who drafted the Explanatory Statement for Measure 49 say "Claimants may build up to three homes if allowed when they acquired their properties."

Read the text of Measure 49 and decide for yourself:

Under Measure 49, there are different requirements for the "1 to 3 home option" depending on where you live.

If you live outside a UGB, Section 6(6) of Measure 49 says that in order to get 1 to 3 homes you must prove 6 things, including:

- (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

Under Measure 49, in order to get 1 to 3 homes, you must have 1) already filed a Measure 37 claim, and 2) prove there is one or more land use regulations that **prohibit** establishing the lot, parcel or dwelling.

That is a much tougher standard than current law, which requires you to show that a land use regulation "**restricts**" the use of your property.

The distinction is critical because most rural families are prevented from building one home on their property by a **restriction**, like LCDC's \$80,000 rule or a wildlife habitat overlay.

These are examples of restrictions – they don't stop you from building, they tell you under what conditions you can build. These restrictions have led to most Measure 37 claims.

There are many other laws out there that are restrictions, not prohibitions, on your ability to use your land. Those laws are **NOT** subject to Measure 49.

Which means that if at the time you bought your property you could have built three homes, but you can't build three homes now because of a land use restriction, Measure 49 wipes out your claim.

Take the time to read Measure 49. It simply doesn't work.

Dave Hunnicutt, Attorney at Law, Tigard

(This information furnished by David J. Hunnicutt, Attorney at Law.)

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Argument in Opposition

Do you need more information about Measure 49?

Go to www.stoptakingourproperty.com and you can find out what Measure 49's supporters aren't telling you.

You can also read the text of Measure 49 for yourself, and hear what experts say about Measure 49 and what changes it makes to Oregon law using the exact language of the measure.

The exact language of Measure 49 is important, because it's the language of Measure 49 that judges and lawyers are required to follow if they are asked to sort out the mess that Measure 49 would create.

www.stop49.com

MEASURE 49 – A WOLF IN SHEEP'S CLOTHING

(This information furnished by David J. Hunnicutt, Director, Stop Taking Our Property PAC.)

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Argument in Opposition

PLEASE VOTE NO ON MEASURE 49

"IF WE CAN STACK PEOPLE UP IN TOWN AND PUT THEM IN A FOOD LINE WE WILL HAVE COMPLETE CONTROL..." These were the words of a head land use planner in Polk County about 30 years ago. I have seen nothing contrary to that statement in 30 years. The agenda is to limit housing growth to the designated urban areas, and restrict rural housing to a minimum.

In 1973, passage of Senate Bill 100 initiated that process for Oregon. To preserve beautiful Oregon, "PLANNING" (land control) was initiated. Property rights were sacrificed without compensation to the landowner for loss of use or value.

Enron people have gone to jail for manipulating values of people's investments in stocks. "PLANNING" has caused a manipulated loss of value for owners of rural land in this State since 1973 without compensation to the owner.

M-49

1. Land applications will be made to the State, rather than to the counties in which the land and usually the owner exists (state control rather than local control.)

2. One to three parcels will be hard to get and the State will designate where the parcels will be. They will contain a maximum of two acres, clustered together to make a mini-town, at a State designated spot on the property.

3. There is no time limit as to when the parcels will be approved by the State.

4. If there is an appeal, which can be brought by anyone, the applicant will be required to pay the government appraiser and attorney plus his own representation with no allowance for collection of those funds, even if the applicant prevails.

5. Vested use is mentioned several times but never defined, nor has it been for 30 years.

6. The legislature has completely disregarded the voice of the people in the Oregon Supreme Court upheld law of M-37 and the initiative process enacted by her citizen's.

VOTE NO ON M-49.

(This information furnished by Vern Ratzlaff.)

This space purchased for \$500 in accordance with ORS 251.255.
The printing of this argument does not constitute an endorsement by the State of Oregon, nor does the state warrant the accuracy or truth of any statement made in the argument.

Secretary of State
Bill Bradbury
State Capitol
Salem, OR 97310-0722

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November 6, 2007**

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September 24, 2018, Meeting - Item 3

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 4:54 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Expert opinion re M49 statutes

For the record in M49 181 (Moore).

As the following message explains, I contacted a person whom my attorney (Bill Kabeiseman) told me is widely regarded as "the Dean of Oregon land use law."

Professor Sullivan was concerned that his opinion not be misconstrued as "legal advice," which is how I represent what I learned from him.

Professor Sullivan granted me the following permission (in an e-mail):

"You may say that I agreed with you, but please don't share the email."

I respected that wish and conveyed our exchange to the City Attorney and Mayor in my own words. I can say that were anyone to read Professor's e-mail, his longer explanation fully supports the interpretation that both Glenn Klein and I have.

I urged the City Attorney to follow-up to get Professor Sullivan's opinion first-hand, but to my knowledge the City Attorney has not provided any information in that regard to the City Council.

One is left with the strong impression that the City Manager and City Attorney do not want the City Council to know what opinions Glenn Klein and Professor Sullivan hold because those opinions would make clear that the staff statutory interpretation is wrong.

Note that Sarah Marvin, who provided me Professor Sullivan's name, subsequently provided a correction to me and the City staff that her position is as a DLCD Measure 49 "specialist" not "expert." She also didn't refer to Professor Sullivan as an "expert," she simply suggested his name as someone to contact. Neither of these errors in terminology on my part change the relevant fact that Professor Sullivan agreed with the interpretation that Glenn Klein and I hold.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

----- Forwarded message -----

From: Paul Conte <paul.t.conte@gmail.com>
Date: Thu, Sep 6, 2018 at 7:29 AM
Subject: PSU Professor Ed Sullivan confirms interpretation by Glenn Klein re M49
To: <Kathryn.Brotherton@ci.eugene.or.us>, Emily Jerome <Emily.N.Jerome@ci.eugene.or.us>, VINIS Lucy K

<Lucy.K.Vinis@ci.eugene.or.us>

Cc: RUIZ Jon R <jon.r.ruiz@ci.eugene.or.us>, Marvin, Sarah <sarah.marvin@state.or.us>

Mayor and staff,

A highly-regarded expert on Measure 49 laws, Ed Sullivan, has agreed with my interpretation of the Measure 49 provision of ORS 195.305(1). This is, of course, the same interpretation of the statutes made by Glenn Klein and adopted by the City Council.

To mention just a few of Professor Sullivan's many awards:

- Jefferson B. Fordham Lifetime Achievement Award, American Bar Association Section of State and Local Government Law
- Joseph J. Mulligan Jr. Distinguished Public Service Award, International Municipal Attorneys Association, 2014
- Career Achievement Award, Oregon Chapter, American Planning Association

You can read Professor Sullivan's full *vita* here:

<https://www.pdx.edu/profile/meet-professor-ed-Sullivan>

You can contact Professor Sullivan to discuss his opinion further at:

esulliva@gmail.com

(503) 793-0291

The DLCD "Measure 49 expert," Sarah Marvin (sarah.marvin@state.or.us), advised me to discuss the issue with Professor Sullivan, whom she considered the best expert on the history and intent of the M49 legislation.

I had a substantive exchange with Professor Sullivan, and we covered the specific issue of whether "use" included *physical characteristics*, such as dwelling size, or just *approved residential uses*, such as single-family dwelling, ADU, duplex, etc. He agreed it was only the latter, as both Glenn Klein and I contend.

With this further confirmation of the correct interpretation of M49, it would be unethical and irresponsible for the City Manager and City Attorney to maintain the invalid and erroneous interpretation that was presented to the Council in Dan Lawler's memo.

The Council should be promptly advised of the correct interpretation and that the Moore claim does not meet the ORS 195.305(1) criteria requiring that the adopted ADU maximum size code amendment "restrict[ed] the residential use of private real property." Mrs. Moore had the use of her property to place an ADU upon it before the maximum dwelling size was reduced, and she retained the use of her property to place an ADU upon it after the maximum dwelling size was reduced. Her "residential use" to place an ADU on the property was not restricted.

Thank you,

Paul conte

On Tue, Sep 4, 2018 at 10:41 AM Paul Conte <paul.t.conte@gmail.com> wrote:

This message is directed to the City Attorney and Deputy City Attorney; however, the potential impacts on Eugene residents and the implementation of Envision Eugene makes it vitally important that the Mayor work with the City Manager and City Attorney to ensure that the Council is fully knowledgeable about impacts before formally adopting the Planning Division's proposed interpretation of Measure 49 provisions.

= = = = =

Kathryn and Emily,

Both of you have enough experience with land use regulations and Oregon Revised Statutes that I believe you understand several points regarding the Planning Division's proposed interpretation of Measure 49 provisions, specifically in ORS 197.305(1): "if a public entity enacts one or more land use regulations that restrict the residential use of private real property...the owner of the property shall be entitled to just compensation" and ORS 195.310(1)(c) providing that a person may file a M49 claim if "the person's desired use of the property is restricted by one or more land use regulations."

a) If, as staff has proposed, "restrict the residential use" is interpreted to encompass limits on physical characteristics of a dwelling, such as maximum height and size, then (with a few exceptions) any future code amendment(s) adopted by Council that add new limit(s) or tightens existing limit(s) would be subject to waivers for five years after adoption through Measure 49 claims.

b) There are strict requirements for interpreting statutes, and the interpretation presented in the July 20, 2018 memo from Dan Lawler does not come close to meeting those requirements.

As I've explained in the message sent almost two weeks ago to the City Attorney, at the very least, the City Council needs to have these facts confirmed. Further, the interpretation proposed by staff would negate the properly constructed and correct interpretation presented by Glenn Klein and previously adopted by the City Council.

Furthermore, although the record is closed to public testimony, statutes allow staff advice to the decision makers. I have had extensive discussions with my attorney and three DLCD staff members, and I've amassed a large amount of legislative history, and there is nothing so far that would support the planning staff proposal. To the contrary there is compelling material that supports Glenn Klein's interpretation.

At the very least then, the City Attorney should do at least a similar amount of research and then follow the rules of statutory construction and present updated findings to the Mayor and Council before they begin deliberations. (While the Tentative Working Agenda has Council making a decision next Monday, I believe the time limit for deciding a Measure 49 claim would allow delaying that decision for about two weeks. This would provide the City Attorney time to present a thorough and lawful interpretation of the critical statutes.)

To much is at stake to simply "defend the fort" and not fulfill your responsibilities to ensure the Council makes the proper decision.

Thank you,

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

----- Forwarded message -----

From: **Paul Conte** <paul.t.conte@gmail.com>

Date: Thu, Aug 23, 2018 at 2:16 PM

Subject: Moore M49 claim and Glenn Klein's (correct) interpretation of the statutes

To: <Kathryn.Brotherton@ci.eugene.or.us>

Cc: SEMPLE Emily <Emily.Semple@ci.eugene.or.us>, VINIS Lucy K <Lucy.K.Vinis@ci.eugene.or.us>

Kathryn,

I don't know whether or not you've been directly engaged in the Moore M49 claim, so I may be repeating facts you already know.

When Glenn Klein was city Attorney, he provided an interpretation of the Measure 49 statute, which the Council adopted as part of the findings for Resolution No. 5202, whereby the Council denied the "Wilson" M49 claim. (See Item C at page 2 of Attachment A in the attached resolution.)

The Planning Division staff has submitted a memo (attached) to the City Council recommending approval of the "Moore" M49 claim. Without elaborating on the arguments at this time, the memo presents an interpretation of the statute that would supplant (and reverse) Glenn Klein's interpretation that Council adopted in Resolution No. 5202.

Staff claims that: "There are important differences between the claims." (See page 2 of memo.) However, the specific "difference" cited is a "difference without a legal distinction." Furthermore, the provided basis for the interpretation does not follow the statutory rules of interpretation and relies on a "textual" argument that isn't the determinant element of the criterion. (Specifically, the staff considered the different definitions of "restrict" versus "prohibit," but that's not the issue, as I explain. The issue is the meaning of "residential use," as I also explain. Glenn Klein's advice relied on the latter, as well.)

I understand that Glenn Klein is still available for limited assistance to the City Council. What I am requesting is that you solicit Glenn's opinion on this case solely with respect to the proper interpretation of ORS 195.305(1), "if a public entity enacts one or more land use regulations that restrict the residential use of private real property...the owner of the property shall be entitled to just compensation" and ORS 195.310(1)(c) providing that a person may file a M49 claim if "the

person's desired use of the property is restricted by one or more land use regulations." (Emphasis added.)

I've attached a rebuttal to the staff's new interpretation. My analysis follows the proper structure for statutory construction, consistent with Glenn's former interpretation. I've also had lengthy discussions with knowledgeable DLCDC staff, and they state they know of no cases or legislative history that would support the staff's new interpretation. I've also discussed this with my land use attorney, and he believes Glenn's interpretation is sound.

As my testimony states, the implications of the staff's extremely broad interpretation would have drastic, far-reaching effect on the Council's ability to adopt future code amendments that added or increased limitations on development (e.g., to implement the Envision Eugene policy of "protecting neighborhood livability").

The question of which is the proper interpretation of the pertinent M49 statutory provision is far more important than just one M49 waiver. Accordingly, I'm requesting that, as the City's chief legal officer, you do two things to help ensure that City Council makes the correct decision:

- a) Solicit Glenn Klein's (limited) advice on the issue of "residential use"; and
- b) Provide the Council with a frank explanation of the potential impacts on future code amendments if the Council were to adopt the Planning staff's new interpretation.

If you would like to discuss this further, I would be happy to fill you in on what I have learned through my conversations mentioned above and researching the history of Measures 37 and 49.

I would appreciate a reply either to me directly or to my City Councilor, Emily Semple.

Thank you for your help.

Paul Conte
1461 W. 10th Ave.
Ward 1

Accredited Earth Advantage
Sustainable Homes Professional

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 3:26 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Testimony: Moore M49 claim and Glenn Klein's (correct) interpretation of the statues
Attachments: Notice of City Council Decision.pdf; Moore M49 Claim Council Memo FINAL.pdf; Conte M49 18-1 Testimony 27-July-2018 SUBMITTED.pdf

For the record in M49 19-1 (Moore)

Requesting the City Attorney to solicit Glenn Klein's opinion and provide it to the City Council almost three weeks ago.

As far as I know this was never done, and yet the staff wants the Council to overturn the former City Attorney's interpretation of the M49 criterion.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

----- Forwarded message -----

From: Paul Conte <paul.t.conte@gmail.com>
Date: Thu, Aug 23, 2018 at 2:16 PM
Subject: Moore M49 claim and Glenn Klein's (correct) interpretation of the statues
To: <Kathryn.Brotherton@ci.eugene.or.us>
Cc: SEMPLE Emily <Emily.Semple@ci.eugene.or.us>, VINIS Lucy K <Lucy.K.Vinis@ci.eugene.or.us>

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Thank you for your help.

Paul Conte
1461 W. 10th Ave.
Ward 1

Accredited Earth Advantage
Sustainable Homes Professional

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 4:33 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Fwd: Moore M49 claim and Glenn Klein's (correct) interpretation of the statues
Attachments: Notice of City Council Decision.pdf; Moore M49 Claim Council Memo FINAL.pdf; Conte M49 18-1 Testimony 27-July-2018 SUBMITTED.pdf

For the record in M49 18-1 (Moore).

This message, sent several days before staff sent you the AIS, urges the City Attorney (and Mayor) to ensure that the City Council has an interpretation of the M49 statute that is based on the required steps in statutory construction.

Instead, what you got was an out-of-date, recycled "City Manager's Report" that didn't even provide any steps in statutory construction, but just blithely blew away Glen Klein's correct and very well argued interpretation of the M49 statutes.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

----- Forwarded message -----

From: **Paul Conte** <paul.t.conte@gmail.com>
Date: Tue, Sep 4, 2018 at 10:41 AM
Subject: Fwd: Moore M49 claim and Glenn Klein's (correct) interpretation of the statues
To: <Kathryn.Brotherton@ci.eugene.or.us>, Emily Jerome <Emily.N.Jerome@ci.eugene.or.us>, VINIS Lucy K <Lucy.K.Vinis@ci.eugene.or.us>
Cc: RUIZ Jon R <jon.r.ruiz@ci.eugene.or.us>

This message is directed to the City Attorney and Deputy City Attorney; however, the potential impacts on Eugene residents and the implementation of Envision Eugene makes it vitally important that the Mayor work with the City Manager and City Attorney to ensure that the Council is fully knowledgeable about impacts before formally adopting the Planning Division's proposed interpretation of Measure 49 provisions.

= = = = =

Kathryn and Emily,

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1461 W. 10th Ave.
Eugene, OR 97402

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Sustainable Homes Professional

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Date: Thu, Aug 23, 2018 at 2:16 PM

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To: <Kathryn.Brotherton@ci.eugene.or.us>

Cc: SEMPLE Emily <Emily.Semple@ci.eugene.or.us>, VINIS Lucy K <Lucy.K.Vinis@ci.eugene.or.us>

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- b) Provide the Council with a frank explanation of the potential impacts on future code amendments if the Council were to adopt the Planning staff's new interpretation.

If you would like to discuss this further, I would be happy to fill you in on what I have learned through my conversations mentioned above and researching the history of Measures 37 and 49.

I would appreciate a reply either to me directly or to my City Councilor, Emily Semple.

Thank you for your help.

Paul Conte
1461 W. 10th Ave.
Ward 1

Accredited Earth Advantage
Sustainable Homes Professional

Staff claims that: "There are important differences between the claims." (See page 2 of memo.) However, the specific "difference" cited is a "difference without a legal distinction." Furthermore, the provided basis for the interpretation does not follow the statutory rules of interpretation and relies on a "textual" argument that isn't the determinant element of the criterion. (Specifically, the staff considered the different definitions of "restrict" versus "prohibit," but that's not the issue, as I explain. The issue is the meaning of "residential use," as I also explain. Glenn Klein's advice relied on the latter, as well.)

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Thank you for your help.

Paul Conte
1461 W. 10th Ave.
Ward 1

Accredited Earth Advantage
Sustainable Homes Professional

Testimony re Elise Moore Measure 49 Claim (File M49 18-1)

Submitted by Paul Conte, July 27, 2018

Mayor and Councilors,

The Moore Measure 49 claim fails to meet the following statutory requirements because:

- The cited regulation, EC 9.2751(18)(a)3, did not “restrict the residential use of private real property.”
- The applicant has not validly established that the cited regulation “reduce[d] the fair market value of the property.”

In light of the evidence and the July 24, 2018 memo from Dan Lawler, the pivotal question regarding the proper application of the Measure 49 Oregon Revised Statutes (ORS) boils down to this:

Should the Council reject the legal opinion of former City Attorney Glenn Klein, which the City Council formally adopted as findings in Resolution 5202 denying the Wilson Measure 49 claim (File M49 16-1)?

Staff claims that the two cases (Wilson and Moore) are distinguishable because:

“There are important differences between the claims. In the Wilson claim, the City concluded that the regulation at issue did not restrict the residential use of the property because the claimants had other viable methods to achieve their desired residential use. In the Moore M49 claim, the claimant appears to have no viable method to achieve her desired residential use”

This falsely describes the two cases and presents a distinction without a difference.

The Wilsons desired the use of their property for a one-family dwelling and a secondary dwelling. The Wilsons also desired to implement this use with a specific design that was prohibited by the cited regulation, EC 9.2751(17)(c)9, which limited the building height of the secondary dwelling the Wilsons desired to have.

Moore desires to use her property for a one-family dwelling. Moore also desires to implement this use with a specific design that is prohibited by the cited regulation, EC 9.2751(18)(a)3, which limits the building size of the one-family dwelling that Moore desires to have.

In **Resolution 5202**, the City Council adopted as its interpretation of the applicable Measure 49 statutes, the opinion of Glen Klein, which states:

“B. ‘Land Use Regulations’

“* * *

“EC 9.2751(17)(c)9 is a provision of the City’s zoning ordinance, and it regulates residential uses on property zoned for residential uses. * * * However, as discussed in

more detail in section C, below, EC 9.2751(17(c)9 does not restrict the residential use of the Wilsons' property; therefore, EC 9.2751(17(c)9 does not qualify as a 'land use regulation' for purposes of Measure 49.

"* * *

"C. Restriction on Residential Use

"A 'land use regulation' only gives rise to a Measure 49 claim if the regulation restricts the residential use of private real property zoned for residential use. EC 9.2751(17(c)9. provides a height limit for new attached and detached secondary dwelling units within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood, and proscribes [sic] a method for determining the height of a building. Claimants allege that EC 9.2751(17(c)9. restricts the residential use of their property, as it prevents the existing residence on their property from automatically qualifying as a secondary dwelling. [because the existing dwelling exceeds the maximum height limit]

"* * * [Provides the code for EC 9.2751(17(c)9.]

"That is, under the code provisions that existed prior to the adoption of Ordinance No. 20526, the Claimants' existing structure met the height requirement for a detached secondary dwelling. However, the code-prescribed manner for measuring the building height of a detached secondary dwelling that went into effect on April 12, 2014 (quoted above), prevents the Claimants from converting the existing structure to a lawful detached secondary dwelling. Based on the measuring method adopted in 2014, the Claimants' existing structure exceeds the maximum height allowed for a detached secondary dwelling.

"Claimants assert that EC 9.2751(17(c)9. is a 'land use regulation' that 'restricts the residential use' of their property because prior to the 2014 adoption of Ordinance No. 20526, the existing residence on Claimants' property would have automatically qualified as a detached secondary dwelling unit. However, following the adoption of Ordinance No. 20526, the existing residence no longer automatically qualifies as a detached secondary dwelling unit because, based on the way the structure must be measured, **the existing residence is too tall to qualify as a detached secondary dwelling unit.**

"However, despite the height restrictions imposed by EC 9.2751(17(c)9. staff has identified a number of additional ways claimants could construct a secondary dwelling on the subject property. * * *

"* * *

"4. The structure containing the existing dwelling could be altered to meet the current height limit for secondary dwelling (this would likely require removing the top floor, and using the lower portion, currently a garage, for the dwelling) and then be converted to a secondary dwelling in conjunction with a new primary dwelling built on the property.

“As Planning staff point out, while EC 9.2751(17)(c)9. prevents claimants from treating the existing structure on the property as a secondary dwelling without alterations, **EC 9.2751(17)(c)9. does not foreclose the Claimants from developing both a primary dwelling and a secondary dwelling on the subject property.** The Claimants argue that their use of the property is restricted because prior to EC 9.2751(17)(c)9. the structure on their property would have automatically qualified as a secondary dwelling and now it does not. However, Measure 49 requires that a land use regulation restrict a residential use and as noted above, EC 9.2751(17)(c)9. does not prevent the residential use of the property generally, nor does it prohibit Claimants from establishing both a primary and a secondary dwelling on the subject property. Paul Conte and Carolyn Jacobs also submitted testimony into the record arguing that EC 9.2751(17)(c)9. does not restrict the use of Claimant’s property.

“Because there are other ways for Claimants to place a secondary dwelling unit on the subject property, the City Manager concludes that EC 9.2751(17)(c)9. does not restrict the residential use of Claimants’ property as required by Measure 49.” (Emphasis added)

It’s critical to note that in the case of the Wilsons’ claim, none of the “additional ways claimants could construct a secondary dwelling on the subject property” would have allowed the Wilsons’ to have the secondary dwelling with the height that the Wilson’s desired. In other words, while Klein’s opinion recognized that the adopted regulation “restricted” the maximum height of the SDU that the Wilsons desired, Klein nonetheless found that the regulation did not restrict the residential use of the Wilson’s property

Staff has misleadingly stated that the Wilsons “had other viable methods to achieve their desired residential use” as if that somehow was different than in the Moore case. But the true comparison is that Wilsons were able to achieve their desired use of a primary dwelling and a secondary dwelling, but were not able to achieve their desired implementation; which is exactly the case with Moore, who is able to achieve her desire for a one-family dwelling use, but is not able to achieve her desired implementation.

Staff has mistakenly conflated the legal meaning of “use” with the way “use” sometimes occurs in informal communication. No one would disagree that it would not be out of the ordinary for a lay person to say “I’d like to *use* my property for a 1,200 square foot home.” However, the meaning of the verb “to use” in an informal context is most definitely not the same as the noun “use” in land use law.

Eugene Code makes this clear by defining “use” in EC 9.0500 Definitions:

“Use. The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained.”

“Use” is explicitly a “purpose,” not a particular design or set of features used to implement a building to serve that purpose.

Eugene Code explicitly lists the “uses” for every zone. ORS 195.300(25) provides the following relevant definition:

“Zoned for residential use means zoning that has as its primary purpose single-family residential use.”

The Eugene Code’s R-1 Zone fits this statutory definition.

EC 9.2700 Purpose of R-1 Low-Density Residential Zone. The purpose of the R-1 Low-Density Residential zone is to implement the Metro Plan by providing areas for low-density residential use. The R-1 zone is designed for one-family dwellings with some allowance for other types of dwellings.

For the R-1 Zone, the list of “uses” is found in Table EC **Table 9.2740 Residential Zone Land Uses and Permit Requirements**. A subgroup of uses in this table is for “Residential.” Thus, within this subgroup, Eugene Code establishes – *in legal terms* – the “residential uses.” The elements in this category are what are encompassed by the statutes that establish the requirements for a valid Measure 49 claim.

Listed under the R-1 residential uses are: “One-Family Dwelling,” “Secondary Dwelling,” “Duplex,” “Multiple-Family Dwelling,” and others. There is not a single residential “use” that embodies a particular size. For example, there are no “residential uses” for: “400 to 800 square foot dwelling,” “801 to 2,500 square foot dwelling,” and “2,500 square foot or larger dwelling.”

In Wilson’s claim, Glenn Klein’s opinion was based on the fact that their lot allowed two uses: One One-Family Dwelling and one Secondary Dwelling – *both before and after EC 9.2751(17)(c)9 was adopted*.

In Moore’s claim, the undisputed fact is that her lot allowed the use for one One-Family Dwelling – *both before and after EC 9.2751(18)(a)3 was adopted*.

Glenn Klein’s analysis and opinion was correct and applicable to both the Wilson and Moore situations.

The City Council has no reasonable path to approving the Moore Measure 49 claim without rejecting the Council’s own findings in the Wilson Measure 49 claim, which explicitly adopted Glenn Klein’s legal opinion.

If any councilor is uncertain about this, despite the clear evidence, it’s incumbent on him or her to seek Glenn Klein’s opinion, or at least the opinion of Deputy City Attorney, Emily Jerome. (I checked with Emily, and she stated she has not been involved in the Moore claim. I believe Emily has the necessary competence to properly opine on whether Glenn Klein’s prior opinion is applicable in the Moore case.)

Staff’s erroneous interpretation of the statutes would have disastrous impacts on Envision Eugene and the “Clear and Objective Housing Approval Criteria Update” process.

Before explaining the obvious flaws in staff’s attempt at interpreting the statutes, I want to make sure councilors understand the full implications that would arise if the Council were to reject Glenn Klein’s interpretation and adopt the staff interpretation instead.

In simple terms, staff argues that *any* code amendment that restricts *any* feature of a One-Family Dwelling “restricts the residential use” of the property. The Moore claim is specifically based on a code amendment that reduced the maximum square footage of a dwelling on an

alley access lot. However, the exact same interpretation would apply to reducing maximum building height of a Secondary Dwelling (as in the Wilson claim), increasing building setbacks, requiring improved treatment of storm water, increasing or decreasing parking requirements, etc.

As long as a property owner could pay an accommodating appraiser to assert the property's value was reduced by some amount because exactly what could be built before couldn't be identically built after, the City would have to approve the claim. In practical terms, the Council would almost certainly then waive the new regulation. The result would be to effectively render any new development requirements unenforceable for a period of five years after adoption. (M49 claims must be filed within five years of the cited regulation.)

Obviously, attorneys like Bill Kloos would trot around town soliciting clients to have him file the claims necessary to evade the new regulations. It would be one matter if the period during which new regulations were unenforceable were something the Council believed merited a 90-day or one-year period before the regulation went into effect; but a universal, five year delay in effective date would essentially defeat any reasonable attempt to control development.

This consequence would render almost meaningless any attempt by the City to develop and adopt "infill compatibility standards" or special area zones in order to implement a core Envision Eugene pillar: "Protect, Repair and Enhance Neighborhood Livability." The staff's misinterpretation of Measure 49 statutes, if adopted, would allow property owners to ignore (by a M49 claim) almost all significant development requirements that might appropriately limit residential development. (Measure 49 statutes provide exceptions for certain new regulations; e.g., for public safety.)

The consequence of staff's misinterpretation would also critically undermine any attempt to replace residential development regulations that aren't "clear and objective" with approval criteria that are "clear and objective." For example, the approval criteria for Willamette Greenway Permits are not clear and objective and have been challenged under recent statutes. This challenge is likely to be successful, which means that the City will not be allowed to enforce the Willamette Greenway criteria on housing proposals (e.g., Planned Unit Developments along the river) until the City adopts clear and objective approval criteria.

However, after adoption of new Willamette Greenway criteria, any property owner could claim that, prior to these new regulations, their property was not bound by *any* Willamette Greenway restrictions and therefore the City would have to approve a Measure 49 claim and waiver of new, clear and objective Willamette Greenway criteria for five years (or provide substantial monetary compensation).

Admittedly, I can't provide the Council a more in-depth analysis of the potential impacts of the staff's misinterpretation because I had only three days to respond to their delayed memo. However, the Council cannot in good faith adopt the staff's interpretation without being able to review a thorough analysis of the potential impacts. Staff, as usual, has failed to provide the Council or public even a "heads up" about the implications of their interpretation.

Staff's interpretation is wrong and fails to follow the most basic "Rules of Statutory Construction."

With all the above said, I want to also make clear that the latest staff interpretation not only would produce absurd and harmful results, it's a ridiculously incompetent analysis that doesn't even follow the most basic legal rules for interpreting statutes.

The staff interpretation is based entirely on the following argument:

"the appropriate inquiry under Measure 49 is not whether the regulation *prevents* residential use, but whether the regulation *restricts* residential use."

In the general sense, this statement is correct. What staff ignored in the previously submitted testimony is that the *only* permitted use of Moore's lot, both before and after the adoption of the cited regulation, was one One-Family Dwelling. Prior to being proven wrong, staff claimed that a One-Family Dwelling was "infeasible," which meant that Moore could not place this One-Family Dwelling on her lot. In effect, staff argued that adoption of EC 9.2751(18)(a)3 prevented her from residential use of her lot. I responded by proving a 462 square foot dwelling was both feasible, and the City has even permitted a smaller One-Family Dwelling on a smaller alley access lot. Thus, I stated, *accurately*, that "the cited regulation does not prevent the residential use of the property."

Having blown their first attempt at applying the Measure 49 statutes, staff has now setup a "straw man" asserting that, because the statute text us "restrict" and not "prevent," Moore's Measure 49 claim is valid. Staff then makes a *faux* attempt at bolstering their interpretation by citing to the dictionary definition of "restrict."

The obvious deficiency in staff's conclusion is that they leap from their off-point "restrict" versus "prevent" comments to the conclusion that "restrict" in the statute applies to particular implementations of dwellings, which it does not. The real point is that "restrict" in the Measure 49 statutes applies to either preventing the placement of any single-family dwellings on a property or reducing the *number* of single-family dwellings on a property.

Staff provides no legal analysis at all of the term "residential use." Instead, staff blithely assumes:

"[Moore's] desired residential use that was allowed prior to the enactment of EC 9.2751(18)(a)3., [] is the construction of a 1,200 square foot home."

Obviously, no matter how Moore's attorney may have expressed Moore's "desired use," that isn't relevant to the *statutes* intended meaning of "residential use." In other words, staff has provided no of relevant analysis to support their assumption that "use" encompasses implementation features. In the absence, Council should rely on Glenn Klein's competent and correct analysis and opinion or seek a competent opinion from Emily Jerome.

Not to flog a "dead horse," but even a first year Oregon law student would be familiar with the legal requirements for interpreting Oregon statutes. I won't get too deep into the legalese (Emily could provide that for any interested councilor). Basically, the Council must look at the text of a statute, the context and legislative history. In addition, an interpretation must not produce absurd results. (There are other rules, but these are most relevant in this instance.)

To properly interpret the phrase “restrict residential use” in ORS 195.305(1), the City must first look to the text and then context.

ORS 195.300 Definitions for ORS 195.300 to 195.336 does not define “residential use” or “use.” However, ORS 195.300(25) does provide the following helpful definition as context:

“Zoned for residential use means zoning that has as its primary purpose single-family residential use.”

Note how “single-family residential use” can only be understood as meaning that “use” refers to a particular “purpose,” specifically, for “single-family” dwellings. This instance of “use” cannot reasonably be understood as referring to a particular design or size of a single-family dwelling.

The statutory definition equates “residential use” in the context of Measure 49 statutes specifically with “single-family residential use.” Thus, the first question in this claim is: Did the cited regulation restrict the owner from use of her property for a single-family residence? The answer is definitively “No.” (Eugene has issued a building permit for a "one-family dwelling" on a different alley access lot that is slightly smaller than Moore’s lot.)

Eugene Land Use Code provides a more fine-grained definition of “Use” that covers the claimed restriction related to "one-family" dwelling unit. EC **9.0500 Definitions** includes the following definition:

Use. The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained.

Thus, the second question is: Did the cited regulation restrict the “purpose for which [the owner’s] land ... is intended”? Eugene Code sets forth the intended purpose for property that is zoned R-1, as this property is:

EC 9.2700 Purpose of R-1 Low-Density Residential Zone. The purpose of the R-1 Low-Density Residential zone is to implement the Metro Plan by providing areas for low-density residential use. The R-1 zone is designed for one-family dwellings with some allowance for other types of dwellings.

Accordingly, the second question is more specifically: Did the cited regulation restrict the owner from developing her property with a “one-family” (i.e., single-family) dwelling, which is one of the allowed “uses” listed under “Residential / Dwellings” in the R-1 zoning code? The answer is clearly “No.”

Under current regulations, the owner is allowed to build a one-family residence on the subject property. Thus, the cited regulation did not “restrict the residential use of [the owner’s] private real property,” and the M49 claim is without merit.

Other sections of the Measure 49 statutes provide confirming context. (The staff memo neither includes these sections nor analyzes how they provide context for proper statutory interpretation.)

ORS 195.310(3) states:

“Unless the claim is based on the enactment of one or more land use regulations described in ORS 195.300 (14)(e), relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.” (Emphasis added)

Note that the statute’s text refers to “use,” not “design,” “development,” “implementation” or any other term. In this section, “use” can only reasonably refer to an allowable use listed in the applicable land use regulations.

Similarly, ORS 195.312(8) states that a Measure 49 claim must provide:

“A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation.”

Here again, the text does not refer to “specific development,” “specific design,” etc.

Even the applicant’s hired appraiser treats “residential use” with the appropriate land use meaning, i.e., a use allowed for the applicable zone:

“Therefore, the concluded highest and best use as of the 2013 date of value would be development with **an allowable residential use in the R-1 zone** * * *.

* * *

“Therefore, the concluded highest and best use as of the 2015 date of value would be development with an **allowable residential use in the R-1 zone** * * *.” See Page 32 of Exhibit D in the M49 application. (Emphasis added.)

As highly relevant context, Measure 49 also requires that even those claims for compensation or waiver that had been made under the more expansive provisions of Measure 37 (which Measure 49 replaced) still

“must comply with all applicable standards governing siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel.” See Oregon Laws 2007. Section 11(1).

It would make no sense for the statutes to impose this requirement on claims under a more expansive measure (Measure 37), but then not intend that claims under a more restrictive measure (Measure 49) would somehow be treated differently. The fact is that “use” in the text of Measure 49 statutes did not encompass design or implementation features, so that “restrict the use” does not encompass development standards or features.

Finally, as legislative history, it’s well-established that Measure 37 was mostly driven by rural land owners who wanted to place additional dwellings on their large parcels and were prohibited from doing so by the adoption of land use laws that restricted the *number* of dwellings on agricultural and forest lands. The only role that development standards (such as forest setbacks) would play in Measure 37 was if a standard inherently limited the number of dwellings allowed. Measure 49 tightened both the scope of claims and the extent of waivers, particularly in how many additional dwellings were allowed under a valid waiver. There is

nothing in the record that would suggest Measure 49 had any intention of addressing claims that a regulation “restricted” building height or size.

In conclusion, the staff memo provided no reliable evidence or followed the required statutory evaluation steps that would support their interpretation of the Measure 49 statutes. In contrast, a legitimate analysis supports Glenn Klein’s opinion, which the City Council previously adopted. The City Council should not overturn that decision, and should rely on their previously adopted interpretation. As a consequence, the Moore Measure 49 claim must be denied.

Staff utterly “bails” on validating the required appraisal estimates

Although the City Council does not need to reach a conclusion on the validity of the appraisal estimates because the claim itself does not meet the statutory requirements, it’s important to call out the unprofessional response by staff in regards to well-documented problems with the estimates provided by the applicant’s hired appraiser.

Instead, staff merely “parrots” the appraiser’s own “boiler-plate” statement of conformance, and staff shamelessly hides behind the statement that “there is no statutory obligation for the City to obtain a third party review of the claimant’s appraisals.”

Obviously, with this level of irresponsible oversight by the staff, an appraiser can feel free to “finesse” the estimates or, as may have happened in the Moore case, simply inadvertently made errors. By allowing staff to shirk their responsibilities, the Planning Director (once again) grossly neglects his duty to protect the interest of Eugene citizens in seeing that Measure 49 claims are not abused.

If the City Council needs to determine whether the estimates were based on sound evidence and analysis (which they are not), then the City Council must direct the City Manager to get an *independent* review of the appraisal, including an independent opinion on whether the specific, well-documented objections that I previously submitted have merit.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Conte". The signature is written in a cursive, slightly slanted style.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402



MEMORANDUM

Date: July 20, 2018

To: Mayor Lucy Vinis and City Council

From: Dan Lawler, Assistant Planner

Subject: Moore M49 Claim (M49 18-1) – Additional Information

This memorandum provides additional information regarding several issues raised in testimony submitted for the Moore M49 (M49 18-1) claim. First, as discussed below, the statutory standard for evaluating M49 claims is whether a regulation restricts the desired residential use of the property. Second, legislative history shows that inclusion of the phrase “whichever is smaller” in EC 9.2751(18)(a)3. was not an error. Third, the claimant’s appraisal complies with the statutory requirements for Measure 49 claims and there is no statutory obligation for the City to obtain a third party review of the claimant’s appraisals.

Public testimony was made that the City should deny the Moore M49 claim because the cited regulation does not prevent the residential use of the property. A review of the statutes cited in that testimony shows that the appropriate inquiry under Measure 49 is not whether the regulation *prevents* residential use, but whether the regulation *restricts* residential use. Under ORS 195.305(1), “if a public entity enacts one or more land use regulations that *restrict* the residential use of private real property...the owner of the property shall be entitled to just compensation.” (Emphasis added) Similarly, ORS 195.310(1)(c) provides that a person may file a claim if “the person’s desired use of the property is *restricted* by one or more land use regulations.” (Emphasis added) (See Attachment A)

The statutory provisions discussed above do not contain the word “prevent” (see ORS 195.305(1) and 195.310(1)(c) in Attachment A). Though the statute does not define either “prevent” or “restrict,” according to Webster’s Third New International Dictionary, “prevent” means “to keep from happening or existing,” while “restrict” means “to set bounds or limits to: hold within bounds.” (See *Webster’s Third New Int’l Dictionary* 1798, 1937 (unabridged ed. 1986)). The language of the statute requires localities to determine whether a regulation confines a residential use of the property within certain limits, rather than whether a regulation stops residential use of the property from happening altogether.

Public testimony was made that Measure 49 requires an owner to *prove* that building a dwelling of 462 square feet is infeasible. Valid Measure 49 claims require a regulation to restrict, rather than make infeasible or completely prevent, a residential use of property. The claimant is not required to address whether a 462 square foot dwelling is feasible on the property. In conformity with the language of the statute, the Moore M49 claim shows that EC 9.2751(18)(a)3. restricts residential use of the property to a maximum dwelling size of 462 square feet (down from the more than 2,000 square foot dwelling that would have previously been allowed on the property).

Measure 49 claims can be made for restrictions on a claimant's desired residential use of the property. ORS 195.310(1)(c) states that a person may file a claim if "the person's desired use of the property is restricted by one or more land use regulations." Similarly, ORS 195.310(1)(b) allows claims if "the person's desired use of the property is a residential use." (See Attachment A) The statute specifically accounts for restrictions on a claimant's *desired* use of property. Property owners are not required to show that the regulation makes all residential uses infeasible.

Public testimony was made that the City's response to a prior M49 claim (Wilson) should be applied to the current claim. There are important differences between the claims. In the Wilson claim, the City concluded that the regulation at issue did not restrict the residential use of the property because the claimants had other viable methods to achieve their desired residential use. In the Moore M49 claim, the claimant appears to have no viable method to achieve her desired residential use that was allowed prior to the enactment of EC 9.2751(18)(a)3., which is the construction of a 1,200 square foot home. In addition, the City Manager concluded that the appraisals for the Wilson claim did not conform to the Uniform Standards of Professional Appraisal Practice, as required by Measure 49, and that conclusion contributed to the City Manager's recommendation to deny the claim.

Regarding the legislative history of the code section regulating the size of dwellings on alley access lots, EC 9.2751(18)(a)3. states that for alley access lots, "the total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller." Public testimony was made that the word "smaller" is an error and that it should be replaced by the word "greater." A review of legislative history from the 2014 single family code amendments does not appear to indicate that "greater" was the intended word. The legislative history suggests instead that the drafters intended for dwellings on alley access lots to be equal to or smaller than 800 square feet.

An email dated February 16, 2014 indicates that several community members reviewed and supported the revised ordinance containing the language "whichever is smaller" (see Attachment B). The February 16, 2014, email includes a document created by community members that "provides a very concise and precise set of changes for code related to SDUs, development on existing alley access lots and accessory buildings" (see Attachment B). On page

3 of the document, under the “development standards for existing alley access only lots” heading, it states that building size for existing alley access lots should be changed to be the same as for detached SDUs. On page 2 of the document, under the “lot and development standards for SDUs” heading, it states that building size should be “a maximum total square footage of 10% of lot area, not to exceed 800 s.f., for both attached and detached SDUs.” In the legislative history reviewed by staff, including the draft ordinance and related Council packet materials leading up to adoption (see Attachment C), staff did not find any indication that the code drafters intended to limit building size for alley access lots to 10% of lot size or 800 square feet, whichever is *greater*. The legislative history appears to indicate that EC 9.2751(18)(a)3. is correct and free from error.

Public testimony was made that the appraisal provided with the M49 claim overstates the reduction in the fair market value of the property. According to the claim, the regulation diminishes potential building size on the property from 50% of lot coverage (2,310 square feet) to 462 square feet. The appraisal that was submitted by the claimant to place a value on this reduction conforms with Measure 49’s statutory requirements. For an appraisal to be valid under Measure 49, ORS 195.310(2)(a-c) requires: 1) a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308 to prepare the appraisal; 2) the appraisal to comply with the Uniform Standards of Professional Appraisal practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and 3) the appraisal to determine the highest and best use of the property at the time the land use regulation was enacted. (See Attachment A)

Both appraisers, Zoe York and Richard Duncan, are certified general appraisers licensed by the State of Oregon (see Attachment D), as required by ORS 195.310(2)(a). The first page of the appraisal certifies that it conforms to the Uniform Standards of Professional Appraisal Practice as required by ORS 195.310(2)(b). No testimony has been provided to indicate that the appraisal does not comply with the Uniform Standards of Professional Appraisal Practice. Finally, the Moore appraisal identifies “allowable residential use in the R-1 zone, subject to general development standards” as the highest and best use of the property at the time the restricting regulation was enacted, as required by ORS 195.310(2)(c) (see page 6 of Attachment D).

Attachments

- Attachment A – Selected Provisions of Oregon Revised Statutes
- Attachment B – Email from Carolyn Jacobs, dated February 16, 2014 with Draft R-1 Code Amendment Recommendations Attached
- Attachment C – June 16, 2014 City Council AIS and Meeting Materials including Draft Ordinance
- Attachment D – Appraisal for Moore M49 (M49 18-1) Claim

2017 ORS 195.305¹

Compensation for restriction of use of real property due to land use regulation

- (1) If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in ORS 195.310 (Claim for compensation) to 195.314 (Notice of claim).
- (2) Just compensation under ORS 195.310 (Claim for compensation) to 195.314 (Notice of claim) shall be based on the reduction in the fair market value of the property resulting from the land use regulation.
- (3) Subsection (1) of this section shall not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:
 - (a) That restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
 - (b) That restrict or prohibit activities for the protection of public health and safety;
 - (c) To the extent the land use regulations are required to comply with federal law;
 - (d) That restrict or prohibit the use of a property for the purpose of selling pornography or performing nude dancing;
 - (e) That plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary; **or**
 - (f) That plan and rezone land within an urban growth boundary to an industrial zoning classification.
- (4) (a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just compensation under this section. Nothing in subsection (3) of this section is intended to affect or alter rights provided by the Oregon or United States Constitution.

2017 ORS 195.310¹

Claim for compensation

- **calculation of reduction in fair market value**
- **highest and best use of restricted property**
- **status of use authorized**

- (1) A person may file a claim for just compensation under ORS 195.305 (Compensation for restriction of use of real property due to land use regulation) and 195.310 (Claim for compensation) to 195.314 (Notice of claim) after June 28, 2007, if:
- (a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;
 - (b) The person's desired use of the property is a residential use or a farming or forest practice;
 - (c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; **and**
 - (d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (Compensation for restriction of use of real property due to land use regulation) (3), has reduced the fair market value of the property.
- (2) For purposes of subsection (1) of this section, except as provided in subsection (4) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average

interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

- (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;
 - (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; **and**
 - (c) Unless the claim is based on the enactment of one or more land use regulations described in ORS 195.300 (Definitions for ORS 195.300 to 195.336) (14)(e), expressly determine the highest and best use of the property at the time the land use regulation was enacted.
- (3) Unless the claim is based on the enactment of one or more land use regulations described in ORS 195.300 (Definitions for ORS 195.300 to 195.336) (14)(e), relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.
- (4) For a claim based on a land use regulation described in ORS 195.300 (Definitions for ORS 195.300 to 195.336) (14)(e), the reduction in fair market value:
 - (a) Is the reduction in fair market value of a lawfully established unit of land that is attributable to the land use regulation on the date the claim is filed.
 - (b) May, at the election of the owner who files the claim, be supported:
 - (A) In the manner described in subsection (2) of this section; **or**
 - (B) By appraisals showing the value of the land and harvestable timber, with and without application of the land use regulation, conducted in accordance with generally accepted forest industry practices for determining the value of timberland.

LAWLER Daniel R

From: KLEIN Glenn
Sent: Monday, February 17, 2014 2:17 PM
To: HANSEN Alissa H; DAVIES Anne C
Cc: MEDARY Sarah J; BURKE Carolyn J
Subject: FW: Recommendations for R-1 code amendments
Attachments: Draft R-1 Code Amendment Recommendations 16-Feb-2014.pdf

Alissa and Anne - Not sure if this is the same as the earlier one or different. In case it is different, here it is.

From: Carolyn Jacobs [carolyn.i.jacobs@gmail.com]
Sent: Sunday, February 16, 2014 4:42 PM
To: *Eugene Mayor, City Council, and City Manager
Subject: Recommendations for R-1 code amendments

Dear Mayor and City Councilors,

Please find attached specific recommendations for addressing unresolved issues with the R-1 Code Amendments.

The attached document provides a very concise and precise set of changes for code related to SDUs, development on existing alley access lots and accessory buildings.

We are also recommending that the code to allow creation of new alley access lots be put on hold until this problematic concept can be dealt with more thoroughly during neighborhood planning processes. As you know, taking the time to get this concept right would have an insignificant impact on the capacity for single-family housing over the next twenty years.

In addition to myself, Paul Conte (JWN), Sue Prichard (Amazon) and Bill Aspegren SUNA) have also reviewed the revised ordinance and believe it reflects the values expressed by many neighborhood leaders across the city.

We hope this will be helpful to you and staff in moving quickly to complete the R-1 Code Amendment process with the full support of the community.

Please let us know if you have any questions.

Thank you for your support of our neighborhoods.

Carolyn Jacobs, Chair
 South University Neighborhood Association

Draft R-1 Code Amendment Recommendations
16-Feb-2014

INTRODUCTION

The following is a response to the City Manager's request for specific direction from councilors on changes they want to see in the draft R-1 ordinance that was presented by staff.

Summary of all recommendations.

- **Interim Protection Measures** – Put in a separate ordinance, based on the revised code e-mailed to council on February 14 by university neighborhood leaders. Ordinance should have an immediate effective date, and the effective date must not be dependent on DLCD acknowledgement.
- **Creation of new alley access only lots** – Remove all code that would allow creation of new alley access only lots. Hold off on further work on this concept until it can be dealt with as part of developing or revising specific neighborhood plans.
- **Owner occupancy standards for SDUs** – Adopt these as part of the ordinance that implements Interim Protection Measures. Make them permanent and city-wide when the city-wide amendments for SDU development standards are adopted.
- **Lot and development standards for SDUs** – Revise as described below.
- **Development standards for existing alley access only lots** – Revise as described below.
- **Development standards for accessory buildings** – Revise as described below.

SUMMARY OF RECOMMENDATIONS IN THIS DOCUMENT

Lot and development standards for SDUs.

Make the following changes to the draft code:

- Count SDUs when calculating density.
- Increase minimum lot sizes to maintain density within the ***Metro Plan*** Low Density Residential range. Allow smaller lots through existing PUD provisions.
- Disallow SDUs on “flag lots.”
- Reduce the height of structures close to neighboring backyards by reducing the “inflection” point at which the sloped setback begins.
- Increase the angle of the sloped setback to allow reasonable massing of structures.
- Rewrite adjustments to clarify criteria and limit extent of allowable adjustments.

Development standards for existing alley access only lots

- Use the same setback, height and massing standards that are used for detached SDUs.

Development standards for accessory buildings

- Reduce the height of structures close to neighboring backyards by reducing the “inflection” point at which the sloped setback begins.
- Increase the angle of the sloped setback to allow reasonable massing of structures.
- Rewrite adjustments to clarify criteria and limit extent of allowable adjustments.

DETAILS OF RECOMMENDATIONS IN THIS DOCUMENT

Lot and development standards for SDUs.

Amend Table 9.2740 to count SDUs when calculating density:

“All dwellings, **including secondary dwellings**, shall meet minimum and maximum density requirements in accordance with Table 9.2750.”

Other than the above, the SDU standards are mostly specified in the proposed code under section **9.2751 Special Development Standards for Table 9.2750** under the “**Secondary Dwellings**” subsection, in the following subsections:

- **Lot area.** Require a minimum of 6,100¹ square feet for an SDU, whether attached or detached. Allow smaller lots through a PUD, as long as overall density remains within **Metro Plan** Low Density Residential range. Do not allow SDUs on flag lots.
- **Building size.** Allow a maximum total square footage of 10% of lot area, not to exceed 800 s.f., for both attached and detached SDUs.
- **Building Height/Setback.** For detached SDUs and any portion of an attached SDU that is more than 60 feet from the front property line:

The dwelling (or portion of dwelling) shall be limited by interior yard setbacks that are five feet, with an inflection point at 8 feet height and a sloped setback from that height that increases at the rate of 10 inches vertically for every additional 12 inches horizontally. (*Note that setbacks are sloped. They do not have “pitch” – that is a term that applies to roofs and other structures, not setback planes. It confuses people who may think that the setback slope is a limit to roof pitch, when it is not.*)

With this setback configuration, it’s reasonable to allow a maximum building height of 18 feet on all lots for both detached SDUs and affected portions of attached SDUs. (An 18 foot height would have to be 13 feet from the adjacent property.)

Do not allow any intrusions into the setback areas other than eaves and chimneys.

- Rewrite **adjustment** (35) to clarify criteria and set maximum extent of allowable adjustments, as follows:

Conversion of Existing Building. Obviously, allow conversion if the structure meets all SDU standards. For structures that would conform to all standards, *except* the sloped setback plane, allow only for total square footage no more than 600 s.f. and no portion of structure more than 15’ above grade. Allow conversion of such structures that are closer than five feet to an interior lot line, only if the adjacent property owner grants an easement.

Building Height. Allow a max height of 24 feet if all of the structure that would fall within the scope of the “Building Height/Sloped Setback” standard is at least 20 feet from all interior property lines and within the sloped setback.

¹ Councilors may want to adopt a slightly different minimum lot size. Here are the relevant factors:

- The **Metro Plan** Low Density Residential density maximum is 14.28 dwellings per net acre (du/na), which is equivalent to one dwelling per 3,050 square feet or two dwellings per 6,100 square feet.
- The City’s R-1 Low Density Residential Zone maximum density is 14 du/na, which is equivalent to one dwelling per 3,111 square feet or two dwellings per 6,222 square feet.

Development standards for existing alley access only lots

These standards are mostly specified in the proposed code under section **9.2779 Alley Access Lot Standards** under the “Development Standards.” Subsection. The following proposed subsections should be changed to be the same as for detached SDUs:

- **Building Size.**
- **Building Height/Interior Setback.**

In addition to using the same Building Height standards, use the same **adjustment** for building height. (i.e., replace adjustment (36) with the rewritten adjustment (35).)

Development standards for accessory buildings

These standards are mostly specified in the proposed code under section **9.2751 Special Development Standards for Table 9.2750** under the “Accessory Buildings in R-1” subsection, in the following subsections:

- **Building Size.** Simplify accessory building size limits as 10% of lot size for all lots, regardless of lot size or development site size. Allow alternatives for larger development sites only through PUDs.
- **Building Height/Setback.** Simplify and provide adequate protection by having interior yard setbacks be five feet, with an inflection point of 8 feet and a sloped setback that increases at the rate of 10 inches vertically for every additional 12 inches horizontally.

With this setback configuration, it’s reasonable to allow a maximum building height of 25 feet on all lots. (A 25 foot height would have to be 19 feet from the adjacent property.) This should be stated as: “No part of the building (except chimneys), shall be more than 25 feet above grade.”

- Rewrite **adjustment** (34) to allow only up to a five foot increase in height in a PUD and as long as the entire structure meets the sloped setback standards. (*With a 25 foot max height, as suggested, there is no great need, and there is significant potential impact, for allowing higher accessory buildings unless they’re part of a PUD. PUD approval criteria already require development to be “compatible” and have “minimal impact” on surrounding areas.*)

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Public Hearing: An Ordinance Concerning Single-Family Code Amendments for Accessory Buildings, Alley Access Lots and Secondary Dwellings; Amending Sections 9.0500, 9.1245, 9.2740, 9.2741, 9.2750, 9.2751, 9.6775, and 9.8030; and Providing an Effective Date (City File CA 13-3)

Meeting Date: June 16, 2014
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: 5
Staff Contact: Alissa Hansen
Contact Telephone Number: 541-682-5508

ISSUE STATEMENT

The City Council will hold a public hearing to consider a package of land use code amendments related to single-family housing in the R-1 Low Density Residential zone. The proposed amendments would revise development standards for secondary dwellings, dwellings on existing alley access lots, and accessory buildings citywide (except within Amazon, Fairmount and South University neighborhoods).

BACKGROUND

As part of Envision Eugene, the City Council initiated land use code amendments to promote secondary dwellings and allow for the creation of new alley access lots. As initiated, these amendments were intended to create additional capacity within the urban growth boundary (UGB) and implement several Envision Eugene strategies under the housing affordability, neighborhood livability and climate change/energy resiliency pillars related to smaller homes.

Planning Commission Process

Following two work sessions and a September 2013 public hearing, the Planning Commission conducted extensive deliberations on the entire package of single-family code amendments (the citywide compatibility standards and the university area protection measures) over the course of three meetings. While there were a handful of straw votes on specific details where the Planning Commissioners were not in complete agreement, there was substantial agreement on the vast majority of the amendments, including nearly unanimous agreement on the Planning Commission's recommended modifications, see Attachment A. To that end, the entire Planning Commission voted (7 to 0) to forward to the City Council a recommendation to approve the entire package of code amendments.

City Council Process

The City Council held a work session on October 30, 2013, and a public hearing on November 18, 2013, on the entire package of amendments. At the February 12, 2014, work session, the City

Council directed staff to return with a separate ordinance which on its own would accomplish the interim protection measures. Subsequently, on March 12, 2014, the City Council adopted the university area interim protection measures, which became effective on April 12, 2014. Those code amendments apply to the existing single-family neighborhoods surrounding the University of Oregon (Amazon, Fairmount and South University), which have experienced a substantial increase in unintended housing development associated with the demand for student housing and the proximity of the university. As adopted, they prohibit certain dwelling types and land divisions, and limit certain uses until more comprehensive planning of these areas can be completed, as committed to through Envision Eugene.

At the May 14, 2014, work session on the remaining single-family amendments, the City Council directed staff to return with a revised ordinance incorporating an alternative proposal provided to the City Council by community/neighborhood leaders, and to schedule a June 2014 public hearing. A revised ordinance reflecting the City Council's direction is provided as Attachment B. The revisions are based on the alternative proposal contained in Attachment C, which was provided to the council on February 16, 2014. In summary, the revised ordinance includes the following changes from the Planning Commission's recommendation:

- Increase the minimum lot size required for construction of a secondary dwelling
- Limit the building size of secondary dwellings and dwellings on alley access lots to 10 percent of the total lot area, not to exceed 800 square feet
- Prohibit secondary dwellings on flag lots (currently allowed on flag lots that are 13,500 square feet or greater in size)
- Change the maximum building height/interior yard sloped setback for secondary dwellings and for dwellings on existing alley access lots to be identical to those adopted as part of the University Area Interim Protection Measures
- Not allow the creation of new alley access lots
- Limit the size of accessory buildings to 10 percent of the total lot area
- Establish maximum building height of 25 feet for all accessory buildings, and change the interior yard sloped setback to be identical to that adopted as part of the University Area Interim Protection Measures
- Limit extent of adjustment reviews

Staff prepared a matrix that contains a summary comparison of the current land use code provisions, the amendments contained in the Planning Commission's recommendation and the alternative proposal (as contained in the revised ordinance). The final column of the matrix includes some of the effects of the alternative proposal. This matrix is provided as Attachment D.

Previously, these code amendments were considered part of the land use efficiency measures to accommodate additional single-family housing within the current urban growth boundary. However, based on the elimination of new alley access lots, the increase in minimum lot size required for secondary dwellings and the prohibition of secondary dwellings on larger flag lots, these amendments result in a reduction in the number of housing units expected within the current urban growth boundary. The final number assigned will be dependent on the analysis of the final adopted package.

Public Notice

Because two of the proposed changes would limit the ability of property owners of certain sized lots to construct secondary dwellings, Oregon Revised Statute 227.186 (commonly referred to as

Measure 56) requires that notice be mailed to owners of property potentially affected by those specific changes. Notice was mailed to owners of 4,532 R-1 zoned lots within the city limits (between 4,500 and 6,099 square feet in area) and owners of approximately 279 R-1 zoned flag lots (13,500 square feet or greater) within the city limits that would no longer be eligible for secondary dwellings due to the proposed increase in the minimum lot size required for secondary dwellings, and the proposed prohibition of secondary dwellings on flag lots, respectively. Notice of the public hearing was also mailed to interested parties, per Eugene Code requirements.

As a result of the Measure 56 notice, over 35 property owners have contacted staff as of June 6, 2014 (via emails or telephone calls) regarding the proposed changes. Generally, the comments range from no concerns (because the property owner does not have plans for building a secondary dwelling or because there are already two units on the property) to those who expressed concern about the proposed changes due to loss of housing possibilities, and because limiting secondary dwellings seems counter to the City's goals of compact urban growth. All written testimony received by staff through June 9, 2014, is provided as Attachment D. Written testimony received at the City Council's November 2013 public hearing and during the one-week subsequent open record period is available on the project webpage: <http://www.eugene-or.gov/index.aspx?NID=2088>

RELATED CITY POLICIES

Findings addressing consistency with related City policies, including provisions of the Metro Plan and applicable refinement plans, are included as an exhibit to the revised ordinance (Exhibit D of Attachment B).

COUNCIL OPTIONS

This item is scheduled for a public hearing only. No options are proposed at this time.

CITY MANAGER'S RECOMMENDATION

This item is scheduled for a public hearing only. No recommendation is proposed at this time.

SUGGESTED MOTION

This item is scheduled for a public hearing only. No motion is proposed at this time.

ATTACHMENTS

- A. Record of Planning Commission Deliberations
- B. Revised Ordinance and Findings
- C. Draft R-1 Code Amendments Recommendations, provided by Carolyn Jacobs, SUNA
- D. Summary Comparison Matrix
- E. Written Testimony Received through June 9, 2014

FOR MORE INFORMATION

Staff Contact: Alissa Hansen

Telephone: 541-682-5508
Staff E-Mail: alissa.h.hansen@ci.eugene.or.us

**Summary of Planning Commission Recommendation
Single Family Code Amendments
October 21, 2013**

The Planning Commission voted unanimously (7 to 0) to recommend approval of the Single Family Code Amendments, with the following modifications:

Secondary Dwelling Units

- Building Size: Change primary residence to principal residence *[General agreement, no vote taken]*
- Ownership/Occupancy: Use majority ownership instead of percentage when determining ownership *[General agreement, no vote taken]*
- Minimum Wall Length: Modify to require a 2 foot deep by 5 foot wide minimum articulation on walls over 25 feet in length. Full height is intended to mean from floor to ceiling (allowing for cantilever floor joists). *[Straw vote 6-0-1 with Steve Baker indicating he was neutral]*

Alley Access Lots

- Distance from Street/Fire Access: Clarify distance requirement for lot and modify to require sprinklers in dwelling if any portion of house is beyond 150 feet of alley/street intersection *[Straw vote 7 to 0]*
- Lot Standards: Establish maximum lot size for new alley access lot size as 5,000 square feet *[General agreement, no vote taken]*
- Development Standards: Allow windows, dormers and balconies on second story of alley lot dwelling on any non-alley facing property line only with the written approval of the affected adjacent property owner, in lieu of requiring an adjustment review. *[Straw vote 7 to 0]*

Accessory Buildings

- Building size/setbacks: For lots 13,500 square feet or less in area, limit the total square footage of all accessory buildings to 1000 square feet. For lots greater than 13,500 square feet to 43,560 square feet, limit the total square footage of all accessory buildings to 10 percent of the lot area, not to exceed 3,000 square feet, and require 10 foot setback and 10:12 sloped setback. For lots greater than 43,600 square feet (one acre) in size, no limit on square footage of accessory buildings, but require 10 foot setback and 10:12 sloped setback. *[Straw vote 7 to 0]*

University Area Interim Protection Measures

- Timing/Sunset: Establish sunset date that interim measures would remain in effect for 42 months after the date of adoption. *[Straw vote 7 to 0]*
- Bedroom Count: Support 3 bedroom limit for new dwellings/remodels, with following exception: For any remodel that adds a bedroom or bedrooms beyond 3 bedrooms, the maximum number of unrelated individuals living in dwelling would be limited to 3 (instead of 5) as long as interim protection measures are in effect, and property owner would be required to record deed restriction stating such. *[Straw vote 7 to 0]*
- Occupancy: Add provision to require property owner to provide city with copy of current lease(s) or rental agreement(s) as a means of verifying occupancy (add as city wide provision) *[Straw vote 6 to 0]*
- Secondary Dwelling Units: Add development standards (see Exhibit 1 for draft development standards) to allow for secondary dwellings during the interim, subject to the 42 month sunset date. *[Straw vote 6 to 1 with John Jaworski voting in opposition due to preference for shorter sunset date.]*

Other Deliberation Topics

The Planning Commission discussed additional topics during their deliberations. However, the motions related to these topics did not pass, and as such are not included in their recommendation.

Secondary Dwelling Units

- Limit occupancy to 3 to 4 people and limit to 2 bedrooms *[general agreement to not add occupancy limit and to leave proposed bedroom limit]*
- Increase minimum lot size for detached secondary dwellings from 6,000 square feet to 6,225 square feet *[Straw vote 2 to 5 with Steve Baker and John Jaworski voting in favor. Those in favor indicated consistency with density requirements and concerns about compatibility, while those in opposition noted that new standards will improve compatibility, the interim standards will address pressures around the university, and satisfaction that existing requirement is consistent with density.]*

Alley Access Lots

- Lot Standards: Increase proposed minimum lot size from 2,250 to 3,600 square feet *[Straw vote 3 to 4 with Steve Baker, John Barofsky and John Jaworski voting in favor. Those in favor mentioned concerns about lot coverage, compatibility and density, while those in opposition noted that the proposed development standards, including building size and paving limitations would limit lot coverage, and that advisory committee looked at these issues extensively.]*
- Setbacks: Increase building setbacks from 5 feet to 10 feet from the two property lines perpendicular to alley *[Straw vote 3 to 4 with Steve Baker, John Barofsky and John Jaworski voting in favor. Those in favor indicated concerns about privacy, compatibility and transition, and noted that Portland requires 10 foot setbacks. Those in opposition noted that the proposed 5 foot setback works with the proposed sloped setbacks and other development standards to ensure compatibility, and that changing one standard in isolation may result in unintended consequences, including more two story buildings.]*

University Area Interim Protection Measures

- Sunset date: Set a date certain of July 31, 2017 for interim measures to automatically sunset *[Straw vote 3 to 4 with Steve Baker, Rick Duncan and John Jaworski voting in favor. Those in favor expressed support for certainty and specificity, while those in opposition noted that if the timing of the ordinance adoption changes or if the effective date changes, then the 42 month timeline provides more flexibility.]*

ORDINANCE NO. _____

AN ORDINANCE CONCERNING SINGLE FAMILY CODE AMENDMENTS FOR ACCESSORY BUILDINGS, ALLEY ACCESS LOTS AND SECONDARY DWELLINGS; AMENDING SECTIONS 9.0500, 9.1245, 9.2740, 9.2741, 9.2750, 9.2751, 9.6775, AND 9.8030, OF THE EUGENE CODE, 1971; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The following definitions in Section 9.0500 of the Eugene Code, 1971, are amended to provide as follows:

9.0500 Definitions. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

Accessory Building. Any authorized, detached building subordinate to the main building on the same development site. *In addition*, [F]for the purposes of EC 9.2700 through [9.2777]**9.2751**, in the R-1 zone, an accessory building that shares a common wall with the primary dwelling for less than 8 feet is considered a detached accessory building.

Bedroom. [A]*Within a dwelling*, a bedroom is any room that either:

- (A) Is designated as a bedroom on a development plan submitted to the city;
- (B) Is included in the number of bedrooms stated in an advertisement, rental or sales contract, marketing material, loan application, or any other written document in which the owner, or an authorized agent of the owner, makes a representation regarding the number of bedrooms available in the dwelling; or
- (C) Meets all of the following:
 1. Is a room that is a "habitable space" as defined by the current Oregon Structural Specialty Code (OSSC) or Oregon Residential Specialty Code (ORSC);
 2. Meets the OSSC or OSRC bedroom requirements for natural light, ventilation, and emergency escape and rescue windows;
 3. Is a room that is accessed by a door on an interior wall and that does not provide access to another room except for a bathroom, toilet room, closet, hall, or storage or utility space.

Kennel. An establishment or premises on which 4 or more dogs over 6 months of age are kept or maintained, whether by owners of the dogs or by persons providing facilities and care, and whether or not for compensation, not including the temporary keeping of one additional dog for up to 6 months in any 12-month period. For purposes of this definition, if the "premises" consists of a lot that contains a main dwelling and a secondary dwelling unit, the "premises" means the lot. (See [EC 9.2741(2)(a)5. and]EC 9.2751(17)(j)](a)6. and (c)10.)

Section 2. Section 9.1245 of the Eugene Code, 1971, is amended to provide as follows:

- 9.1245 Legal Pre-Existing Structures.** The structures listed in Table 9.1245 Legal Pre-Existing Structures shall be considered to be pre-existing as long as such structures were legally established. These structures may continue, and are not subject to the provisions of sections 9.1200 through 9.1230. Determinations as to whether a particular structure qualifies as a pre-existing structure shall be made by the Planning Director.

Table 9.1245 Legal Pre-Existing Structures		
<i>R-1 Low Density Residential</i>	<i>Secondary Dwelling</i>	<i>Limited to those in existence on ____ [effective date of ordinance]</i>
<i>R-1 Low Density Residential</i>	<i>Accessory Building</i>	<i>Limited to those in existence on ____ [effective date of ordinance]</i>
<i>R-1 Low Density Residential</i>	<i>Alley Access Lot Dwelling</i>	<i>Limited to those in existence on ____ [effective date of ordinance]</i>
R-1 Low Density Residential [within the] within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association	Secondary Dwelling, Rowhouse, Duplex, Triplex, Fourplex, Flag Lot, Alley Access Lot, Dwellings with 4 or more bedrooms, Accessory Building	Limited to those in existence on April 12, 2014

Section 3. The introductory provision for the entry for “Dwellings” under the “Residential” section in Table 9.2740 of Section 9.2740 of the Eugene Code, 1971, is amended to provide as follows:

- 9.2740 Residential Zone Land Use and Permit Requirements.** The following Table 9.2740 Residential Zone Land Use and Permit Requirements identifies those uses in the residential zones that are:
- (P) Permitted, subject to zone verification.
 - (SR) Permitted, subject to an approved site review plan or an approved final planned unit development.
 - (C) Subject to an approved conditional use permit or an approved final planned unit development.
 - (PUD) Permitted, subject to an approved final planned unit development.
 - (S) Permitted, subject to zone verification and the Special Development Standards for Certain Uses beginning at EC 9.5000.
 - (#) The numbers in () in the table are uses that have special use limitations that are described in EC 9.2741 Special Use Limitations for Table 9.2740.

The examples listed in Table 9.2740 are for informational purposes and are not exclusive. Table 9.2740 does not indicate uses subject to Standards Review. Applicability of Standards Review procedures is set out at EC 9.8465.

Table 9.2740 Residential Zone Land Uses and Permit Requirements					
	R-1	R-1.5	R-2	R-3	R-4
Residential					
Dwellings. (All dwellings, <i>including secondary dwellings</i> , shall meet minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards unless specifically exempted elsewhere in this land use code. All dwelling types are permitted if approved through the Planned Unit Development process.)					

Section 4. Subsection (2) of Section 9.2741 of the Eugene Code, 1971, is amended to provide as follows, and by moving the provisions of (2)(a) and (b) to Section 9.2751(17) as shown in Section 6 of this Ordinance:

9.2741 Special Use Limitations for Table 9.2740.

- (2) **Secondary Dwellings.** Secondary dwellings are only permitted in R-1 and are subject to the standards [below] *beginning at EC 9.2750, except that new secondary dwellings are prohibited on alley access lots and flag lots.*
- ~~[(a) Secondary dwellings that are within the same building as the primary dwelling shall comply with all of the following:~~
- ~~1. The dwelling shall not exceed 800 square feet unless occupying the full story of a multi-story structure with ground floor residential use.~~
 - ~~2. Either the primary dwelling or the secondary dwelling shall be occupied by the property owner.~~
 - ~~3. There shall be at least 1 off-street parking space on the property.~~
 - ~~4. Except for flag lots, the lot shall be at least 4,500 square feet. Flag lots shall contain at least 13,500 square feet to permit a secondary dwelling.~~
 - ~~5. No more than 3 dogs shall be permitted on the lot, not including the temporary keeping of one additional dog for up to 6 months in any 12-month period.~~
- ~~[(b) In addition to the standards in subsection (a) of this section, detached secondary dwellings shall comply with the following:~~
- ~~1. Except for flag lots, the lot shall be at least 6,000 square feet. Flag lots shall contain at least 13,500 square feet.~~
 - ~~2. If located within 20 feet of a property line, the maximum building height shall not exceed 15 feet.~~
 - ~~3. Provide a pedestrian walkway from the street or alley to the primary entrance of the secondary dwelling.~~
 - ~~4. The primary entrance to a secondary dwelling shall be defined by a roofed porch.~~
 - ~~5. Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the street or alley.~~

Prior to issuance of a final occupancy permit for the secondary dwelling (or the primary dwelling if it is constructed later), the owner shall provide the city with a copy of a notice that has been recorded with the Lane County Clerk that documents the requirement that the secondary dwelling or primary dwelling is, and will remain, owner/occupied.]

Section 5. Section 9.2750 of the Eugene Code, 1971, is amended to provide as follows:

- 9.2750 Residential Zone Development Standards.** In addition to applicable provisions contained elsewhere in this code, the development standards listed in this section and in EC 9.2751 to EC 9.2777 shall apply to all development in residential zones. In cases of conflicts, standards specifically applicable in the residential zone shall apply. *In cases of conflicts in this section between the general standards and the area-specific standards, the area-specific standards shall apply.*

The following Table 9.2750 sets forth the residential zone development standards, subject to the special development standards in EC 9.2751.

Table 9.2750 Residential Zone Development Standards (See EC 9.2751 Special Development Standards for Table 9.2750.)					
	R-1	R-1.5	R-2	R-3	R-4
Density (1)					
Minimum Net Density per Acre	No Minimum	--	10 units	20 units	20 units
Maximum Net Density per Acre	14 units	--	28 units	56 units	112 units
Maximum Building Height (2), (3), (4), (5), (16), (17), (18)					
Main Building. [Includes Secondary Dwellings Within the Main Building] <i>Does not include main building on Alley Access Lot</i>	30 feet	35 feet	35 feet	50 feet	120 feet
<i>Main Building on Alley Access Lot</i>	See (18)	--	--	--	--
Accessory Building. [Includes Secondary Dwellings Detached from Main Building (See EC 9.2741(2)(b) if located within 20 feet of property line.)]	[20 feet] See (16)	20 feet	25 feet	30 feet	30 feet
Secondary Dwelling	See (17)	--	--	--	--
Minimum Building Setbacks (2), (4), (6), (9), (10), (11), (16), (17), (18)					
Front Yard Setback (excluding garages and carports)	10 feet	10 feet	10 feet	10 feet	10 feet
Front Yard Setback for Garage Doors and Carports (12)	18 feet	--	18 feet	18 feet	18 feet
Interior Yard Setback (except where use, structure, location is more specifically addressed below)(7)	5 feet or minimum of 10 feet between buildings	--	5 feet or minimum of 10 feet between buildings	5 feet or minimum of 10 feet between buildings	5 feet or minimum of 10 feet between buildings

Table 9.2750 Residential Zone Development Standards (See EC 9.2751 Special Development Standards for Table 9.2750.)					
	R-1	R-1.5	R-2	R-3	R-4
Interior Yard Setback for Education, Government and Religious Uses.	15 feet	--	15 feet	15 feet	15 feet
Interior Yard Setback for Buildings Located on Flag Lots in R-1 Created After December 25, 2002 (See EC 9.2775(5)(b))	10 feet	--	--	--	--
<i>Interior Yard Setback for Accessory Buildings in R-1</i>	See (16)	--	--	--	--
<i>Interior Yard Setback for Secondary Dwellings</i>	See (17)	--	--	--	--
<i>Interior Yard Setback for Alley Access Lots in R-1</i>	See (18)	--	--	--	--
Area-Specific Interior Yard Setback	--	--	--	See (8)	See (8)
Maximum Lot Coverage (18)					
All Lots, [Excluding Rowhouse Lots] <i>except where specifically addressed below</i>	50% of Lot	--	50% of Lot	--	--
<i>Lots with Secondary Dwellings (Area-Specific)</i>	See (17)(c)	--	--	--	--
<i>Alley Access Lots in R-1</i>	See (18)	--	--	--	--
Rowhouse Lots	75% of Lot	75% of Lot	75% of Lot	75% of Lot	75% of Lot
Outdoor Living Area (13)					
Minimum Total Open Space	--	--	20% of dev. site	20% of dev. site	20% of dev. site
Fences (14)					
Maximum Height Within Interior Yard Setbacks	6 feet	42 inches	6 feet	6 feet	6 feet
Maximum Height within Front Yard Setbacks	42 inches	42 inches	42 inches	42 inches	42 inches
Driveways and Parking Areas (15)					
General Standards	--	--	--	See (15)(b)	See (15)(b)
Area-Specific	See (15)(a)	--	--	--	--
Accessory Buildings in R-1 (16)					
<i>General Standards</i>	See (16)(a)	--	--	--	--
Area-Specific	See (16)(b)	--	--	--	--
Secondary Dwellings [Units] (17)					
General Standards	See [EC 9.2741(2)] (17)(a) and (b)	--	--	--	--

Table 9.2750 Residential Zone Development Standards (See EC 9.2751 Special Development Standards for Table 9.2750.)					
	R-1	R-1.5	R-2	R-3	R-4
Area-Specific	See (17)(c)	--	--	--	--
Alley Access Lots (18)					
<i>General Standards</i>	See (18)(a)				
Area-Specific	See (18)(b)	--	--	--	--
Maximum Bedroom Count (19)					
Area-Specific	See (19)	--	--	--	--

Section 6. Figure 9.2751(16)(a)2.a. is added as shown on Exhibit A attached hereto; Figure 9.2751(16)(c)1. is relabeled to Figure 9.2751(16)(b)3. as shown on Exhibit B attached hereto; Figure 9.2751(18)(k) is relabeled to Figure 9.2751(18)(a)11. as shown on Exhibit C attached hereto; and Subsections (3), (11), (16), (17), and (18) of Section 9.2751 of the Eugene Code, 1971, are amended; to provide as follows:

9.2751 Special Development Standards for Table 9.2750.

(3) Building Height.

- (a) Except as provided in (b) and (c) below, in the R-3 and R-4 zone, the maximum building height shall be limited to 30 feet for that portion of the building located within 50 feet from the abutting boundary of, or directly across an alley from, land zoned R-1.
- (b) For that area bound by Patterson Street to the west, Agate Street to the east, East 18th Avenue to the north and East 20th Avenue to the south:
 1. In the R-3 zone between 19th and 20th Avenues, the maximum building height is 35 feet.
 2. In the R-4 zone west of Hilyard Street, the maximum building height is 65 feet.
 3. In the R-4 zone east of Hilyard Street, the maximum building height is:
 - a. 35 feet within the area south of 19th Avenue;
 - b. 50 feet within the half block abutting the north side of 19th Avenue;
 - c. 65 feet within the half block abutting the south side of 18th Avenue.

(See Figure 9.2751(3)).

- (c) For that area bound by Hilyard Street to the west, Kincaid Street to the east, East 13th Alley to the north and East 18th Avenue to the south the maximum building height is 65 feet.

(See Figure 9.2751(3)).

- (d) An additional 7 feet of building height is allowed for roof slopes of 6:12 or steeper in the R-1, R-2, R-3 and R-4 zones, except that this additional building height allowance is not permitted *in the R-1 zone* for secondary

dwellings, accessory buildings [in the R-1 zone,] or development on alley access lots[within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association].

- (11) **Alley Access Lots/Parcels.** [Alley access parcels shall be subject to the provisions of this section for all yards, including the yard adjacent to the property line separating the alley access parcel from the original parent parcel. Alley access parcels have only interior yard setbacks.] There are no front yard setbacks since there is no frontage on a street. (See EC 9.2751(18) for Alley Access Lot Standards *in R-1*[within the city-recognized boundaries of the Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association].)

(16) **Accessory Buildings in R-1.**

- (a) **General Standards.** *Except as provided in subsection (b) below, the following standards apply to all new accessory buildings:*
1. **Building Size.** *The maximum square footage of all accessory buildings shall not exceed 10 percent of the lot area, except that accessory buildings on development sites larger than one acre (43,560 square feet) may exceed that maximum size if approved through the PUD process. For the purposes of calculating square footage, all floors of a multi-story structure shall be included.*
 2. **Building Height/Interior Setback.**
 - a. *Interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line to a maximum building height of 25 feet, except as provided below. (See Figure 9.2751(16)(a)2.a.)*
 - b. *Where the entire structure meets the sloped setback standard above, approval for up to a 5-foot increase in height may be granted only through the PUD process.*
 3. **Use.** *No accessory building shall be rented, advertised, represented or otherwise used as an independent dwelling. An accessory building shall be limited to 2 plumbing fixtures, except that an accessory building may have 3 plumbing fixtures if, prior to the city's issuance of a building permit for the accessory building, the owner records a deed restriction with the Lane County Clerk, on a form approved by the city, that includes the following provisions:*
 - a. *The accessory building may not be rented, advertised, represented, or otherwise used as an independent dwelling.*
 - b. *The deed restriction runs with the land and binds the property owner(s), heirs, successors and assigns.*
 - c. *The deed restriction may be terminated, upon approval by the city, at such time as the city code no longer limits the use of said accessory building for residential uses, or upon removal of the accessory building.*
- (b) **Area-Specific Accessory Building Standards.** The following standards apply to all new accessory buildings associated with a

dwelling in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association [that are detached or that share a common wall with the primary dwelling for less than 8 feet]:

- ~~(a)~~1. In addition to any accessory buildings legally established prior to April 12, 2014, one accessory building is allowed.
- ~~(b)~~2. The accessory building shall not exceed 400 square feet in area.
- ~~(c)~~3. Building Height/Interior [Sloped] Setback.

~~1-a.~~ The interior yard setbacks shall be at least 5 feet from the interior lot lines. In addition, at a point that is 8 feet above finished grade, the setbacks shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot lines until a point not to exceed a maximum building height of 18 feet.

~~2-b.~~ The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.

(See Figure 9.2751(16))[(c)4-1]/(b)3.)

- ~~(d)~~4. An accessory building greater than 200 square feet in area shall have a minimum roof pitch of 6 inches vertically for every 12 inches horizontally.
- ~~(e)~~5. No accessory building shall be rented, advertised, represented or otherwise used as an independent dwelling.
- ~~(f)~~6. The accessory building shall not include more than one plumbing fixture.
- ~~(g)~~7. For an accessory building with one plumbing fixture, prior to the city's issuance of a building permit for the accessory building, the owner shall provide the city with a copy of a deed restriction on a form approved by the city that has been recorded with the Lane County Clerk. The deed restriction must include the following statements:
 - ~~1-a.~~ The accessory building shall not be rented, advertised, represented or otherwise used as an independent dwelling.
 - ~~2-b.~~ If the property owner is unable or unwilling to fulfill the requirements of the Eugene Code for use of the accessory building, then the property owner shall discontinue the use and remove the plumbing fixture from the building.
 - ~~3-c.~~ Lack of compliance with the above shall be cause for code enforcement under the provisions of the applicable Eugene Code.
 - ~~4-d.~~ The deed restriction shall lapse upon removal of the accessory building or removal of the plumbing fixture. The City must approve removal of deed restriction.
 - ~~5-e.~~ The deed restriction shall run with the land and be binding upon the property owner, heirs and assigns and is binding upon any successor in ownership of the property.

(17) Secondary Dwellings in R-1.

- (a) General Standards for Attached Secondary Dwellings. Except as provided in subsection (c) below, secondary dwellings that are**

within the same building as the primary dwelling shall comply with all of the following:

1. Lot Area. To allow for a secondary dwelling, the lot shall contain at least 6,100 square feet except that secondary dwellings are prohibited on alley access lots and flag lots.
2. Building Size. The total building square footage of a secondary dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
3. Building Height/Interior Setback.
 - a. For attached secondary dwellings located within 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet, and maximum building height shall be limited to that of the main building as per Table 9.2750
 - b. For attached secondary dwellings located greater than 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line to a maximum building height of 18 feet. (See Figure 9.2751(16)(b)3.)
 - c. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in subsections a. and b. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet.
4. Minimum Attachment. The secondary dwelling and the primary dwelling must share a common wall or ceiling for a minimum length of 8 feet to be considered attached.
5. Maximum Bedrooms. The secondary dwelling shall contain no more than 2 bedrooms.
6. Dog Keeping. No more than 3 dogs shall be permitted on the lot, not including the temporary keeping of one additional dog for up to 6 months in any 12-month period.
7. Ownership/Occupancy Requirements. Either the primary dwelling or the secondary dwelling shall be the principal residence of the property owner. The principal residence must be occupied for a minimum of 6 months of each calendar year by a property owner who is the majority owner of the property as shown in the most recent Lane County Assessor's roll. If there is more than one property owner of record, the owner with the majority interest in the property shall be deemed the property owner. Any property owner of record holding an equal share in the property may be deemed the majority owner if no other owner owns a greater interest. The principal residence cannot be leased or rented when not occupied by the property owner. Prior to the city's issuance of the building permit for the secondary dwelling (or the

- primary dwelling if it is constructed later) the property owner must provide the city with a copy of the property deed to verify ownership and two forms of documentation to verify occupancy of the primary residence. Acceptable documentation for this purpose includes voter's registration, driver's license, homeowner's insurance, income tax filing, and/or utility bill. When both the primary and secondary dwelling are constructed at the same time, such documentation must be provided prior to final occupancy.*
8. **Temporary Leave.** *Notwithstanding subsection 7. above, a property owner may temporarily vacate the principal residence for up to one year due to a temporary leave of absence for an employment, educational, volunteer opportunity, or medical need. The property owner must provide the city proof of temporary leave status from the property owner's employer, educational facility, volunteer organization or medical provider, and a notarized statement that the property owner intends to resume occupancy of the principal residence after the one year limit. During the temporary leave, the property owner may rent or lease both units on the property. Leaves in which property owner is temporarily absent shall not be consecutive and shall not occur more than once every 5 years. This standard may be adjusted in accordance with EC 9.8030(34).*
 9. **Deed Restriction.** *Prior to issuance of a building permit for the secondary dwelling (or the primary dwelling if it is constructed later), the owner shall provide the city with a copy of a deed restriction on a form approved by the city that has been recorded with the Lane County Clerk. The deed restriction must include a reference to the deed under which the property was acquired by the present owner and include the following provisions:*
 - a. *One of the dwellings must be the principal residence of a property owner who is the majority owner of the property. Requirements for occupancy shall be determined according to the applicable provisions of the Eugene Code.*
 - b. *The deed restriction runs with the land and binds the property owner(s), heirs, successors and assigns.*
 - c. *The deed restriction may be terminated, upon approval by the city, when one of the dwellings is removed, or at such time as the city code no longer requires principal occupancy of one of the dwellings by the owner.*
 10. **Verification.** *At least once every two years, the property owner shall provide to the city documentation of compliance with the ownership and occupancy requirements of subsection 7. above. The property owner must provide a copy of the current property deed to verify ownership and two forms of documentation to verify occupancy of the principal residence. Acceptable documentation for this purpose includes voter's registration, driver's license,*

- homeowner's insurance, income tax filing, and/or utility bill.
- (b) **General Standards for Detached Secondary Dwellings.** In addition to the standards in subsection (a) of this section, detached secondary dwellings shall comply with the following, except as provided in subsection (c) below:
1. **Building Size.** Up to 300 square feet of un-heated garage or storage space attached to the secondary dwelling unit is allowed and is not counted in the allowable total building square footage.
 2. **Pedestrian Access.** A pedestrian walkway shall be provided from the street or alley to the primary entrance of the secondary dwelling. The pedestrian walkway shall be a hard surface (concrete, asphalt or pavers) and shall be a minimum of 3 feet in width.
 3. **Primary Entrance.** The primary entry to a secondary dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet.
 4. **Outdoor Storage/Trash.** Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the street or alley with a minimum 42-inch tall 100-percent site obscuring fence or enclosure on at least three sides.
 5. **Building Height/Interior Setback.**
 - a. Interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line until a point not to exceed a maximum building height of 18 feet.
 - b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in a. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet. (See Figure 9.2751(16)(b)3.)
 - c. This standard may be adjusted to allow for a secondary dwelling over an accessory building in accordance with EC 9.8030(34).
 6. **Maximum Wall Length.** Along the vertical face of the dwelling, offsets shall occur at a minimum of every 25 feet by providing at least one of following: recesses or extensions, including entrances, a minimum depth of 2 feet and a minimum width of 5 feet for the full height of the wall. Full height is intended to mean from floor to ceiling (allowing for cantilever floor joists).
- (c) **Area-Specific Secondary Dwelling Standards.** The following standards apply to all new attached or detached secondary dwellings in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association:
- (a)1. **Lot Area.** To allow for a secondary dwelling, the lot shall contain at least 7,500 square feet.

- ~~(b)~~2. Lot Dimension. The boundaries of the lot must be sufficient to fully encompass an area with minimum dimensions of 45 feet by 45 feet.
- ~~(e)~~3. Lot Coverage. The lot shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.
- ~~(d)~~4. Vehicle Use Area. The maximum area covered by paved and unpaved vehicle use areas including but not limited to driveways, on-site parking and turnarounds, shall be limited to 20 percent of the total lot area.
- ~~(e)~~5. Building Size. For lots at least 7,500 square feet and less than 9,000 square feet in area, the secondary dwelling shall not exceed 600 square feet of total building square footage. For lots at least 9,000 square feet in area, the secondary dwelling shall not exceed 800 square feet of total building square footage. Total building square footage is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
- ~~(f)~~6. Minimum Attachment. ~~[The secondary dwelling and the primary dwelling must share a common wall or ceiling for a minimum length of 8 feet to be considered attached.]~~ **The standards at EC 9.2751(17)(a)4. are applicable.**
- ~~(g)~~7. Maximum Bedrooms. For lots with a primary dwelling containing 3 or fewer bedrooms, the secondary dwelling shall be limited to 2 bedrooms. For lots with a primary dwelling containing 4 or more bedrooms, the secondary dwelling shall be limited to 1 bedroom.
- ~~(h)~~8. Maximum Occupancy. For lots with a primary dwelling containing 3 or fewer bedrooms, the secondary dwelling shall be limited to 3 occupants. For lots with a primary dwelling containing 4 or more bedrooms, the secondary dwelling shall be limited to 2 occupants.
- ~~(i)~~9. Building Height/Interior ~~Sloped~~ Setback. For detached secondary dwellings:
 - ~~1-a.~~ The interior yard setback shall be at least 5 feet from the interior lot line. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet.
 - ~~2-b.~~ The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.
- (See Figure 9.2751(16))~~[(e)1.](b)3.~~**
- ~~(j)~~10. Dog Keeping. ~~[No more than 3 dogs shall be permitted on the lot, not including the temporary keeping of one additional dog for up to 6 months in any 12-month period.]~~ **The standards at EC 9.2751(17)(a)6. are applicable.**
- ~~(k)~~11. Ownership/Occupancy Requirements. ~~[Either the primary dwelling or the secondary dwelling shall be the principal residence of the property owner. The principal residence must be occupied for a minimum of 6 months of each calendar year by a property~~

owner who is the majority owner of the property as shown in the most recent Lane County Assessor's roll. If there is more than one property owner of record, the owner with the majority interest in the property shall be deemed the property owner. Any property owner of record holding an equal share in the property may be deemed the majority owner if no other owner owns a greater interest. The principal residence cannot be leased or rented when not occupied by the property owner. Prior to the city's issuance of the building permit for the secondary dwelling (or the primary dwelling if it is constructed later) the property owner must provide the city with a copy of the property deed to verify ownership and two forms of documentation to verify occupancy of the primary residence. Acceptable documentation for this purpose includes voter's registration, driver's license, homeowner's insurance, income tax filing, and/or utility bill. When both the primary and secondary dwelling are constructed at the same time, such documentation must be provided prior to final occupancy.] ***The standards at EC 9.2751(17)(a)7. are applicable.***

(t) **12. Temporary Leave.** [Notwithstanding subsection (k) above, a property owner may temporarily vacate the principal residence for up to one year due to a temporary leave of absence for an employment, educational, volunteer opportunity, or medical need. The property owner must provide the city proof of temporary leave status from the property owner's employer, educational facility, volunteer organization or medical provider, and a notarized statement that the property owner intends to resume occupancy of the principal residence after the one year limit. During the temporary leave, the property owner may rent or lease both units on the property. Leaves in which property owner is temporarily absent shall not be consecutive and shall not occur more than once every 5 years.] ***The standards at EC 9.2751(17)(a)8. are applicable.***

(m) **13. Deed Restriction.** [Prior to issuance of a building permit for the secondary dwelling (or the primary dwelling if it is constructed later), the owner shall provide the city with a copy of a deed restriction on a form approved by the city that has been recorded with the Lane County Clerk. The deed restriction must include a reference to the deed under which the property was acquired by the present owner and include the following provisions:

1. One of the dwellings must be the principal residence of a property owner who is the majority owner of the property. Requirements for occupancy shall be determined according to the applicable provisions of the Eugene Code.
2. The deed restriction runs with the land and binds the property owner(s), heirs, successors and assigns.
3. The deed restriction may be terminated, upon approval by the City, when one of the dwellings is removed, or at such time as the city code no longer requires principal occupancy of one of the dwellings by the owner.

In addition, the applicable maximum occupancy limitation in subsection (h) above must be included in the deed restriction.] ***The***

standards at EC 9.2751(17)(a)9. are applicable.

- ~~(n)~~ **14. Verification.** [At least once every two years, the property owner shall provide to the city documentation of compliance with the ownership and occupancy requirements of subsection (k) above. The property owner must provide a copy of the current property deed to verify ownership and two forms of documentation to verify occupancy of the principal residence. Acceptable documentation for this purpose includes voter's registration, driver's license, homeowner's insurance, income tax filing, and/or utility bill.] **The standards at EC 9.2751(17)(a)10. are applicable.**
- ~~(o)~~ **15. Parking.** For the primary dwelling, there shall be a minimum of one and a maximum of two parking spaces on the lot. There shall be one additional parking space on the lot for the exclusive use for the occupants and guests of the secondary dwelling.
- ~~(p)~~ **16. Alley Access Parking and Driveway.** The standards at EC 9.2751(18)~~[(k)]~~**(a)11. are applicable to attached and detached secondary dwellings where primary vehicle access for the required parking is from an alley.**
- ~~(q)~~ **17. Pedestrian Access.** [A pedestrian walkway shall be provided from the street or alley to the primary entrance of the secondary dwelling. The pedestrian walkway shall be a hard surface (concrete, asphalt or pavers) and shall be a minimum of 3 feet in width. The standards in this subsection (q) are applicable to attached and detached secondary dwellings, except that if primary vehicle access for the required parking is from an alley, the path must be provided from the alley.] **The standards at EC 9.2751(17)(b)2. are applicable to attached and detached secondary dwellings, except that if primary vehicle access for the required parking is from an alley, the path must be provided from the alley.**
- ~~(r)~~ **18. Primary Entrance.** [The primary entry to a secondary dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet. The standards in this subsection ~~[(r)]~~ are applicable to detached secondary dwellings only.] **The standards at EC 9.2751(17)(b)3. are applicable to detached secondary dwellings only.**
- ~~(s)~~ **19. Outdoor Storage/Trash.** [Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the street or alley with a minimum 42 inch tall 100 percent site obscuring fence or enclosure on at least three sides. The standards in this subsection ~~[(s)]~~ are applicable to detached secondary dwellings only.] **The standards at EC 9.2751(17)(b)4. are applicable to detached secondary dwellings only.**
- ~~(t)~~ **20. Maximum Wall Length.** [Along the vertical face of the dwelling, offsets shall occur at a minimum of every 25 feet by providing at least one of following: recesses or extensions, including entrances, a minimum depth of 2 feet and a minimum width of 5 feet for the full height of the wall. Full height is intended to mean from floor to ceiling (allowing for cantilever floor joists). The standards in this subsection ~~[(t)]~~ are applicable for detached secondary dwellings only.] **The standards at EC 9.2751(17)(b)6.**

are applicable to detached secondary dwellings only.

~~[(u) Enforcement. Failure to adhere to the standards required under this section shall constitute a violation subject to the enforcement provisions of section 9.0000 through 9.0280 General Administration.]~~

- (d) **Adjustment Review.** *The standards at EC 9.2751(17)(a)8. regarding temporary leave and at EC 9.2751(17)(b)5. regarding building height (to allow for a secondary dwelling over an accessory building) may be adjusted in accordance with EC 9.8030(34). Additionally, an adjustment may be requested to convert an existing building into a secondary dwelling in accordance with EC 9.8030(34) if the existing building does not meet the standards under EC 9.2751(17)(a) or (b). For secondary dwellings, these are the only standards that may be adjusted. With the exception of EC 9.2751(17)(a)8. regarding temporary leave, these standards are not adjustable for secondary dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association.*
- (e) **Enforcement.** *Failure to adhere to the standards required under this section shall constitute a violation subject to the enforcement provisions of section 9.0010 through 9.0280 General Administration.*

(18) **Alley Access Lots in R-1.**

(a) **General Standards.**

1. **Applicability.** *Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.*
2. **Use Regulations.** *Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.*
3. **Building Size.** *The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.*
4. **Lot Coverage.** *Alley access lots shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.*
5. **Building Height/Interior Setback.**
 - a. *Interior yard setbacks shall be at least 5 feet, including along the alley frontage. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line perpendicular to the alley until a point not to exceed a maximum building height of 18 feet.*
 - b. *The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in a. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet.*

(See Figure 9.2751(16)(b)3.)

- c. These standards may be adjusted in accordance with EC 9.8030(35).

6. Windows, Dormers and Balconies.

- a. Any window on the upper story must be located a minimum of 10 feet from any property line.
- b. Up to two dormers are allowed on the side of the dwelling facing the alley. Dormers are limited to a maximum width of 10 feet. Dormers are not allowed on the remaining sides of the dwelling.
- c. Balconies and other second floor outdoor areas are only allowed on the side of the dwelling facing the alley, and shall be setback at least 10 feet from the alley.
- d. Notwithstanding b. and c. above, dormers and balconies are not allowed on the second floor of a dwelling on any non-alley facing property line unless the affected adjacent property owner consents in writing on a form approved by the city.

7. Bedrooms. The dwelling shall contain no more than 3 bedrooms.

8. Primary Entrance. The primary entry to the dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet.

9. Pedestrian Access. The dwelling shall be served by a minimum three foot wide hard-surfaced/hard-scaped (paved, concrete or pavers) pedestrian walkway from the alley, or from the front street via an easement. The pedestrian walkway must be recognizable and distinct (different color, materials and/or texture) from the driveway and parking area, but is not required to be separated from the driveway or parking area.

10. Parking Spaces. There shall be a minimum of 1 and a maximum of 2 parking spaces on the lot.

11. Parking and Driveway.

- a. Only one covered or enclosed parking space may be provided (carport or garage). The covered or enclosed parking space shall be counted towards the total number of parking spaces.
- b. The maximum dimensions for a garage shall be 16 feet by 24 feet, with a maximum garage door width of 9 feet.
- c. The minimum setback for a garage shall be 5 feet from the alley. If the garage is setback greater than 5 feet from the alley, it must be setback a minimum of 15 feet and the area between the garage and the alley shall be counted towards one parking space.
- d. The maximum width for a driveway accessing a garage or carport shall be 12 feet.
- e. The maximum dimensions for one parking space located perpendicular to the alley shall be 12 feet in width by 20 feet in depth.

- f. *The maximum dimensions for two side by side parking spaces perpendicular to the alley shall be 20 feet in width by 20 feet in depth.*
- g. *The maximum dimensions for tandem parking spaces shall be 12 feet in width by 33 feet in depth.*
- h. *Only one parking space parallel to the alley shall be allowed, and such space shall not exceed 10 feet in width and 20 feet in length along the length of alley.*
- i. *The total vehicle use area, including but not limited to driveways and on-site parking, but not including parking space in garage, shall not exceed 400 square feet.*
- j. *No parking shall occur outside of the vehicle use area. (See Figure 9.2751(18)(a)11.)*
- 12. **Distance from Street/Fire Safety.** *If any portion of the exterior walls of the first story of the dwelling is greater than 150 feet from the centerline of the alley where it intersects with the curb of the street, as measured by a route approved by the fire code official, the dwelling shall be equipped throughout with multi-purpose residential sprinklers as defined in National Fire Protection Association Standard 13D.*
- 13. **Trash and Recycling.** *Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the alley with a minimum 42-inch tall 100-percent site obscuring fence or enclosure on at least three sides.*
- 14. **Accessory Buildings.** *Detached accessory buildings are allowed subject to the standards at EC 9.2751(16), except that the total square footage of all accessory buildings on an alley access lot is limited to 400 square feet.*
- 15. **Adjustment Review.** *For alley access lots, EC 9.2751(18)(a)5 is the only standard that may be adjusted. This standard is not adjustable for dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association.*
- (b) **Area-Specific Alley Access Lot Standards in R-1.** ~~[(a) — Applicability. The following standard apply]~~ *Except as provided below, the standards in subsection (a) of this section apply to alley access lots existing as of April 12, 2014, in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association. In lieu of EC 9.2751(18)(a)3. Building Size, the following applies:*
 - 1. **Building Size.** *An alley access lot dwelling shall not exceed 1,000 square feet of total building square footage, measured at the exterior perimeter walls. For alley access lots, total building square footage is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.*
 - 2. *This standard may not be adjusted.*
- ~~[(b) — General. All base zone development standards must be met, unless otherwise stated in this section. Secondary dwellings are~~

not allowed.

- (c) ~~Building Size.~~ An alley access lot dwelling shall not exceed 1,000 square feet of total building square footage, measured at the exterior perimeter walls. For alley access lots, total building square footage is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms. For one and one-half story structures, a maximum of 400 square feet of the total building square footage can be on the upper floor.
 - (d) ~~Lot Coverage.~~ Alley access lots shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.
 - (e) ~~Building Height/Interior Setback.~~
 - 1. ~~The interior yard setbacks shall be at least 5 feet from all lot lines (including the alley frontage). In addition, at a point that is 8 feet above finished grade, the setbacks from all lot lines, except the alley frontage, shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet.~~
 - 2. ~~The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.~~
- (See Figure 9.2751(16)(c)1.)**
- (f) ~~Windows, Dormers and Balconies.~~
 - 1. ~~Any window on the upper story must be located a minimum of 10 feet from any property line.~~
 - 2. ~~Up to two dormers are allowed on the side of the dwelling facing the alley. Dormers are limited to a maximum width of 10 feet. Dormers are not allowed on the remaining sides of the dwelling.~~
 - 3. ~~Balconies and other second floor outdoor areas are only allowed on the side of the dwelling facing the alley, and shall be setback at least 10 feet from the alley.~~
 - 4. ~~Notwithstanding 2. and 3. above, dormers and balconies are not allowed on the second floor of a dwelling on any non-alley facing property line unless the affected adjacent property owner consents in writing on a form approved by the city.~~
 - (g) ~~Bedrooms.~~ The dwelling shall contain no more than 3 bedrooms.
 - (h) ~~Primary Entrance.~~ The primary entry to the dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet.
 - (i) ~~Pedestrian Access.~~ The dwelling shall be served by a minimum three-foot wide hard surfaced/hardscaped (paved, concrete or pavers) pedestrian walkway from the alley, or from the front street via an easement. The pedestrian walkway must be recognizable and distinct (different color, materials and/or texture) from the driveway and parking area, but is not required to be separated

- from the driveway or parking area.
- (j) ~~Parking Spaces.~~ There shall be a minimum of 1 and a maximum of 2 parking spaces on the lot.
- (k) ~~Parking and Driveway.~~
1. ~~Only one covered or enclosed parking space may be provided (carport or garage). The covered or enclosed parking space shall be counted towards the total number of parking spaces.~~
 2. ~~The maximum dimensions for a garage shall be 16 feet by 24 feet, with a maximum garage door width of 9 feet.~~
 3. ~~The minimum setback for a garage shall be 5 feet from the alley. If the garage is setback greater than 5 feet from the alley, it must be setback a minimum of 15 feet and the area between the garage and the alley shall be counted towards one parking space.~~
 4. ~~The maximum width for a driveway accessing a garage or carport shall be 12 feet.~~
 5. ~~The maximum dimensions for one parking space located perpendicular to the alley shall be 12 feet in width by 20 feet in depth.~~
 6. ~~The maximum dimensions for two side by side parking spaces perpendicular to the alley shall be 20 feet in width by 20 feet in depth.~~
 7. ~~The maximum dimensions for tandem parking spaces shall be 12 feet in width by 33 feet in depth.~~
 8. ~~Only one parking space parallel to the alley shall be allowed, and such space shall not exceed 10 feet in width and 20 feet in length along the length of alley.~~
 9. ~~The total vehicle use area, including but not limited to driveways and on site parking, but not including parking space in garage, shall not exceed 400 square feet.~~
 10. ~~No parking shall occur outside of the vehicle use area. (See Figure 9.2751(18)(k))~~
- (l) ~~Distance from Street/Fire Safety.~~ If any portion of the exterior walls of the first story of the dwelling is greater than 150 feet from the centerline of the alley where it intersects with the curb of the street, as measured by a route approved by the fire code official, the dwelling shall be equipped throughout with multi-purpose residential sprinklers as defined in National Fire Protection Association Standard 13D.
- (m) ~~Trash and Recycling.~~ Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the alley with a minimum 42-inch tall 100 percent site obscuring fence or enclosure on at least three sides.
- (n) ~~Accessory Buildings.~~ Detached accessory buildings are allowed subject to the standards at EC 9.2751(16), except that the total square footage of all accessory buildings on an alley access lot is limited to 400 square feet.]

Section 7. Section 9.6775 of the Eugene Code, 1971, is amended to provide as follows:

9.6775 Underground Utilities.

- (1) ***Exemptions from Underground Utility Standards. The following are exempt from the undergrounding requirement of this section:***
 - (a) ***Temporary uses on a development site.***
 - (b) ***New utility connections to structures or buildings with legally established above ground utility service.***
 - (c) ***Secondary dwellings that can be served from an existing legally established above ground utility service to the primary dwelling on the development site.***
 - (d) ***Dwellings on alley access lots that can be served from an existing above ground utility-owned structure.***
- (2) ***Underground Utility Standards.*** All new on-site utilities shall be placed underground if there is a utility-owned structure immediately adjacent to the development site, unless adjusted pursuant to the provisions of EC 9.8030(5). ~~[This provision does not apply to temporary uses on a development site or to new utility connections to structures or buildings with legally established above ground utility service.]~~ This requirement is satisfied if the applicant verifies in writing that utilities will be placed underground concurrent with planned future development to occur within 12 months. Exceptions shall be made for such features as padmounted transformers, switch cabinets, back flow prevention devices and closures needed to safely operate and maintain utility systems.

Section 8. Subsections (34) and (35) of Section 9.8030 of the Eugene Code, 1971, are

added, to provide as follows:

- 9.8030 Adjustment Review - Approval Criteria.** The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.
- (34) ***Secondary Dwellings. Where this land use code provides that the standards for secondary dwellings may be adjusted, the standards may be adjusted upon demonstration by the applicant that the applicable corresponding criteria are met.***
 - (a) ***Temporary Leave. A property owner may exceed the temporary leave provisions by one additional consecutive year if the property owner submits proof of temporary leave status from the property owner's employer, educational facility, volunteer organization or medical provider.***
 - (b) ***Conversion of Existing Building. A legally established building existing as of _____ [effective date of ordinance] may be converted to a secondary dwelling if it complies with all of the following:***
 1. ***The existing structure satisfies all secondary dwelling standards except the applicable sloped setback under Building Height/Interior Setback at EC 9.2571(17)(a)3. or EC 9.2751(17)(b)5.***
 2. ***The secondary dwelling is limited to 600 square feet in total building square footage, and 15 feet in height.***

3. *If the existing structure is closer than 5 feet to an interior property line, the adjacent property owner must provide written consent pursuant to EC 9.2751(7).*
- (c) **Building Height.** *A secondary dwelling may have a maximum building height of up to 24 feet if all of the structure that would fall within the scope of the "Building Height/Sloped Setback" standard is at least 20 feet from all interior property lines and within the sloped setback.*
- (35) **Alley Access Lots. Building Height/Interior Setback.** *A dwelling on an alley access lot may have maximum building height of up to 24 feet if all of the structure that would fall within the scope of the "Building Height/Sloped Setback" standard is at least 20 feet from all interior property lines and within the sloped setback.*

Section 9. The findings set forth in Exhibit D attached to this Ordinance are adopted as findings in support of this Ordinance.

Section 10. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 11. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 12. This Ordinance shall take effect pursuant to Section 32 of the Eugene Charter 2002, or on the date of its acknowledgement as provided in ORS 197.625, whichever is later.

Passed by the City Council this
____ day of _____, 2014

Approved by the Mayor this
____ day of _____, 2014

City Recorder

Mayor

Figure
9.2751(16)(a)2.a

**Building Height/
Interior Setback for
Accessory Buildings
in R-1**

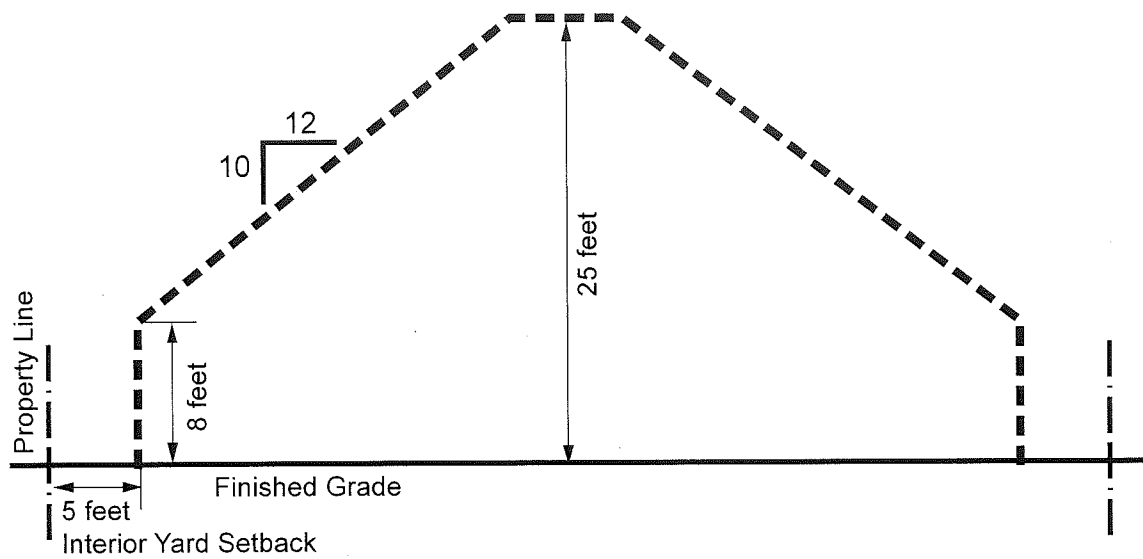


Figure
9.2751(16)(b)3.

Building Height/Interior Setbacks for:

- Accessory Buildings (Area-Specific)
- Secondary Dwellings (General and Area-Specific)
- Alley Access Lots (General and Area-Specific)

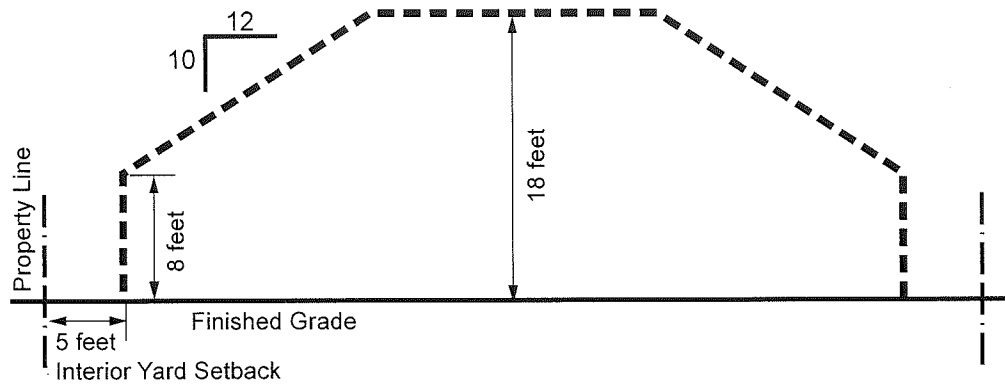
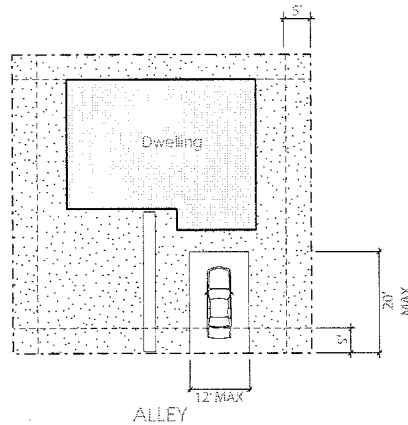


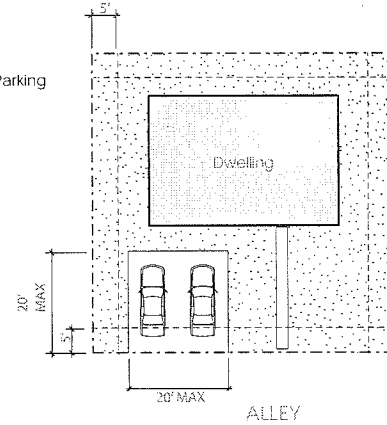
Figure
9.2751(18)(a)11.

Parking and Driveway for Alley Access Lots

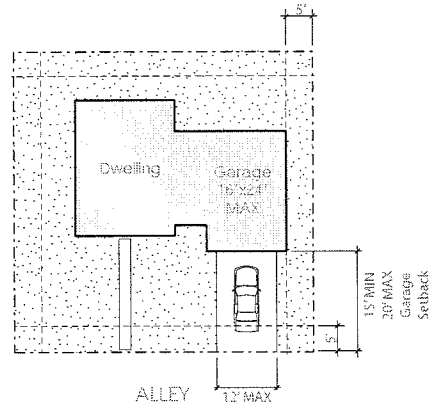
OPTION A:
Single Perpendicular Parking
400 SF MAX



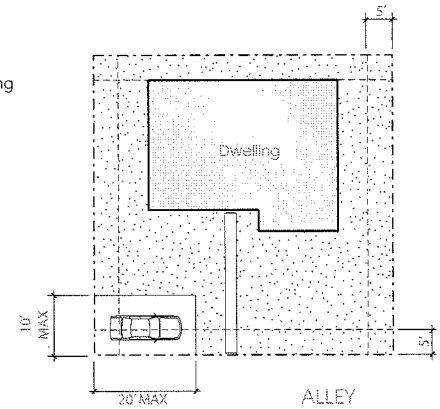
OPTION B:
Side by Side Parking
400 SF MAX



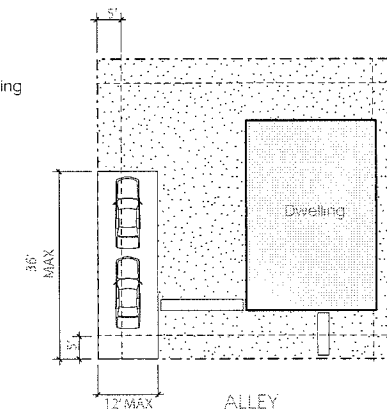
OPTION C:
Attached Parking and
Single Parking Combination
400 SF MAX



OPTION D:
Parallel Parking
400 SF MAX



OPTION E:
Tandem Parking
400 SF MAX



--- Property Line
--- Setbacks

Exhibit D

Findings

**Single Family Land Use Code Amendments
Secondary Dwellings, Accessory Buildings and Alley Access Lots
(City File CA 13-3)**

Land Use Code Amendments (CA 13-3)

Eugene Code Section 9.8065 requires that the following approval criteria (in ***bold italics***) be applied to a code amendment:

- (1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

Goal 1 - Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City has acknowledged provisions for citizen involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The amendments do not amend the citizen involvement program. The process for adopting these amendments complied with Goal 1 because it is consistent with the citizen involvement provisions.

The early concepts for these amendments emerged out of the city's Infill Compatibility Standards (ICS) project (beginning in 2007), which was led by a task team that included 14 neighborhood association representatives, a Housing Policy Board representative, and five additional members with the perspectives of builders, developers, and designers of market-rate and affordable infill housing.

The initial code concepts were largely influenced by the previous work of the ICS project, specifically the Single-Family Dwelling Subcommittee and R-1 Infill/Flag Lot Implementation Team (RIFLIT), as well as the Neighborhood Livability Working Group, best practices from other cities, and a review of Eugene land use code. Once drafted, the code concepts were reviewed and vetted by an external advisory group comprised of neighborhood advocates, designers and builders with expertise in single family housing, and two Planning Commissioners. The majority of the members of the advisory group were also part of the original ICS/RIFLT team.

Prior to the start of the formal adoption process, the code concepts were sent out for broad public feedback to over 120 individuals that are interested in the topic or involved in a group or profession associated with neighborhood livability and infill, including neighborhood leaders and advocates, property owners, architects, designers and developers, Infill Compatibility Standards Task Team, and the Home Builder's Association. Other engagement and information opportunities included an open house in June 2013, highlighting the project in the May edition of the Envision Eugene e-newsletter, an open invitation to neighborhood leaders and other interested parties to meet about the amendments, and the establishment of a project web page.

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The Planning Commission's September 2013 public hearing on the proposal was duly noticed to all neighborhood organizations, community groups and individuals who have requested notice, as well as to the City of Springfield and Lane County. In addition, notice of the public hearing was also published in the Register Guard.

The City Council held two duly noticed public hearings (November 2013 and June 2014) to consider approval, modification, or denial of the code amendments. Pursuant to Oregon Revised Statute 227.186 (commonly referred to as Measure 56), notice of the City Council's second public hearing was mailed to owners of property potentially affected by the proposal to increase the required minimum lot size for secondary dwellings and to prohibit secondary dwellings on flag lots. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the ordinance is consistent with Statewide Planning Goal 1.

Goal 2 - Land Use Planning. *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

Eugene's land use code specifies the procedure and criteria that were used in considering these amendments. The record shows that there is an adequate factual base for the amendments. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of these amendments with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to Lane County, Springfield and the Department of Land Conservation and Development. There are no exceptions to Statewide Planning Goal 2 required for these amendments. Therefore, the amendments are consistent with Statewide Planning Goal 2.

Goal 3 - Agricultural Lands. *To preserve agricultural lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

Goal 4 - Forest Lands. *To conserve forest lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. *To conserve open space and protect natural and scenic resources.*

OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific

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requirements of Goal 5;

- (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) *The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

These amendments do not create or amend the City's list of Goal 5 resources, do not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and do not amend the acknowledged urban growth boundary. Therefore, Statewide Planning Goal 5 does not apply.

Goal 6 - Air, Water and Land Resource Quality. *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendments do not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

Goal 7 - Areas Subject to Natural Disasters and Hazards. *To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendments do not affect the City's restrictions on development in areas subject to natural disasters and hazards. Further, the amendments do not allow for new development that could result in a natural hazard. Therefore, Statewide Planning Goal 7 does not apply.

Goal 8 - Recreational Needs. *To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendments do not affect the City's provisions for or access to recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

Goal 9 - Economic Development. *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Goal 9 requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Lands Study (1992) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 9 and the corresponding Administrative Rule. As the amendments are specific to residential development

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standards in the R-1 Low Density Residential zone, which implements the low density residential Metro Plan designation, the amendments do not impact the supply of industrial or commercial lands. Therefore, the amendments are consistent with Statewide Planning Goal 9.

Goal 10 - Housing. To provide for the housing needs of citizens of the state.

Goal 10 requires communities to provide an adequate supply of residential buildable land to accommodate estimated housing needs for a 20-year planning period. The Residential Lands Study (1999) was adopted by the City of Eugene as a refinement of the Metro Plan, and complies with the requirements of Goal 10 and the corresponding Administrative Rule. According to the Residential Lands Study, there is sufficient buildable residential land to meet the identified land need.

The amendments pertaining to accessory buildings and development on existing alley access lots do not impact the supply of residential buildable land. No land is being re-designated from residential use to a nonresidential use, and the amendments do not otherwise diminish the lands available for residential use.

The amendments related to the secondary dwellings do not impact the supply of residential buildable land. No land is being re-designated from residential use to a nonresidential use, and the amendments do not otherwise diminish the lands available for residential use. The changes will result in a decrease in the number of lots designated low density residential that are eligible for construction of a secondary dwelling. Within Eugene's city limits, there are approximately 4,645 lots designated low density residential that are between 4,500 square feet and 6,099 square feet (and an additional 137 lots within this size range and designation between the city limits and the urban growth boundary) that will no longer be eligible for a secondary dwelling due to the increase in the required minimum lot size for such a dwelling. Within Eugene's city limits, there are approximately 278 flag lots that are 13,500 square feet or greater and designated low density residential (and an additional 20 flag lots within that size range and designation between the city limits and the urban growth boundary) that would no longer be eligible for a secondary dwelling due to the prohibition of secondary dwellings on flag lots of that size.

Based on recent trends pertaining to the number of secondary dwellings permitted on lots within the two lot size categories, it is projected that the changes could result in approximately 20 fewer secondary dwellings being built over the next 20 years. The existing surplus of residential land, based on various actions Eugene and Springfield have taken to decrease the amount of acreage (approximately 1250 to 178 acres, considering a low or high demand assumption), is sufficient to accommodate the 20 displaced dwellings.

Based on the above findings, the amendments do not impact the supply or availability of residential lands included in the documented supply of "buildable land" that is available for residential development as inventoried in the acknowledged Residential Lands Study. Therefore, the amendments are consistent with Statewide Planning Goal 10.

Goal 11- Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

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The amendments do not affect the City's provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

Goal 12- Transportation. *To provide and encourage a safe, convenient and economic transportation system.*

The Transportation Planning Rule (OAR 660-012-0060) contains the following requirement:

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
 - (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
 - (b) *Change standards implementing a functional classification system; or*
 - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
 - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

The amendments do not change the functional classification of a transportation facility or change the standards implementing a functional classification system. Therefore, the amendments do not have a significant effect under (a) or (b). In regards to (c), the level of residential and development currently permitted through existing code and zoning regulations will be reduced by up to 14 dwellings as a result of these amendments, and thus will not result in the degradation of any transportation facility. Therefore, the amendments do not significantly affect any existing or future transportation facilities. Based on the above findings, the amendment is consistent with Statewide Planning Goal 12.

Goal 13 - Energy Conservation. *To conserve energy.*

The amendments do not impact energy conservation. Therefore, Statewide Planning Goal 13 does not apply.

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Goal 14 - Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

The amendments do not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

Goal 15 - Willamette River Greenway. *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The amendments do not contain any changes that affect the Willamette River Greenway regulations, therefore, Statewide Planning Goal 15 does not apply.

Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

There are no coastal, ocean, estuarine, or beach and dune resources related to the property effected by these amendments. Therefore, these goals are not relevant and the amendments will not affect compliance with Statewide Planning Goals 16 through 19.

(2) *The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.*

Applicable Metro Plan Policies

The following policies from the *Metro Plan* (identified below in *italics*) are applicable to these amendments. To the extent that the following policies constitute mandatory approval criteria, based on the findings provided below, the amendments are consistent with and supported by the applicable provisions of the *Metro Plan*.

Residential Land Use and Housing Element

Residential Density Policies:

- A.9 *Establish density ranges in local zoning and development regulations that are consistent with the broad density categories of this plan.*

Low density: Through 10 dwelling units per gross acre (could translate up to 14.28 units per net acre depending on each jurisdictions implementation measures and land use and development codes)

Medium density: Over 10 through 20 dwelling units per gross acre (could translate to over 14.28 units per net acre through 28.56 units per net acre depending on each jurisdictions implementation measures and land use and development codes.)

High density: Over 20 dwelling units per gross acre (could translate to over 28.56 units per net acre depending on each jurisdictions implementation measures and land use and development codes)

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This policy was raised in public testimony. The code amendments apply to the city's R-1 Low Density Residential Zone, which implements the Metro Plan's low density residential land use plan designation. The Eugene Code density provisions for the R-1 zone, which are not proposed to be changed as part of these amendments, are consistent with the above policy in that they allow for a maximum of 14 units per net acre. Consistent with this policy, the single family code amendments do not change or conflict with the density range for low density residential.

- A.13 Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use while considering impacts of increased residential density on historic, existing and future neighborhoods.*

The intent of the amendments pertaining to secondary dwellings and alley access lots is to allow for compatible infill, consistent with this policy. The addition of standards addressing building height and sloped setbacks for secondary dwellings and alley access lots is to ensure that such has minimal impact on surrounding properties in existing neighborhoods.

Housing Type and Tenure Policies

- A.17 Provide opportunities for a full range of choice in housing type, density, size, cost and location.*
- A.18 Encourage a mix of structure types and densities within residential designations by reviewing and, if necessary, amending local zoning and development regulations.*

Consistent with these policies, the amendments provide for opportunities for smaller housing types within existing single family neighborhoods.

Design and Mixed Use Policies

- A.23 Reduce impacts of higher density residential and mixed-use development on surrounding use by considering site, landscape, and architectural design standards or guidelines in local zoning and development regulations.*

This policy was raised in public testimony. To the extent the code amendments related to secondary dwellings, development on existing alley access lots and accessory buildings in the R-1 Low Density Residential zone constitutes higher density residential development as referenced in this policy, the amendments are consistent with this policy in that they add design standards to address building height, setbacks, parking area and building size.

- A.24 Considering adopting or modifying local zoning and development regulations to provide a discretionary design review process or clear and objective design standards, in order to address issues of compatibility, aesthetics, open space and other community concerns.*

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Consistent with this policy direction, the amendments related to secondary dwellings, accessory buildings and development on existing alley access lots all include clear and objective design standards that address compatibility and aesthetics, and also include a discretionary path (adjustment review) to allow for flexibility, while maintaining compatibility, under certain circumstances.

Transportation Element

Land Use Policies

- F.4. Require improvements that encourage transit, bicycles, and pedestrians in new commercial, public, mixed use and multi-unit residential development.*

This policy was raised in public testimony. This policy is not applicable to the code amendments because the amendments do not involve or affect commercial, public, mixed use or multi-unit residential development.

Transportation System Improvements: Roadway Policies

- F.14 Address the mobility and safety needs of motorists, transit users, bicyclists, pedestrians, and the needs of emergency vehicles when planning and constructing roadway system improvements.*

This policy was raised in public testimony as applying to the amendments for alley access lots. This policy is not applicable to alleys, because, as stated in TransPlan, this policy is relevant to the region's roadway system, which is comprised of arterial and collector streets.

Transportation System Improvements: Bicycle Policies

- F.22 Construct and improve the region's bikeway system and provide bicycle system support facilities for both new development and redevelopment/expansion.*

This policy was raised in public testimony as applying to the amendments for alley access lots. As stated in TransPlan, the bicycle policies are focused on directing bicycle system improvements, such as expansion of the existing regional network, the provision of safety improvements and the addition of adequate support facilities. This policy is not applicable to the amendments for alley access lots, as it applies to system improvements at the regional level rather than individual sites.

Transportation System Improvements: Pedestrian Policies

- F.26 Provide for a pedestrian environment that is well integrated with adjacent land uses and is designed to enhance safety, comfort, and convenience of walking.*

This policy was raised in public testimony as applying to the amendments for alley access lots. This policy is not applicable to the amendments for alley access lots as it is intended to apply on a broader scale (system improvements) than an individual single family lot.

Applicable Refinement Plans

Given the broad applicability of these amendments (R-1 Low Density Residential zoning applies throughout the city), all adopted refinement plans were reviewed for consistency. It is noted that the

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secondary dwelling unit and accessory buildings amendments apply citywide. Areas with existing alley access lots include areas covered by the Jefferson/Far West Refinement Plan, South Hills Study and the Whitaker Plan.

No relevant policies were found in the following adopted refinement plans:

- Bethel-Danebo Refinement Plan (1982)
- Bethel-Danebo Refinement Plan Phase II (1977)
- Central Area Transportation Study (2004)
- Comprehensive Stormwater Management Plan (1993)
- Eugene Commercial Lands Study (1992)
- Eugene Downtown Plan (2004)
- Eugene (EWEB) Downtown Riverfront Specific Area Plan (2013)
- Fairmount/U of O Special Area Study (1982)
- Laurel Hill Neighborhood Plan (1982)
- 19th and Agate Special Area Study (1988)
- Riverfront Park Study (1985)
- South Hills Study (1974)
- South Willamette Subarea Study (1987)
- TransPlan (2002)
- Walnut Station Specific Area Plan (2010)
- Westside Neighborhood Plan (1987)
- West University Refinement Plan (1982)
- Whiteaker Plan (1994)
- Willow Creek Special Area Study (1982)
- Resolution No. 3862 Adopting the West 11th Commercial Land Use Policy and Refining the Eugene-Springfield Metropolitan Area General Plan (1984)
- Resolution No. 3885 Establishing Areas for the Application of C-4 Commercial-Industrial District Zoning, and Amending Resolution No. 3862 (1984)

Findings addressing relevant provisions of applicable refinement plans are provided below.

Jefferson Far West Refinement Plan (1983)

The following residential policies in the Land Use Element of the plan lend general support for the amendments:

- 3.0 Encourage a mixture of housing densities and types to allow a diverse population group to live in the area.*

The amendments related to secondary dwelling units and development on existing alley access lots are consistent with this policy in that they provide the opportunity for smaller single family housing types.

Additionally, the following policies in Land Use Element (following the land use diagram) are relevant:

- 2. Central Low-Density Residential Area*
The low-density designation recognizes existing residential development and land uses. The

Exhibit D

City shall continue to recognize the residential character of the area and provide incentives for public and private rehabilitation of rundown structures. In addition, the City shall encourage block planning, infilling, and shared housing. Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.

4. *South Low-Density Residential Area*

This area shall be recognized as appropriate for low-density residential use. The City shall encourage the rehabilitation of rundown structures, block planning, infilling, and shared housing.

15. *Low Density Residential Area*

This area shall be recognized as appropriate for low-density residential use. The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area. The City shall encourage block planning, infilling, and shared housing. Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.

Within all three of these low density residential subareas of the plan, the City is directed to encourage infilling. Consistent with this policy direction, the amendments related to secondary dwellings and development on existing alley access lots are intended to encourage compatible infill housing.

River Road-Santa Clara Urban Facilities Plan (1987)

The following policies from the Residential Land Use section are relevant:

- 1.0 *Recognize and maintain the predominately low-density residential character of the area consistent with the Metro Plan.*
- 2.0 *Provide a diversity of housing types in the area. Available techniques include encouraging reinvestment and rehabilitation of existing housing stock and the use of development standards that provide for clustering or planned unit development.*

The amendments attempt to strike a balance between maintaining the character of existing low density neighborhoods and providing a diversity of housing types in the area, consistent with this policy. While the amendments continue to allow for secondary dwellings in recognition of the importance of this small single-family housing type, they also include standards to address the compatibility of these dwellings.

Willakenzie Area Plan (1992)

Although there are no policies in this refinement plan that directly address the amendments or constitute mandatory approval criteria, the following land use policy lends general support for the amendments:

Residential Policies

1. *Maintain the existing low-density residential character of existing Willakenzie neighborhoods, while recognizing the need to provide housing for all income groups in the city.*

Exhibit D

4. *Encourage a mixture of housing densities and types to address the housing needs of a diverse population.*

The amendments attempt to strike a balance between maintaining the character of existing low density neighborhoods and providing housing for all income levels, consistent with this policy. While the amendments continue to allow for secondary dwellings in recognition of the importance of this housing type, they also include standards to address the compatibility of these dwellings.

TransPlan (2002)

Several policies from TransPlan were raised in public testimony as applying to the amendments. Those policies are addressed above under the Metro Plan, as identical policies are included in the Metro Plan. Those findings are incorporated herein by reference as demonstration of compliance with these policies.

Based on the above findings, the proposal is consistent with and supported by the applicable provisions of these adopted plans.

- (3) *The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The amendments do not establish a special area zone. Therefore, this criterion does not apply to these amendments.

Draft R-1 Code Amendment Recommendations 16-Feb-2014

INTRODUCTION

The following is a response to the City Manager's request for specific direction from councilors on changes they want to see in the draft R-1 ordinance that was presented by staff.

Summary of all recommendations.

- **Interim Protection Measures** – Put in a separate ordinance, based on the revised code e-mailed to council on February 14 by university neighborhood leaders. Ordinance should have an immediate effective date, and the effective date must not be dependent on DLCD acknowledgement.
- **Creation of new alley access only lots** – Remove all code that would allow creation of new alley access only lots. Hold off on further work on this concept until it can be dealt with as part of developing or revising specific neighborhood plans.
- **Owner occupancy standards for SDUs** – Adopt these as part of the ordinance that implements Interim Protection Measures. Make them permanent and city-wide when the city-wide amendments for SDU development standards are adopted.
- **Lot and development standards for SDUs** – Revise as described below.
- **Development standards for existing alley access only lots** – Revise as described below.
- **Development standards for accessory buildings** – Revise as described below.

SUMMARY OF RECOMMENDATIONS IN THIS DOCUMENT

Lot and development standards for SDUs.

Make the following changes to the draft code:

- Count SDUs when calculating density.
- Increase minimum lot sizes to maintain density within the ***Metro Plan*** Low Density Residential range. Allow smaller lots through existing PUD provisions.
- Disallow SDUs on “flag lots.”
- Reduce the height of structures close to neighboring backyards by reducing the “inflection” point at which the sloped setback begins.
- Increase the angle of the sloped setback to allow reasonable massing of structures.
- Rewrite adjustments to clarify criteria and limit extent of allowable adjustments.

Development standards for existing alley access only lots

- Use the same setback, height and massing standards that are used for detached SDUs.

Development standards for accessory buildings

- Reduce the height of structures close to neighboring backyards by reducing the “inflection” point at which the sloped setback begins.
- Increase the angle of the sloped setback to allow reasonable massing of structures.
- Rewrite adjustments to clarify criteria and limit extent of allowable adjustments.

DETAILS OF RECOMMENDATIONS IN THIS DOCUMENT

Lot and development standards for SDUs.

Amend Table 9.2740 to count SDUs when calculating density:

“All dwellings, **including secondary dwellings**, shall meet minimum and maximum density requirements in accordance with Table 9.2750.”

Other than the above, the SDU standards are mostly specified in the proposed code under section **9.2751 Special Development Standards for Table 9.2750** under the “**Secondary Dwellings**” subsection, in the following subsections:

- **Lot area.** Require a minimum of 6,100¹ square feet for an SDU, whether attached or detached. Allow smaller lots through a PUD, as long as overall density remains within **Metro Plan** Low Density Residential range. Do not allow SDUs on flag lots.
- **Building size.** Allow a maximum total square footage of 10% of lot area, not to exceed 800 s.f., for both attached and detached SDUs.
- **Building Height/Setback.** For detached SDUs and any portion of an attached SDU that is more than 60 feet from the front property line:

The dwelling (or portion of dwelling) shall be limited by interior yard setbacks that are five feet, with an inflection point at 8 feet height and a sloped setback from that height that increases at the rate of 10 inches vertically for every additional 12 inches horizontally. *(Note that setbacks are sloped. They do not have “pitch” – that is a term that applies to roofs and other structures, not setback planes. It confuses people who may think that the setback slope is a limit to roof pitch, when it is not.)*

With this setback configuration, it’s reasonable to allow a maximum building height of 18 feet on all lots for both detached SDUs and affected portions of attached SDUs. (An 18 foot height would have to be 13 feet from the adjacent property.)

Do not allow any intrusions into the setback areas other than eaves and chimneys.

- Rewrite **adjustment** (35) to clarify criteria and set maximum extent of allowable adjustments, as follows:

Conversion of Existing Building. Obviously, allow conversion if the structure meets all SDU standards. For structures that would conform to all standards, *except* the sloped setback plane, allow only for total square footage no more than 600 s.f. and no portion of structure more than 15’ above grade. Allow conversion of such structures that are closer than five feet to an interior lot line, only if the adjacent property owner grants an easement.

Building Height. Allow a max height of 24 feet if all of the structure that would fall within the scope of the “Building Height/Sloped Setback” standard is at least 20 feet from all interior property lines and within the sloped setback.

¹ Councilors may want to adopt a slightly different minimum lot size. Here are the relevant factors:

- The **Metro Plan** Low Density Residential density maximum is 14.28 dwellings per net acre (du/na), which is equivalent to one dwelling per 3,050 square feet or two dwellings per 6,100 square feet.
- The City’s R-1 Low Density Residential Zone maximum density is 14 du/na, which is equivalent to one dwelling per 3,111 square feet or two dwellings per 6,222 square feet.

Development standards for existing alley access only lots

These standards are mostly specified in the proposed code under section **9.2779 Alley Access Lot Standards** under the “Development Standards.” Subsection. The following proposed subsections should be changed to be the same as for detached SDUs:

- **Building Size.**
- **Building Height/Interior Setback.**

In addition to using the same Building Height standards, use the same **adjustment** for building height. (i.e., replace adjustment (36) with the rewritten adjustment (35).)

Development standards for accessory buildings

These standards are mostly specified in the proposed code under section **9.2751 Special Development Standards for Table 9.2750** under the “Accessory Buildings in R-1” subsection, in the following subsections:

- **Building Size.** Simplify accessory building size limits as 10% of lot size for all lots, regardless of lot size or development site size. Allow alternatives for larger development sites only through PUDs.
- **Building Height/Setback.** Simplify and provide adequate protection by having interior yard setbacks be five feet, with an inflection point of 8 feet and a sloped setback that increases at the rate of 10 inches vertically for every additional 12 inches horizontally.

With this setback configuration, it’s reasonable to allow a maximum building height of 25 feet on all lots. (A 25 foot height would have to be 19 feet from the adjacent property.) This should be stated as: “No part of the building (except chimneys), shall be more than 25 feet above grade.”

- Rewrite **adjustment** (34) to allow only up to a five foot increase in height in a PUD and as long as the entire structure meets the sloped setback standards. *(With a 25 foot max height, as suggested, there is no great need, and there is significant potential impact, for allowing higher accessory buildings unless they’re part of a PUD. PUD approval criteria already require development to be “compatible” and have “minimal impact” on surrounding areas.)*

Secondary Dwellings

The following table (Table 1) provides a summary comparison of the current code provisions for secondary dwelling units (SDUs), the proposal as contained in the draft ordinance provided at the Council's November 2013 public hearing (Planning Commission Recommendation), and the changes suggested by university area neighbors following the Council's February 2014 work session (alternative proposal). The final column includes some of the implications of the alternative proposal.

Table 1

Secondary Dwellings				
Development Standard	Current Code	Planning Commission Recommendation	Alternative Proposal	Implications of Alternative Proposal
Minimum Lot Size/Density	<p>For attached SDUs: Except for flag lots, the lot shall be at least 4,500 square feet to allow for an SDU.</p> <p>For detached SDUs: Except for flag lots, the lot shall be at least 6,000 square feet.</p> <p>Flag lots: Must contain at least 13,500 square feet to allow for any SDU</p> <p>Density: The City's long standing practice, supported by the Metro Plan, does not include SDUs when calculating density at the time of permit. They are counted in the City's supply of housing.</p>	<p>No changes to minimum lot size</p> <p>Flag lots: No changes</p> <p>Density: Continue current practice, supported by the Metro Plan, of not counting SDUs when calculating density.</p>	<p>Increase minimum lot size to 6,100 square feet to allow for any SDU</p> <p>Flag lots: Prohibit SDUs on all flag lots</p> <p>Density: Add code language that requires SDUs to be counted when calculating density</p>	<p>By increasing minimum lot and calculating towards density, approximately 4,780 lots within the UGB or approximately 10% of all lots eligible for an SDU would no longer be eligible for an SDU.</p> <p>Flag lots: If SDUs are prohibited on flag lots, approximately 300 lots would no longer be eligible for SDUs.</p>
Building Size	800 square feet, unless occupying an entire story of a multi-story home	Limits all SDUs 800 square feet. Clarifies how to measure	Limit total square footage to 10% of lot area, not to exceed 800 square feet.	<p>For lots less than 8,000 square feet, SDU would be required to be less than 800 sq. ft.</p> <p>For a 6,100 square foot lot, the SDU would be limited to 610 square feet. To provide for two bedrooms, 750 square feet is a more realistic size.</p>
Building Height	<p>Attached SDUs: 30 feet or 37 feet for roof slopes 6:12 or steeper (same as main house)</p> <p>Detached SDUs: 15 feet or 22 feet for roof slopes 6:12 or steeper if located within 20 feet of a property line (Allows for 2 story)</p> <p>20 feet or 27 feet for roof slopes 6:12 or steeper if located greater than 20 feet from a property line.</p>	<p>Attached SDUs: no change</p> <p>Detached SDUs: 15 feet for roof slopes 5:12 or less (flatter) or 18 feet for roof slopes 6:12 or steeper if located within 20 feet of a property line. (Allows for 1 story)</p> <p>24 feet, if located greater than 20 feet from any property line (Allows for 2 story)</p>	<p>Attached SDUs: 18 feet for any portion of an attached SDU that is more than 60 feet from a front property line. No change for attached SDUs within 60 feet from front property line.</p> <p>Detached SDUs: 18 feet</p>	<p>Lowers height for attached SDUs more than 60 feet from front property line (street) to 18 feet, regardless of height of the home containing the SDU.</p> <p>Attached SDUs often include garage, basement or other conversions of existing homes. For lots that are not located in the traditional block/rectilinear lot pattern commonly found in Eugene's closer in neighborhoods (such as larger or hilly lots in the south hills, and larger lots north of the river) this may be problematic for conversations depending on the location of the existing home.</p> <p>If an existing home located greater than 60 feet from the street exceeds 18 feet in height, a conversion would not be allowed. Although difficult to quantify, this would presumably result in a reduction in the number of lots that can currently create an attached SDU through conversion.</p> <p>The suggested change for sloped setback/building height is identical to the area-specific SDU standards recently adopted as part of the University Area Interim Protection Measures.</p> <p>Taking into account that typical ceiling height in residential construction is 8 to 9 feet, not including a crawl space and required ceiling insulation, an 8 foot building height is not feasible for construction.</p>
Sloped Interior Yard Setbacks	No sloped setback (which means the dwelling can reach maximum building height at a point 5 feet in from the interior property line)	<p>For detached SDUs located within 20 feet of a property line: creates a building envelope that requires dwelling to slope away from interior yard setback starting at a building height of 12 feet above grade.</p> <p>For a detached secondary dwelling, starting at the 5 foot interior yard setback, the dwelling would be limited in height to 12 feet, and then would be required to slope away from the interior property lines at a maximum roof slope of</p>	<p>For all detached SDUs and any portion of an attached SDU that is more than 60 feet from the front property line: creates a building envelope that requires dwelling to slope away from interior yard setback starting at a building height of 8 feet above grade (instead of 12 feet), and use a maximum slope of 10:12 (83%). This would result in the ridge (tallest point) of the dwelling being a minimum of 13 feet from the interior property lines.</p>	

Setback Intrusions	Allows for building features, such as eaves, awnings, chimneys, bays, bay windows and porches, to project into interior yard setbacks up to 2 feet	6:12 (50%) rising to a maximum height of 18 feet. This would result in the ridge (tallest point) of the dwelling being a minimum of 17 feet from the interior property lines.	Limit setback intrusions to eaves, chimneys and gables.	Limit setback intrusions to eaves and chimneys	Would not allow gables to project into sloped setback.
Ownership/Occupancy	Either the primary dwelling or the secondary dwelling must be occupied by the property owner	Strengthens current requirements by defining ownership and length of occupancy, requiring documentation to verify ownership and occupancy, requiring deed restriction and requiring verification every two years that requirements are met. Provides allowance for temporary leave under certain circumstances.		Adopt as proposed in ordinance	
Adjustment Review	None	<p>Allows for adjustment review in limited situations: temporary leave, to allow conversion of existing accessory building into secondary dwelling and to allow a secondary dwelling over an accessory building (height).</p> <p>To allow for conversion of existing building that does not meet all of SDU standards; the SDU must be limited to 800 square feet and must be limited to one story or on ground floor of 2 story building. Other relevant compatibility criteria apply.</p> <p>To allow for a SDU over an accessory building (such as a garage), limit SDU size to 500 square feet, limit building height to 24 feet. Other relevant compatibility criteria apply.</p>	<p>Allows for conversion of existing building that does not meet all of SDU standards; the SDU must be limited to 800 square feet and must be limited to one story or on ground floor of 2 story building. Other relevant compatibility criteria apply.</p>	<p>To allow for conversion, if the structure meets all SDU standards except the sloped setback, limit SDU to 600 square feet in building size and 15 feet in height. If closer than 5 feet from interior property line, allow if adjacent property owner grants easement.</p> <p>To allow for a SDU over an accessory building, limit height to 24 feet if all of the building is at least 20 feet from all interior property lines and within the sloped setback.</p>	<p>For conversion of existing structures, would place additional limits on building size and height (beyond those for new SDUs). Whereas a new SDU could be 800 square feet and 18 feet in height (assuming an 8,000 square foot or greater sized lot), an existing building to be converted to an SDU could not exceed 600 square feet and 15 feet in height.</p> <p>To allow for a SDU over an accessory building, the building would need to be at least 20 feet from all interior property lines and fit within sloped setback established above.</p> <p>Although difficult to quantify, this would presumably result in a reduction in the number of lots that can currently do an attached SDU through conversion of an existing home.</p>

Alley Access Lots

The following table (Table 2) provides a summary comparison of the current code provisions for dwellings on alley lots, the proposal as contained in the draft ordinance provided at the Council's November 2013 public hearing (Planning Commission Recommendation), and the changes suggested by neighbors following the Council's February 2014 work session (alternative proposal). The final column includes some of the implications of the alternative proposal.

Table 2

Alley Access Lots				
Development Standard	Current Code (applies to existing lots)	Planning Commission Recommendation (to apply to existing and newly created lots)	Alternative Proposal (to apply to existing lots; prohibit new lots)	Implications of Alternative Proposal
Creation of new lots	Not currently allowed.	Allow for creation of new alley access lots, subject to compatibility standards.	Do not allow for creation of new alley access lots	
Building Size	No limits (except that current lot coverage standards limit total building coverage to 50 percent of a lot)	1,000 square feet maximum. For two story structures, only 400 square feet of the 1,000 is allowed on the upper floor.	Same as suggested above for detached SDUs: Limit total square footage to 10% of lot area, not to exceed 800 square feet.	Existing alley access lots are typically less than 5,000 square feet in area, which means that homes would be limited to 500 square feet or less. Homes on alley access lots will be smaller than secondary dwellings in most cases. Homes on alley access lots are a different housing type than SDUs. Limiting the homes to such a small size (and height) will limit the desirability of these homes for owner-occupancy. The recently adopted University Area Interim Protection Measures allow provide for a maximum building size of 1,000 square feet on existing alley access lots.
Building Height	30 feet or 37 feet for roof slopes 6:12 or steeper	24 feet	18 feet	Same as suggested above for detached SDUs
Sloped setback	No sloped setback (which means the dwelling can reach maximum building height at a point 5 feet in from the interior property line)	Creates a building envelope that requires dwelling to slope away from interior yard setback starting at a building height of 14 feet above grade. Starting at the 5 foot interior yard setback, the dwelling would be limited in height to 14 feet, and then would be required to slope away from the interior property lines at a maximum roof slope of 8:12 (67%) rising to a maximum height of 24 feet. This would result in the ridge (tallest point) of the dwelling being a minimum of 20 feet from the interior property lines.	Creates a building envelope that requires dwelling to slope away from interior yard setback starting at a building height of 8 feet above grade (instead of 14 feet), and change maximum slope to 10:12 (instead of 8:12). This would result in the ridge (tallest point) of the dwelling being a minimum of 13 feet from the interior property lines (instead of 20 feet).	Same as suggested above for detached SDUs, which is identical to the area-specific SDU standards recently adopted as part of the University Area Interim Protection Measures. Taking into account that typical ceiling height in residential construction is 8 to 9 feet, not including a crawl space and required ceiling insulation, an 8 foot building height is not feasible for construction.
Adjustment Review	None	Provide for adjustment review to building height/sloped setback subject to criteria that address scale, location, design, privacy, light and solar access, and visual impact of the dwelling in the context of adjacent properties.	Provide for adjustment review to allow dwelling up to maximum height of 24 feet if all of the building is at least 20 feet from all interior property lines and within the sloped setback.	Existing alley access lots are typically less than 5,000 square feet and are generally 50 feet in width. As such, it may not be possible or practicable to create a dwelling that is 20 feet from all interior property lines. Due to the suggested change for building size to 10% of lot area (see above), which results in a very small home, it is unlikely a property owner would need or desire to seek an increase in height.

Accessory Buildings

The following table (Table 3) provides a summary comparison of the current code provisions for accessory buildings, the proposal as contained in the draft ordinance provided at the Council's November 2013 public hearing (Planning Commission Recommendation), and the changes suggested by university area neighbors following the Council's February 2014 work session (alternative proposal). The final column includes some of the implications of the alternative proposal.

Table 3

Accessory Buildings				
Development Standard	Current Code	Planning Commission Recommendation	Alternative Proposal	Implications of Alternative Proposal
Building Size	No limits (except that current lot coverage standards limit total building coverage to 50 percent of a lot)	On development sites (with a dwelling) that are 13,500 square feet or less in area, limit total square footage to 1,000 square feet On development sites (with a dwelling) that are between 13,501 square feet and 43,559 square feet, limit total square footage to 10 percent of development site, not to exceed 3,000 square feet. On development sites 43,560 square feet (one acre) or greater in area, or on development sites with a non-residential use (such as a park, church or school), no building size limitation.	Limit to 10% of lot size for all lots Allow alternative for large development sites through PUDs	Suggested change simplifies the standard by not differentiating between lot sizes, as recommended by the Planning Commission to address scale and proportionality. Requiring planned unit development (PUD) approval for larger development sites would be onerous to a property owner. PUDs are a two-step land use application process that require tentative approval by the City's Hearings Official; are subject to a minimum application fee of \$21,593; require a property owner to hire a team of professionals to prepare the application; and typically take at least 6 to 9 months to process.
Building Height	20 feet or 27 feet for roof slopes 6:12 or steeper	22 feet for development sites (with a dwelling) that are 13,500 square feet or less in area 25 feet for development sites greater than 13,500 square feet in area or on development sites with a non-residential use.	25 feet for all lots regardless of size	Suggested change simplifies the standard by not differentiating between lot sizes, as recommended by the Planning Commission to address scale and proportionality.
Sloped setback	No sloped setback (which means the building can reach maximum building height at a point 5 feet in from the interior property line)	On development sites (with a dwelling) that are 13,500 sq ft or less in area, interior yard setbacks shall be at least 5'. In addition, at a point that is 12' above finished grade, the setback shall slope at 6:12 horizontally away from the property line to a maximum building height of 22' On development sites greater than 13,500 sq ft in area or on development sites with a non-residential use, the interior yard setback shall be at least 10 feet. In addition, at a point that is 12' above finished grade, the setback shall slope at 10:12 horizontally away from the property line to a maximum building height of 25 feet	Creates a building envelope for all sized lots that requires a building to slope away from a five foot interior yard setback starting at a building height of 8 feet above grade (instead of 12 feet). Use maximum slope of 10:12 regardless of lot size. This would result in the ridge (tallest point) of the building being a minimum of 19 feet from the interior property lines.	Suggested change simplifies the standard by not differentiating between lot sizes, as recommended by the Planning Commission to address scale and proportionality. Requires same 8 foot building height at interior yard setback as suggested for secondary dwellings and alley access lots. Results in a 25 foot tall building 19 feet from property line (as opposed to 25 feet from property line).
Adjustment Review	None	Provide for adjustment review to building height/sloped setback subject to criteria that address scale, location, design, privacy, light and solar access, and visual impact of the building in the context of adjacent properties.	Allow up to a five foot increase in height only through an approved planned unit development application and as long as the entire structure meets the sloped setback standard.	Requiring planned unit development (PUD) approval for larger development sites would be onerous to a property owner. Planned unit developments are a two-step land use application process that require tentative approval by the City's Hearings Official; are subject to a minimum application fee of \$21,593; require a property owner to hire a team of professionals to prepare the application; and typically take at least 6 to 9 months to process.

HANSEN Alissa H

From: mbbarrow@comcast.net
Sent: Saturday, May 31, 2014 9:49 AM
To: HANSEN Alissa H
Cc: mb barlow
Subject: Proposed SDU change

Dear Ms Hansen,
I am a concerned landlord and homeowner who is strongly in favor of cultivating in-fill density and minimizing sprawl.
I received your notice of regulation changes and find myself confused:

1. Nowhere could I find a map showing the area affected. Are these proposals limited to the university area, or, do they apply to the whole R-1 Zone?
2. What is the reasoning for the city to move away from its avowed support of infill?
3. Who submitted the Alternative Proposal?

In addition to seeking answers to my questions, I also want to state clearly that I emphatically support rules that foster in-fill via legally built SDUs in all of the R-1 area.

Small property owners and landlords have suffered in recent years from decisions favoring larger developers, resulting in eyesores and oversupply of units for students. However, the market for accessory units for students who seek quiet and the archetypal 'mother-in-law unit' remains. If University area or other homeowners have noise complaints, enforcement of existing owner-occupied laws would foster positive change by having the responsible landlord onsite to address issues. As a dreamer and supporter of individual social responsibility, I would also like to have a tie between a student's legal record involving complaints or founded charges for any violation become part of his/her student record as well as public record.

Finally, please could you mail me a copy of the table comparing the two proposals before the day of the public hearing? I am a grey hair, and the print I found when downloading was not legible to me. My address is:

2290 Monroe
Eugene, OR
97405

Thank you, Ms Hansen. I look forward to your specific answers.

Best,
MB Barlow, LCSW, ACSW

HANSEN Alissa H

From: kyle_de@juno.com
Sent: Thursday, May 29, 2014 2:53 PM
To: HANSEN Alissa H
Subject: Proposed Land Use Regulation Change

Hi there -

Well, I had a long involved letter written you weighing in against any regulation change that prohibits the construction of secondary dwellings on any size lot - then through an indiscriminate use of the space bar, apparently, I lost it.

So the long and short of it is, please don't do it! Since in-filling is such the better option to sprawl in the face of population expansion! In ecological terms, in economical terms such the better solution: Smaller, more efficient homes. Less demand on material resources. Plugging into existing infrastructures rather than expanding into farmland and timberland. Providing more rewarding craft-like jobs that are closer to home as opposed to production-line big-box developments where the workers are factory-hands and the money heads out of town. Development houses are either cookie-cut dingbats or vastly wasteful follies. Fitting dwellings to existing lots requires creativity and often the pride of close ownership.

So don't do it, please; don't delimitate our option to creatively provide homes for ourselves. What would the benefit of such a prohibition be? If anything, let's make it easier and less expensive to innovatively in-fill! Walk or work around any neighborhood - as I do all over town - and you will see both examples of how cool and functional secondary dwellings can be and of property that cries out for better use. I have also worked for developers and have seen how dysfunctional, even brutally dysfunctional, new sprawl can be: totally automobile-dependent living, chlorinated sprinkler systems for postage-stamp lawns that each require combustion engine mowers, natural-gas fake fireplaces (so wasteful, so inefficient!) new roads, sewers and other utilities, etc., etc. that gobble up farmland and timberland. Not to mention pre-requisite speculative boom-and-bust economies....

Okay. You see that I'm against it. Thanks you for considering my opinion.

Sincerely, Kyle DeBord
2429 Friendly Alley
Eugene, OR 97405

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FixYourBloodSugar.com

HANSEN Alissa H

From: OregonDan@comcast.net
Sent: Saturday, May 31, 2014 12:27 PM
To: HANSEN Alissa H
Subject: Land Use Change - Reasons for Flag Lot development Prohibition

RE: Land Use Change
Why is construction of a secondary dwelling TOTALLY PROHIBITED ON FLAG LOTS, yet permitted on smaller non-flag lots?

Dear City Planner Alissa Hansen,

The fair market value of my TWO FLAG LOTS (each larger than 16,000 sq ft) will be reduced if the proposed prohibition on construction of a secondary dwelling is enacted. Even when the area of the panhandle portion is subtracted, the remaining area of each of my flag lots exceeds 13,500 square feet.

What is the justification for singling out flag lots for the development prohibition?

Thank you for your time and attention to this matter.

Sincerely,

Daniel Ridder
2011 Kimberly Dr., Eugene 97405
(541) 345-5228

HANSEN Alissa H

From: Eric Jones <ericjones2@comcast.net>
Sent: Saturday, May 31, 2014 8:29 PM
To: HANSEN Alissa H
Subject: Concerns proposed land-use regulation change (construction of secondary dwelling on flag lots)

My wife, Linda, and I own property at 2953 Ingalls Way (tax lot 1804-1211-02301). Our property is a "flag" lot, approximately 13,682 square feet (0.36 acres) in size, and is the site of our primary dwelling.

We are concerned about the proposed changes to Eugene's land-use code that would no longer allow the construction of a secondary dwelling on flag lots that are 13,500 square feet (0.31 acres) or larger for the following reasons:

1. While the impacts of the proposed change are clear, the rationale for the change is not stated. It would appear that the overarching Council goal is to further compact urban development. Prohibiting the construction of secondary dwellings on large flag lots, assuming other development criteria can be met, seems to be inconsistent with the Council's adopted policies related to urban development.
2. Singling out large flag lots is arbitrary and capricious. We can find no stated rationale for applying this regulatory change to flag lots and not, for example, all lots greater than 13,500 square feet. It is not good policy to create blanket policies to address individual issues. If there is a specific property on which a neighborhood leader wishes to block construction of a secondary dwelling, that situation can be argued before the appropriate authorities.
3. Finally, we would like to note that the proposed change has the potential to damage us economically. If we were to sell our property at some point in the future, we would lose the existing potential value of being able to construct a secondary dwelling, assuming other development criteria could be met.

For these reasons, we request that the Council not approve land-use regulations that would prohibit the construction of secondary dwellings on flag lots 13,500 square feet or more.

Sincerely,
Eric and Linda Jones
2953 Ingalls Way
Eugene, OR 97405
541-344-8653

HANSEN Alissa H

From: tammy@ashestobeauty.org
Sent: Saturday, May 31, 2014 9:13 PM
To: HANSEN Alissa H
Subject: Proposed change to land use regs

I think that this is a terrible time to limit housing possibilities. There are so many homeless people many of whom are elderly and need the support of their family. Please don't disallow secondary dwellings in R-1 residential zones.

Tamara Wilhite
541-606-5433

HANSEN Alissa H

From: Maggie <maggie@pacinfo.com>
Sent: Sunday, June 01, 2014 7:56 AM
To: HANSEN Alissa H
Subject: proposed ordinance

Dear Alissah,

I received a disturbing letter about a proposed ordinance change that I am told will affect my property. I have future plans to build a small home in the footprint of my garage, for me to live in when I am older. The expectation that I would be able to expand the living space of my current less than 1,000 sq. ft. home into my spacious back lot w/garage, to make room for family members in the main house, is why I bought this house and property more than ten years ago.

Please let me know how to confirm that this ordinance will affect me and what I can do to challenge it. I will be out of town for the June 16th hearing.

Many thanks.

Maggie (Margaret) Keenan
2252 Pierce Street
Eugene, OR 97405

HANSEN Alissa H

Subject: FW: zoning changes issues

From: t spears <spears2012@msn.com>
Date: June 1, 2014, 11:28:52 AM PDT
To: PIERCY Kitty <Kitty.Piercy@ci.eugene.or.us>
Subject: zoning changes issues

Good Morning Mayor Piercy,

I recently received a letter that states my property may be rezoned to exclude building a small second home. We have a 13,800 flag lot. We bought the property in 1987. We have counted on being able to eventually build a small abode for our disabled daughter. If the rezoning is approved we will not be able to do this. Since she will, likely, never be able to live independently this would impact her in a very detrimental way. Please give some consideration to helping us and others in our situation by allowing disabled housing to be built on very large properties. It is a very positive way to reduce the future homeless population, in my opinion.

Thanks,

Tonya Spears
2675 Benson Lane
Eugene 97408

HANSEN Alissa H

From: anna baio <j.annabaio@gmail.com>
Sent: Monday, June 02, 2014 3:28 PM
To: HANSEN Alissa H
Subject: Proposed land use regulation change

Alissa,

I received a notice of proposed changes to R-1 Low Density Residential Zone, which would no longer allow secondary dwellings.

First, I want to know who is requesting this change and why have some home owners not been notified. It seems very unfair and shameful. Many home owners have considered a secondary dwelling on their properties for their grown children, extra income in their retirement or for a caretaker, if needed in the future. Now the city is proposing to take that ability away from home owners in my neighborhood.

After looking over some of the actual rules for secondary dwellings, the word, "draconian" seems to apply to the control of homeowners' freedom of movement. It sounds like the city wants to force people to sell their properties, if they need or want to be away for extended periods. Are these proposals really legal?

I watch the city give tax breaks to huge developers, like Capstone, to build ugly monstrosities in our downtown. If you look at Craigslist, these apartments are ridiculously overpriced. Not every renter in Eugene is a student or wants to live in these apartments. The small duplex market is very appealing to Eugene renters, who want to live in a quiet neighborhood away from the University, where they can have a garden and bike or walk to work. The homeowner, who provides a secondary dwelling on a alley or corner lot is a great benefit to many of these renters.

So, you tell me, why the changes? I thought the city aimed to have urban infill. Homeowners pay most of your taxes. What is going on? This whole plan smells very unsavory!!!!

I definitely will be at the June 16th meeting and so will my homeowner neighbors, who never received this notice and have properties that have qualified for a secondary dwelling.

Sincerely,

Anastasia Baio

HANSEN Alissa H

From: Marcy Abbale <marcysweetie@gmail.com>
Sent: Wednesday, June 04, 2014 9:54 AM
To: HANSEN Alissa H
Subject: Single-Family Housing Proposed Land Use Regulation Change



Revised to Eugene:
City Council....

June 4, 2014

City Council of Eugene

Re: Notice of Proposed Land Use Regulation Change and City Council Public Hearing

To Whom It May Concern:

I am writing to voice my concern about the proposed land use regulation change regarding not being able to have the potential to build a secondary dwelling on a residential lot.

If everyone of us would open their eyes and hearts to what's happening in the world (think outside of the box of Eugene) and the shrinking value of our currency and rising food costs, they might be able to see that the stock market is volatile, the economy is at high risk, and the food supply continues to grow in demand with less agriculture landscape available to plant on, homes may need to be built smaller and families may find themselves having to live together with parents, children, grandparents, etc. To deny the possibility to build a tiny dwelling to assist others is unacceptable. I'm not speaking about the homeless here. I'm talking middle class/lower income families that struggle every day to meet ends meet.

You seem to be so concerned with the homeless...this preposterous idea contradicts that idea of thinking. If the economy doesn't turn around soon, you will find yourself faced with many additional homeless people. Why not allow families to help one another? Why not allow for strangers to help one another?

Put on your thinking caps before it's too late.

Respectfully,

Marcy Ann Abbale
2487 Mangan Street
Eugene OR 97402-8724
(541)688.5650

HANSEN Alissa H

From: sheri cannell <sheriatba@yahoo.com>
Sent: Wednesday, June 04, 2014 7:48 PM
To: HANSEN Alissa H
Subject: infill a goal

on the subject of sdu's

1. i thought a stated goal of the city is infill not extending the ugb. what happened?
2. if the existing owner occupied laws were enforced, that alone would address lots of the noise and nuisance complaints in the u area.
3. legal sdu's blend into the neighborhoods , if done according to code.
4. this new proposal favors wealthy homeowners with larger lots.

thanks, sheri cannell

Stephen Leppold
2925 Ingalls Way
Eugene, OR 97405
June 6, 2014

Received

JUN 6 2014

City of Eugene
Planning Division

Eugene City Council
c/o Alissa Hansen
99 W. 10th Avenue
Eugene, OR 97401

Dear Mayor Piercy and City Councilors:

Re: Proposed code changes for secondary dwellings

Ten years ago, my wife and I purchased a flag lot (in the Crest Drive neighborhood) that was large enough to allow a Secondary Dwelling Unit, and this potential for an SDU was factored into the price we paid for the property.

Taking away the SDU option from *all* flag lots, as proposed, seems arbitrary and unfair to current owners, such as my wife and I, who would like to be able to build a small SDU for ourselves when we retire.

I suggest (and request) that SDUs remain a possibility for existing flag lots, at least for current owners who purchased their flag lot prior to the date of the code changes. The current restriction on flag lot size (minimum 13,500 square feet to allow an SDU) should be sufficient.

Thank you for your consideration.

Sincerely,



Stephen Leppold

HANSEN Alissa H

From: Randy Birzer <randybirzer@comcast.net>
Sent: Saturday, June 07, 2014 10:35 AM
To: HANSEN Alissa H
Subject: Secondary Dwelling on Flag Lots

Alissa,

I am **opposed** to the proposed changes in Eugene's land use code that would no longer allow a secondary dwelling on flag lots that are .31 acre or larger.

I own a flag lot that is .44 acre and there is plenty of space and parking to build a secondary dwelling, which we may want to do in the future.

One of my nearby neighbors has approved plans for a "cluster development", with the movement for more density verses sprawl, it does not seem fair that they can build several houses close together and we can only have one on our .44 acre lot.

Thanks for your consideration.



Randy Birzer

Birzer Home Inspection LLC

541-554-1217

EugeneInspection.com

Randy@Eugeneinspection.com

HANSEN Alissa H

From: mbbarlow@comcast.net
Sent: Sunday, June 08, 2014 12:02 PM
To: HANSEN Alissa H
Cc: mb barlow
Subject: Testimony regarding proposed changes to land use code

As a local citizen and landlord, I strongly oppose the proposed changes regarding SDUs. The part of the Alternative Proposal which lifts the requirement for increased lot size is most welcome, although I do not agree that those developers who choose to build multi-unit dwellings should find relief from the fees now charged.

The goal of properly permitted and built SDUs is commensurate with the goal of infill to prevent sprawl. Limiting these to the yards of more prosperous citizens who tend to have larger lots is unfair. Losing the potential to build a legal SDU also reduces the property value of current landholders and that, too, is unfair. Why give yet another advantage to wealthier citizens when it defies the city's avowed goal of in-fill with SDUs commensurate with the existing neighborhood?

Despite the overbuilding of 'princess dorm' buildings with MUPTE privilege, there remains a market for SDUs in owner-occupied properties, in order to serve as a small income stream or close-in home for the proverbial in-law.

For those who have legitimate concerns regarding noise and nuisance from properties with SDUs, I refer to the owner-occupied mandate. If this were enforced, it would mean that the owner of the property would be onsite to regulate or evict in the face of tenant misbehavior. The law in place is more than adequate, were it enforced.

Thank you for thinking about this from the concerns of the majority, not the most vocal or best funded, segment of the community.

Respectfully submitted,

MB Barlow, LCSW, ACSW
2290 Monroe
97405



APPRAISAL REPORT

Vacant Residential Lot
Portland Alley
Eugene, Lane County, Oregon
Tax Lot 2700 on Map 18-03-06-42

Submitted To:

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Avenue, Suite 204
Eugene, Oregon 97401

Submitted By:

Zoe R. York, MAI
Richard J. Duncan, MAI, SRA
Duncan & Brown, LLC
260 West 12th Avenue
Eugene, Oregon 97401
Duncan & Brown File No. **17-166**

Date of Report:

June 16, 2017

Date (s) of Value:

July 28, 2013
July 28, 2015





DUNCAN & BROWN
REAL ESTATE ANALYSTS

PRINCIPALS

RICHARD J. DUNCAN, MAI, SRA
JASEN D. HANSEN, MAI
COREY S. DINGMAN, MAI

June 16, 2017

ASSOCIATES

THOMAS S. MORGAN
ALAN CLARK
LEAH C. CALLAHAN, MAI
CLINT C. BECRAFT, MAI
ZOE R. YORK, MAI
BARBARA SHIELDS
ROBERT A. MCLAUCHLIN
NICOLE C. AUTRY
JOSEPH JACKSON

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Avenue, Suite 204
Eugene, Oregon 97401

RE: Vacant Residential Lot
Portland Alley
Eugene, Lane County, Oregon
Tax Lot 2700 on Map 18-03-06-42

Dear Mr. Kloos:

Pursuant to your request, we have completed an appraisal of the captioned real estate as of the requested dates of value. The subject property consists of a single tax lot totaling 0.11 acre, zoned R-1, Low Density Residential. The lot is located on Portland Alley in Eugene, Lane County, Oregon. The Lane County Department of Assessment and Taxation identifies the subject property as Tax Lot 2700 on Map 18-03-06-42. The property is improved with a concrete pad, a small shed and perimeter fencing.

The purpose of this inspection and subsequent analysis was to develop an opinion of the as-is market value of the subject property as of July 28, 2013, one year prior to the 2014 City of Eugene Ordinance 20541, as well as the as-is market value of the subject property as of July 28, 2015, one year after Ordinance 20541 was enacted. The intended use is to assist the client in determining the effect on fair market value of the subject site as a result of the ordinance. Based on our inspection and analysis of pertinent market data, it is our opinion the market values of the subject site, as of the respective dates of value, were:

Market Value July 28, 2013:	\$65,000
Market Value July 28, 2015:	\$40,000

The following appraisal report details the basis and reasoning for our value conclusion. This report conforms to the *Uniform Standards of Professional Appraisal Practice* (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation and is intended to comply with the reporting standards set forth under USPAP Standards Rule 2-2(a) for an Appraisal Report. Discussion contained in this report is specific to the needs of the client and for the stated intended use. Supporting documentation concerning the data, reasoning and analyses is retained in the appraisers' work file. The appraisers are not responsible for unauthorized use of this report. We certify this appraisal has been prepared in accordance with the Code of Professional Ethics and Standards of Professional Practices set forth by the Appraisal Institute. We certify we have no present or contemplated interest in the property and our fee for making this appraisal is not predicated upon reporting any specified value or value range.

Bill Kloos
June 16, 2017

Please contact us at your convenience if any additional data or information is required.

Respectfully submitted,
DUNCAN & BROWN



Zoe R. York, MAI
zoe@duncanbrown.com



Richard J. Duncan, MAI, SRA
rick@duncanbrown.com

ZRY, MAI, Certification No. C001053, Exp. 07/31/18
RJD, MAI, SRA, Certification No. C000106, Exp. 7/31/17

ZRY/RJD/cp

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AERIAL PHOTOGRAPHS

2011 Lane County Aerial Photographs



EXECUTIVE SUMMARY

Location: Vacant Residential Lot
Portland Alley
Eugene, Lane County, Oregon
Map 18-03-06-42, Tax Lot 2700

Property Type: Vacant residential lot.

Owner of Record: Elise A. Moore

Tax & Assessment Data (2013):

Identification		Real Market Value			Assessed Value	Taxes
Tax Lot	Account	Land	Improvements	Total	Total	
2700	0628279	\$73,870	\$0	\$73,870	\$5,402	\$102.61

Tax & Assessment Data (2015):

Identification		Real Market Value			Assessed Value	Taxes
Tax Lot	Account	Land	Improvements	Total	Total	
2700	0628279	\$79,963	\$0	\$79,963	\$5,731	\$107.64

Parcel Size: The subject site contains 0.11 acre or 4,620 square feet, per the Lane County plat map.

Zoning: R-1, Low Density Residential by the City of Eugene.

Highest & Best Use—
July 28, 2013:

Development with an allowable residential use in the R-1 zone, subject to general development standards within the zone. There was no specific development restrictions associated with alley access lot development.

July 28, 2015:

Development with an allowable residential use in the R-1 zone, subject to alley access lot development standards within the zone, which most notably include a building size restriction to a maximum of 10% of the total lot area, or 462 square feet.

Market Value Conclusions:

July 28, 2013:

\$65,000

July 28, 2015:

\$40,000

Date of Report: June 16, 2017

Appraisers: Zoe R. York, MAI & Richard J. Duncan, MAI, SRA

ASSUMPTIONS & LIMITING CONDITIONS

General Assumptions and Limiting Conditions

1. This Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the *Uniform Standards of Professional Appraisal Practice*. As such, information and discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraisers' opinion of value are specific to the needs of the client and for the intended use stated in this report. Supporting documentation concerning the data, reasoning and analyses is retained in the appraisers' file. The appraisers are not responsible for unauthorized use of this report.
2. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. The appraisers' liability is limited to the client's interest only in an amount not to exceed the fee for the service.
3. Title to the property is assumed good and marketable unless otherwise stated in this report. No responsibility is assumed for the legal description or for such matters including legal or title considerations. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated in this report. It is assumed the utilization of the land and improvements is within the boundaries or property lines of the property described and there is no encroachment or trespass unless otherwise stated in this report.
4. Responsible ownership and competent property management are assumed unless otherwise stated in this report. It is assumed there is full compliance with all applicable federal, state and local environmental regulations and laws, unless non-compliance is stated, defined and considered in the appraisal report.
5. It is assumed that all required licenses, certificates of occupancy or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
6. Compliance with all applicable zoning and use regulations and restrictions is assumed unless a nonconforming use has been stated, defined and considered in the appraisal report.
7. It is assumed there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. The appraisers are not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraisers that may suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The appraisers' value estimate is predicated on the assumption there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraisers' descriptions and comments are the result of the routine observations made during the appraisal process.

9. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reference purposes only. No guarantee as to accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.
10. Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act. The presence of architectural and communications barriers that are structural in nature and would restrict access by disabled individuals may adversely affect the property's value, marketability, or utility.
11. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraisers, and in any event only with proper written qualification and only in its entirety. The appraisers are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question because of this appraisal, unless arrangements have been previously made.
12. Neither all nor any part of the contents of this report, including any conclusions as to value, the identity of the appraisers, or the firm with which the appraisers are connected, shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the appraisers.

PERTINENT DEFINITIONS

Market Value

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date.²

Highest & Best Use

The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.³

When a site contains improvements, the highest and best use may be determined to be different than the existing use. The existing use will continue unless and until land value in its highest and best use exceeds the sum of the value of the entire property in its existing use, and the cost to remove the improvements.

An additional implication is that the determination of the highest and best use results from the appraiser's judgment and analytical skills, that is, that the use determined from analysis represents an opinion not a fact to be found. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

1. 12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 24, 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994.
2. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed., (Chicago: Appraisal Institute, 2015), p. 13.
3. *Ibid.*, p. 109

PRELIMINARY INFORMATION

Property Appraised

The subject property consists of a single tax lot totaling 0.11 acre, zoned R-1, Low Density Residential. The lot is located on Portland Alley in Eugene, Lane County, Oregon. The Lane County Department of Assessment and Taxation identifies the subject property as Tax Lot 2700 on Map 18-03-06-42. The property is improved with a concrete pad, a small shed and perimeter fencing.

Purpose and Intended Use

The purpose of this inspection and subsequent analysis was to develop an opinion of the as-is market value of the subject property as of July 28, 2013, one year prior to the 2014 City of Eugene Ordinance 20541, as well as the as-is market value of the subject property as of July 28, 2015, one year after Ordinance 20541 was enacted. The intended use is to assist the client in determining the effect on fair market value of the subject site as a result of the ordinance.

Intended User and Client

The clients and intended users of this report are Elise Moore and Bill Kloos, attorney at Law Office of Bill Kloos PC.

Interest Appraised

Fee simple estate.

Scope of the Appraisal

The scope of the appraisal assignment has been to collect, confirm, analyze and interpret pertinent market data and other market forces so as to arrive at the requested opinions of market value for the subject property. As part of the assignment, a complete investigation of all pertinent data in relation to the subject property was conducted.

This investigation included, but was not limited to:

- Personal inspection of the subject property, the immediate neighborhood, and market area to determine marketability of the subject;
- Review of public property records related to the subject;
- Research of supply and demand of competing sites over the last 7 years;
- Research and analysis of transactions of comparable sites. Research for comparable sales included Lane County deed records from 2010 through the current date (June 2017), as well as the Multiple Listing Service from 2010 to the current date (June 2017) and discussions with market participants regarding trends, lot values and market appeal during this time frame;
- Discussions with 2010 seller of the subject lot;
- Research of market conditions that influence value for the subject property on both dates of value;
- Application of the appropriate approaches to value and reconciliation to the requested opinions of market value;
- Preparation of the written appraisal report conveying the appraisers' analyses and conclusions.

Information	Source
Address, tax information	Lane County records.
Zoning	City of Eugene.
Site size	Lane County records.
Flood plain information	Federal Emergency Management Agency (FEMA).
Sales and lease data	Appraisers' files; public records; multiple listing service; broker interviews.

The Sales Comparison Approach will be utilized in the valuations. This approach is based on the principle that an informed purchaser would pay no more for a property than the cost of acquiring an existing property with the same utility. The Cost Approach and Income Approaches are not applicable methods of valuation for vacant land.

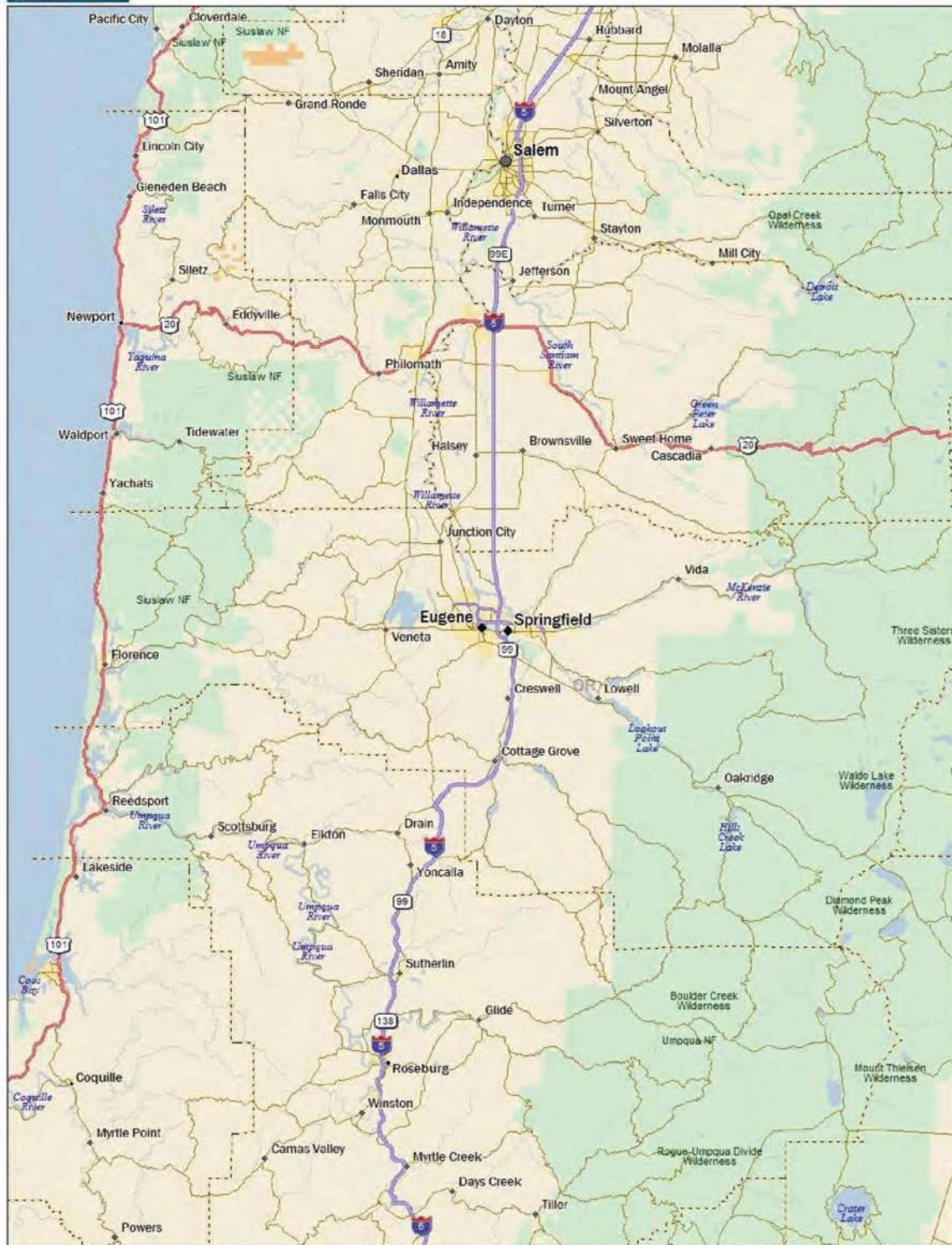
Compliance and Competency Provision

This appraisal has been prepared in compliance with the 2016-17 *Uniform Standards of Professional Appraisal Practice* (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. Zoe R. York, MAI, and Richard J. Duncan, MAI, SRA, are certified general appraisers in the State of Oregon and have the knowledge and experience to complete this assignment competently, in compliance with the stated regulations.

REGIONAL MAP

DeLORME

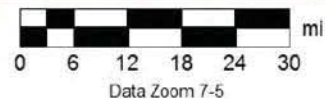
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www.delorme.com



MARKET AREA DESCRIPTION

Eugene/Springfield Metropolitan Area

The Eugene/Springfield metropolitan area is located in Lane County, in the central, western portion of the state of Oregon. The Willamette Valley is the most densely populated portion of the state with the three largest metropolitan areas—Portland, Salem and Eugene/ Springfield—located at the north, middle and south ends of the valley, respectively.



Eugene is home to University of Oregon and is also known as “Track Town USA” for its abundant running trails and renowned venue, Hayward Field. Springfield has historically been known for its forest products industry; over the past 15+ years, Springfield has also attracted a number of other major employers, diversifying and expanding its economic base. The Eugene/Springfield community is also popular for its natural beauty and rich recreational opportunities bolstered by its proximity to the Cascade Mountains, Willamette Valley vineyards, and Oregon coast.

Population & Demographics

Oregon economic conditions heavily influence the state’s population growth. Approximately 70% of the population of Lane County is in or within five miles of the Eugene/Springfield metropolitan area, Oregon’s second largest following the Portland/Vancouver metropolitan area and the fifth most populous metropolitan area in the Oregon/Washington/Idaho tri-state region. The city, county and state population growth statistics are set forth as follows:

Population						% Growth			
	1980	1990	2000	2010	2016 est.	1980-1990	1990-2000	2000-2010	2010-2016
Eugene	105,664	112,669	137,893	156,185	165,885	6.63%	22.4%	12.3%	6.2%
Springfield	41,621	44,683	52,864	59,403	60,140	7.35%	18.3%	12.4%	1.2%
Lane County	275,226	282,912	322,977	351,715	365,940	2.79%	14.2%	8.9%	4.0%
Oregon	2,633,149	2,842,337	3,421,399	3,831,074	4,076,350	7.94%	20.3%	12.0%	6.4%

Over most of the last century, Oregon, Lane County, and the cities of Eugene and Springfield have exhibited a capacity for rapid, nearly uninterrupted population growth. From 1970 to 2007, the population of Lane County grew at an average annual rate of 1.3%; during the same period, Eugene and Springfield grew at annual rates of 1.8% and 2.1%, respectively. The 2010 census reflected a continuation of this trend but a breakdown of the annual data reveals that population growth slowed substantially in all areas of Oregon since 2006. Except for the Hispanic population, which has grown eight times faster than the non-Hispanic population in Oregon over the last decade, population growth in Oregon declined from 2006 to 2013. In 2013-14, this trend reversed in Lane County and Oregon, which grew at their fastest pace since the late-2000s recession.⁴

4. Wihtol, Christian. “Oregon population grows with economy.” *The Register-Guard*. 19 Nov. 2014.

Market Area Description

In-migration has been the driving force behind population growth in Lane County since the beginning of the decade, as people move for jobs, the relatively affordable cost of living, and the local climate and lifestyle amenities.⁵ The population over age 65 is expected to grow rapidly, along with national trends, while the population under age 65 will grow more slowly or even slightly decline in size as the school-age population has recently done.⁶ These changing demographics will affect employment, government programs and private sector opportunities.

U.S. Census QuickFacts	Eugene	Springfield	Lane Co.	Oregon
Area (sq. miles):	43.72	15.74	4,553.12	95,988.01
Population density (persons per sq. mile):	3,572	3,774	77.2	39.9
Households, total:	65,814	23,632	144,912	1,516,456
Average household size (persons):	2.28	2.50	2.38	2.49
Average family size:	2.88	3.05	2.90	3.04
Median household income:	\$42,167	\$39,273	\$42,931	\$50,229
Median age (years):	34.2	34.7	39.0	38.7
Persons under 5 years:	4.9%	7.3%	4.9%	6.2%
Persons under 18 years:	18.2%	24.3%	19.1%	22.6%
Persons 65 years and over:	12.6%	11.6%	16.8%	13.9%
Female persons:	51.1%	51.0%	50.9%	50.5%
Persons below poverty level:	24.1%	21.5%	20.0%	16.2%
High school graduate or higher, of persons age 25+:	93.8%	86.7%	91.1%	89.4%
Bachelor's degree or higher, of persons age 25+:	39.0%	14.9%	27.7%	29.7%
Housing units:	69,951	24,809	156,448	1,675,562
Homeownership rate:	49.8%	53.3%	59.6%	62.0%
Housing units in multi-unit structures:	34.1%	27.9%	22.3%	23.2%
Median value of owner-occupied housing units:	\$238,700	\$168,600	\$218,900	\$238,000
Mean travel time to work (minutes) for workers age 16+:	17.1	18.8	19.6	22.5
Total number of firms, 2007:	16,645	4,050	32,527	348,154
Manufacturers' shipments, 2007 (\$1000):	2,276,080	1,029,165	6,219,861	66,880,653
Merchant wholesaler sales, 2007 (\$1000):	1,569,559	499,059	2,889,191	51,910,777
Retail sales, 2007 (\$1000):	2,582,532	755,583	4,452,231	50,370,919
Accommodation and food services sales, 2007 (\$1000):	369,764	120,726	607,721	7,555,764

Sources: 2009–2013 American Community Survey, 2007 Economic Census

Urban/Suburban Geography & Real Estate Development Patterns

The community is situated at the confluence of the McKenzie and Willamette rivers at the head of the Willamette Valley. The Willamette River flows northward from the southern valley to its confluence with the Columbia River at Portland and Vancouver, Washington. The Eugene/Springfield metropolitan area is approximately 440 feet above sea level, and the topography of the area is flat valley floor and flood plain land. The head of the Willamette Valley is bordered by the Coast Range on the west and the Cascade Range foothills on the east; the area to the south is mountainous as well. The valley is open to the north.

Climate in the southern Willamette Valley is generally mild with no seasonal extremes. The average high temperature for December is 49°F, while the average low is 37°F. For August, the average high and low temperatures are 82° and 51°F, respectively. The area has an average frost-free period of approximately 150 days and receives approximately 46 inches of rain per year on average, with over 85% falling between October and May. Snow is rare in the winter, as are temperatures above 100°F in the summer.

The high economic growth periods in the 1920s, 1960s, 1970s, and 1990s saw the most development activity, with new development extending outward from the city centers. Both Eugene and Springfield experienced high levels of residential, commercial and industrial development

5. Op cit.

6. McDonald, Sherri Buri. "Low-Growth Pains: Slow population gain ripples through Lane County's economy." *The Register-Guard*. 24 Feb. 2011.

between 2000 and 2006, but the global economic recession of the late 2000s severely curtailed new development in almost all segments of the local market area.

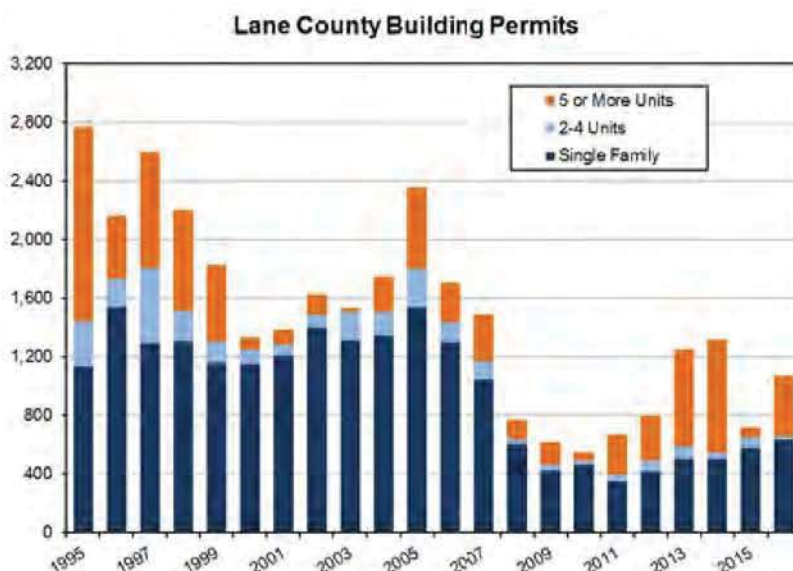
Residential Development—

The majority of the area's single-family housing was built from 1965 to 1980, and consists primarily of average-quality, ranch-style homes. Residential development slowed during the recession of 1981-83, with new construction gaining speed beginning in 1988 and continuing until the recession in 2007. New single-family homes constructed since 1988 are of generally higher quality than those of the 1970s with two-level houses more prevalent due to smaller lots. Between 2008 and 2012, building activity fell well below the historic average for single-family homes but more recently has shown evidence of some recovery.

Multi-family development in the area ranges in age from new to 50 years old. Most multi-family structures are wood-frame, garden-court style, and suburban apartment complexes. A large number of units were constructed in the 1990s, which resulted in above-average vacancy for an extended timeframe as new units were absorbed. Recent building permit data indicates about 2,500+ new apartment units have been constructed in Eugene and Springfield since 2000, with the majority of the newest construction located near the University of Oregon campus.

New housing construction in Lane County peaked in 2005 before the late-2000s recession and dropped dramatically from 2006 to 2009. Since then the level of permits has slowly increased as excess inventory has been reduced.⁷

Multi-unit structures of five or more units grew rapidly in 2013 and 2014 from a boom in student housing associated with the University of Oregon. Single family units have steadily increased since bottoming out in 2011, although they are still well below pre-recession levels.⁸



Commercial and Industrial Development—

Commercial development includes a central business district in Eugene's downtown core, neighborhood shopping centers, two regional malls, and a large lifestyle shopping center, which account for much of the retail space in the area. Downtown Eugene contains a large amount of office space with city, county, and federal governments occupying the largest share. The downtown Springfield area has a limited supply of general office space, with government agencies occupying the majority of what is available. Over the past 15 years, newer offices have been developed by owner-occupants in the Coburg Road, Chad Drive, and Crescent Avenue subareas in north Eugene, as well as in the Gateway subarea in northwest Springfield.

The Eugene/Springfield metropolitan area has several established industrial neighborhoods. The West Eugene industrial neighborhood is the largest and most heavily developed industrial area in

7. Rooney, Brian. "New Housing Construction in Lane County Is Slowly Coming Back From Recessionary Lows". Worksource Oregon, 9 Feb. 2017. Web.

8. Ibid.

the city of Eugene. Other industrial development in Eugene is located near Highway 99N/Airport Road, a developing area with a large amount of vacant land. Industrial development in Springfield is located on the south side of South A Street and in areas near Olympic Street and 42nd Street. Between 2005 and 2007, prior to the late-2000s recession, industrial development had also been occurring at a historically high level.

Education

The metropolitan area is served by three school districts: Eugene, Springfield and Bethel, containing a total of 35 elementary schools, three K-8 schools, 15 middle schools, seven comprehensive high schools, four alternative high schools, an international high school program on multiple campuses, three K-12 language immersion programs, and a life skills program. There are six charter schools among the three districts. The area is also served by several parochial and college preparatory schools.



Eugene is the home of the University of Oregon, Lane Community College, Gutenberg College, Northwest Christian University and New Hope Christian College. The University of Oregon (UO) is a four-year state university with an enrollment of 24,125 students as of fall 2015. UO has earned national and international recognition for excellence in its law school, business, journalism and music colleges, as well as its chemistry, creative writing, psychology and special education programs.

Lane Community College (LCC), a two-year public college, includes general education courses, lower-division college transfer courses, and occupational training. Over 36,000 students take credit or noncredit classes at LCC, which has the third largest enrollment of credit students of the 17 community colleges in Oregon. The main campus is located in south Eugene and its new Downtown Campus Academic Building, a \$54 million, 90,000-square-foot building featuring sustainable construction and design features, housing for 255 students and a bookstore, opened in downtown Eugene in 2012. LCC also offers a Flight Technology Center at the Eugene Airport, community learning centers in Cottage Grove and Florence, and several outreach centers in area high schools and other sites.



Transportation

The metropolitan area is served by the Interstate 5 (I-5) freeway, the westernmost interstate freeway system in the U.S., which extends the length of the west coast. This freeway bisects the metropolitan area from north to south and forms the boundary between Eugene and Springfield. Interstate 105 (I-105), an inter-urban freeway, traverses I-5 connecting Eugene and Springfield. Several major state highways pass through the community and provide a direct route of travel to the major markets throughout the region.

The city of Eugene is a major switching area for the Union Pacific and BSNF railroads. Motor freight carriers and the Greyhound bus line also service the metropolitan area. Eugene Airport, also known as Mahlon Sweet Field, is the fifth-largest airport in the Pacific Northwest and the largest non-hub airport in the nation, providing commercial air service to major cities in six western states.⁹ The Port of Coos Bay, located 120 miles to the southwest, is the largest deep-draft coastal harbor between San Francisco Bay and Puget Sound, and is Oregon's second-busiest maritime commerce center.¹⁰

Utilities & Community Services

Water and sewerage are provided by local municipalities, while solid waste disposal service falls to various private firms. Eugene Water and Electric Board, Springfield Utility Board, and Northwest Natural Gas serve most areas throughout Eugene and Springfield. The cities have individual police departments and are involved in a phased consolidation of the fire departments, while outlying areas are served by rural fire districts and the county sheriff's department.

Three hospitals serve the region. Sacred Heart Medical Center at RiverBend, opened in the Gateway area of Springfield in 2008 by non-profit operator PeaceHealth, is licensed for 338 beds and is the only Level II trauma center in Lane County. Sacred Heart Medical Center University District, a 104-bed specialty hospital, is located near the University of Oregon campus in central Eugene. Since completion of RiverBend, PeaceHealth has invested substantially in the University District hospital. Included in the upgrades are completed remodels of rehabilitation and elder services and recently started construction of a new 24,684 square-foot behavioral health center and remodeling of the emergency department. The most recent construction was completed in 2014 at a cost of over \$14 million.

McKenzie-Willamette Medical Center, an investor-owned acute care hospital licensed for 114 beds, is located in the north-central neighborhood of Springfield. It has also expanded with the construction of the McKenzie Wound Center on West 11th Avenue in Eugene.

Additionally, the State of Oregon opened a 211,000-square-foot, 174-bed state psychiatric hospital in Junction City in 2015.¹¹ The \$84 million hospital was originally intended to be co-located with a new state prison at a total project cost of \$130 million, but inmate populations have declined significantly over the last decade and the prison development is on hold indefinitely. In December 2016, Governor Kate Brown proposed shuttering the hospital facility in order to balance the state budget¹²; state leaders are evaluating the budget proposal in the current legislative term.



In 2016, the U.S. Department of Veterans Affairs opened a 126,000-square-foot hospital in northeast Eugene. The hospital is estimated to have cost \$50 million, and services include surgeries, podiatry and dental care. Officials expect to care for close to 14,000 veterans at the new facility.¹³

9. *Eugene Airport Media Guide*, Eugene Airport website, <http://flyeug.com>.

10. Oregon International Port of Coos Bay, "Navigation & Channel Data," <http://www.portofcoosbay.com>.

11. Carillo, Angelica. "New psychiatric hospital in Junction City to welcome first patients this week." *KMTR*. 8 March 2015. Web.

12. "Governor proposes closing new Junction City campus of the Oregon State Hospital." *KVAL*. 1 Dec. 2016. Web.

13. McDonald, Sherri Buri. "Veterans, medical staff celebrate Eugene VA clinic's grand opening." *The Register-Guard*. 26 Jan. 2016.

Government Controls & Regulations

Eugene and Springfield are both governed by a mayor/city council/city manager form of government. Lane County has a commission form of government with five county commission districts. Eugene is the county seat. Oregon and Lane County rely on income and property tax receipts for school, local, state and general funding; there is no sales tax in Oregon.

A significant amount of area throughout several Oregon counties is non-taxable federal lands, dating back to the 1900s. To make up for the loss of property tax revenue, federal agencies have shared receipts from timber sales with the respective counties. As the forest products industry began experiencing structural changes in the 1980s, this revenue source became volatile and declined substantially. In 1994, Congress responded by providing "safety net payments" to counties in northern California, western Oregon and western Washington; in 2000, Congress passed the Secure Rural Schools and Community Self-Determination Act that provided enhanced, stabilized payments to counties in more states; this has been an important revenue source for Lane County. This act expired in 2014 and was not reauthorized by Congress, though it is expected to be pursued again by Oregon's congressional delegation. Timber states in the western U.S. saw the biggest drop, and Forest Service payments to Oregon counties dropped from \$67.9 million to \$5.9 million.¹⁴

Oregon has one of the most comprehensive land use planning systems in the United States. The system was established in the early 1970s as a way to facilitate orderly development, control urban sprawl and preserve farmland. Each local government was required to establish an Urban Growth Boundary (UGB) and develop a plan in which growth outside the boundary cannot take place until the interior of the boundary is filled. The State Land Conservation and Development Commission (LCDC) was established to oversee the process. Local planning departments and commissions still retain the authority to direct growth in their respective jurisdictions, and adherence to the goals of the statewide land use planning system varies within in the state. The state Land Use Board of Appeals (LUBA) was established to settle disputes not resolved at the local level. Citizens may challenge local decisions by appealing to LUBA.

Economic Conditions

The Eugene/Springfield metropolitan area is the regional hub for manufacturing, services and government in the southern Willamette Valley. The primary trading area population is approximately 220,000, and retail, wholesale, and professional services serve an overall population of approximately 550,000, which includes all of Lane County and portions of neighboring counties.

Forest products manufacturing has been a major economic driver in the area, although the impact is not nearly as high as in the past. As Lane County's economy has diversified over the past several decades, industries such as retail trade, services and health care have expanded as major industries. The cities of Eugene and Springfield continue to identify new opportunities to further diversify the employment base, such as recruiting a customer service call center for Symantec (maker of Norton software), a call center for Royal Caribbean cruise line, and call centers for Enterprise Rent-A-Car and Pentagon Federal Credit Union. In addition to growth in call centers, the area is home to an expanding artisan food and beverage industry. Regional vineyards, breweries, food manufacturers and retailers are proliferating in the Willamette Valley. As of 2010, Lane County had 44 vineyards producing 920 tons of grapes which support numerous local wineries.¹⁵ In 2013, Ninkasi Brewing, with 75 employees, became the third-largest beer producer in Oregon and 32nd in national beer sales, capturing a portion of the \$10.2 billion craft beer industry nationwide.¹⁶ Other organic and artisan food producers include chocolatiers, dairy producers, and other specialized food makers.

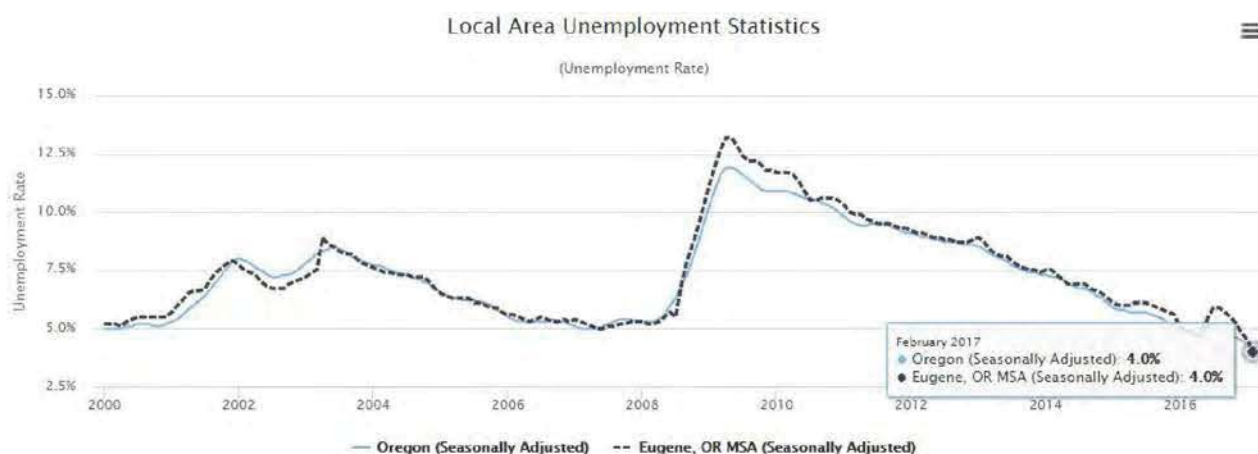
14. Associated Press. "Steep drop in timber payments announced." *The Register-Guard*. 16 Jan. 2015.

15. Shelton-Tideman, Annette I. "Fruit of the Vine: Oregon's Grape and Wine Industry." *Worksource Oregon*. 21 Sept. 2012. Web.

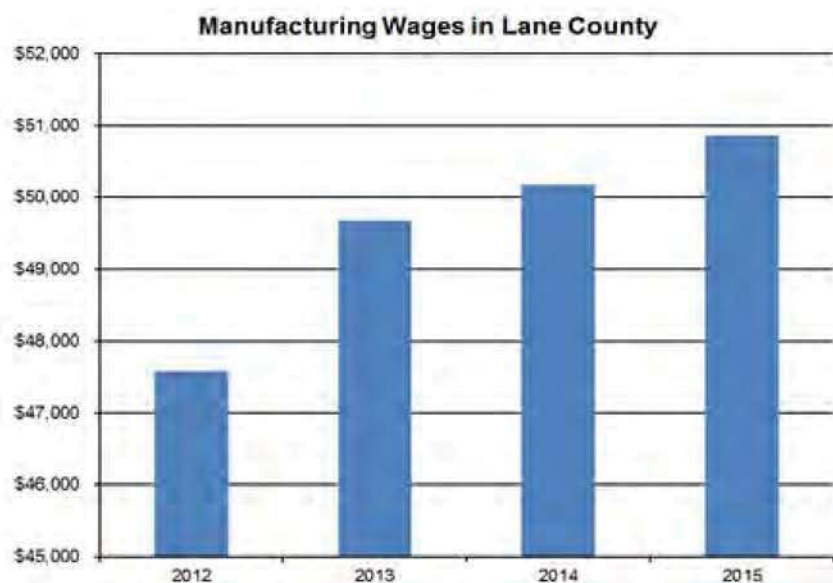
16. "Ninkasi Brewing Continues to Boom and Grow." *Business Oregon*. n.d. Web. <<http://www.oregon4biz.com/story.php?storyID=71>>. "Beer Sales." *Brewers Association*. N.p., n.d. Web. <<http://www.brewersassociation.org/pages/business-tools/craft-brewing-statistics/beer-sales>>.

Market Area Description

Oregon's most recent economic expansion ended within the onset of the late-2000s economic recession in late 2007 when statewide unemployment began to rise, hitting a peak of 11.6% in May 2009. Seven years later, Oregon's payroll employment rose above its pre-recession peak in November 2014, reaching a record 1,740,800 jobs. During the roughly two years of job loss that started in December 2007, the state lost 147,400 jobs, or 8.5%. Most of the job growth since then has come from the state's metropolitan areas and especially the Portland area. In comparison, Lane County lost a higher percentage of jobs and was slower going into the recovery. Lane County's pre-recession peak was in February 2008 and county employment finally bottomed out in September 2010 after losing 17,900 jobs, or 11.4%. As of June 2016, the county has regained 15,900 jobs, about 88% of the jobs lost.¹⁷



In the first half of 2016, bright spots in job and general economic growth appeared: "Health care and transportation and warehousing are both growing at a rate above 4%. Announcements that the Swanson plant will be rebuilt, Winnebago arriving, and a new cell phone chip manufacturer acquiring the old Hynix plant have hopes high for more impressive growth in the near future as well."¹⁸ In 2016's second quarter, Oregon's Employment Department forecast Lane County's tech sector would grow by 28% between 2014 and 2024, compared with 11% growth for all industries¹⁹ and reported manufacturing wages in Lane County began showing consistent growth from 2012 to 2015.²⁰



17. Rooney, Brian. "Lane County Is Almost Back to Prerecession Employment Levels". *Worksource Oregon*, 19 Sept. 2016. Web.
18. Thompson, Kim. "Employment Growth Slow but Steady in Eugene/Springfield Metro Area". *Worksource Oregon*, 6 Jan. 2016. Web.
19. Thompson, Kim. "Lane County's Tech Sector Employment Flat in 2015 but Future Growth is Expected". *Worksource Oregon*, 26 June 2016. Web.
20. Thompson, Kim. "Manufacturing Wages on the Rise in Lane County". *Worksource Oregon*, 25 Aug. 2016. Web.

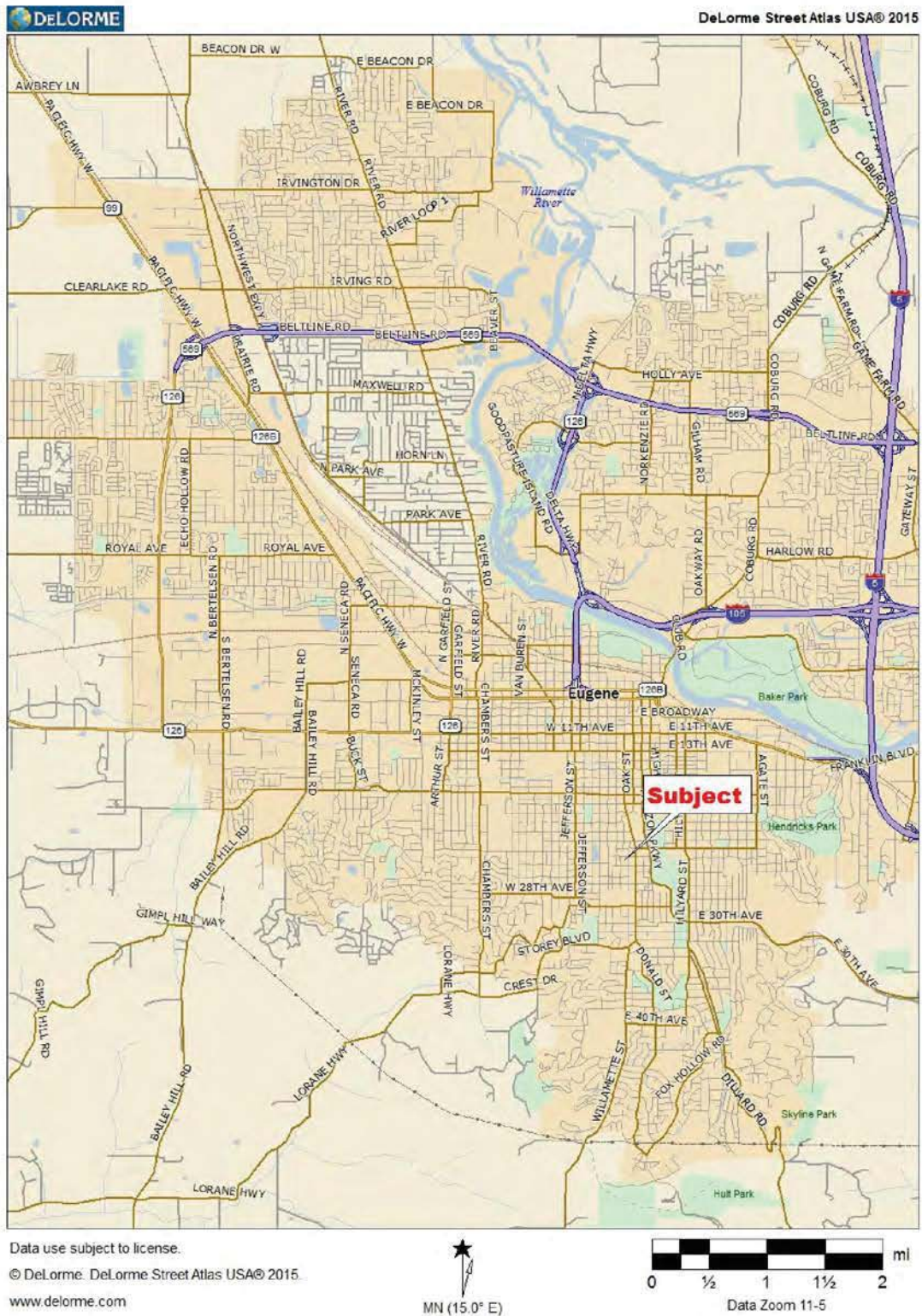
Summary & Trends

Eugene and Springfield are typical western American cities in that they were founded on, and still somewhat depend on, resource-based industries such as forest products and agriculture. Major local institutions such as the University of Oregon and government agencies have provided an increased level of stability. The economy has diversified over the past several years and is expected to continue to do so in the future. The local economy tends to parallel national and state business cycles and trends.

The metropolitan area is currently experiencing modest population growth, as is the state as a whole, and the majority of the increase is attributable to migration from other states. In the local area, the fastest growing age group is 55+, a trend that is expected to continue and will further spur the health care and retail services sectors of the local economy. Another growth trend is indicated by continued increases in students enrolled in local universities. Development of student housing increased over the last few years, with a number of additional projects nearly completed and proposed for the upcoming year. Based on recent enrollment figures and the current and forecasted supply of new units in the campus area, supply is expected to surpass demand in the near-term for this market sub-sector.

Overall, the market area is expected to experience modest population growth in the next five years. Real estate values have appreciated and depreciated with the swings of the local economy and the amount of migration. Real estate values are generally stable with higher transaction volume over the past 2 to 4 quarters, with some areas beginning to experience slight to moderate increases in market prices. The long-term outlook for the area is for continued stability and modest appreciation following national and state-wide trends.

CITY MAP



NEIGHBORHOOD DESCRIPTION

South Eugene

The subject neighborhood is commonly referred to as South Eugene. The dominating factor in the neighborhood is the strip commercial development on the east and west sides of Willamette Street. This commercial corridor provides the majority of commercial services for the southeast quadrant of Eugene, generally bordered by 18th Avenue on the north, the existing city limits to the east and south, and Chambers Street to the west, an area of approximately eight square miles. The specific components of the subject neighborhood are described as follows:

Residential Development

Single-family residential development is the predominant land use in southeast Eugene, excluding the commercial corridor along Willamette Street and several other small commercial pockets. The northern boundary of the subject neighborhood is located close to the downtown core area, and, therefore, the residential developments are generally older and of lesser quality than the more recent residential developments near the neighborhood's southern boundaries. The majority of single-family uses in the larger neighborhood boundaries are of average quality, developed between the 1930s and 1950s, ranging in price from approximately \$180,000 to \$300,000.

However, the College Hill area, in which the subject is located on the eastern periphery, is one of the prime residential areas in South Eugene, with older, good-quality homes with classic design and excellent appeal, ranging in price from \$350,000 to \$800,000.

The primary importance of residential development in the subject neighborhood is the quantity of residential development in comparison to the relatively low amount of commercial development. The large population base, serviced by a relatively small amount of close-by commercial facilities, results in a positive atmosphere for commercial development.

Multi-family residential development is scattered throughout the subject neighborhood. Multi-family developments range from small 2- to 3-unit buildings to large 30+-unit apartment complexes. The typical multi-family development in the subject neighborhood is of average quality and condition, appealing to moderate-income families and students due to the proximity to the University of Oregon.

Commercial Development

The majority of commercial development within the subject neighborhood is located on the east and west sides of Willamette Street, extending southerly from 18th Avenue to approximately 32nd Avenue, with a primary commercial intersection at Willamette Street and 29th Avenue. The commercial developments consist of a combination of retail and office use.

Retail Use—

Most of the retail facilities in the subject neighborhood were constructed in the 1960s and are of average quality and condition. The trend is towards updating the exterior appeal of the commercial properties to be more competitive in the market for specialty-type retailers.

Retail users are generally located in small neighborhood shopping centers or in strip-style developments along Willamette Street. The intersection of 29th Avenue and Willamette Street contains a neighborhood shopping center that has been renovated and renamed Woodfield Station. The center contains a variety of retail users, including Rite-Aid, Market of Choice (grocery store),

Oregon Community Credit Union, and smaller retail stores and restaurants such as Subway, Sixteen Tons, and Pizza Hut, among others. Two mid-size retail tenants, OfficeMax and Big 5 Sporting Goods, are newer to the South Eugene neighborhood. Other smaller strip developments along Willamette Street include a variety of uses such as personal service providers, barber/beauty shops, an organic food store, and other similar secondary retail facilities. There are several small fast food and eat-in restaurants, as well as gas stations and auto service businesses located in the subject neighborhood.

Office Use—

Office use is a secondary commercial use in the subject neighborhood. Of the existing office developments, the majority are used for medical/dental purposes, with several medical, dental and related facilities located between 18th Avenue and 32nd Avenue on Willamette Street. In summary, the majority of commercial development within the subject neighborhood is retail oriented, with office use, primarily medical/dental-related, as the secondary commercial use.

Industrial Development

There is no industrial development in the subject neighborhood.

Utilities

The subject neighborhood is located within the city limits of Eugene and is served by all public utilities including sanitary sewer, storm sewer, public water, electricity, telephone, cable television, and natural gas.

Transportation

The subject neighborhood is well served by transportation facilities. Willamette Street is one of the primary north/south arterials between the downtown core area and South Eugene. The primary east/west arterials through the subject neighborhood are 18th Avenue and 29th Avenue, with various collectors and secondary residential streets throughout the area. The Lane Transit District provides regularly scheduled bus service throughout the area.

Access to the surrounding freeway systems is rated as average via Willamette Street to the downtown core area, and 30th Avenue leading east to the I-5 freeway. Overall, access to and through the subject neighborhood is typical of the majority of suburban areas throughout Eugene.

PROPERTY DATA

Legal Description

A preliminary title report setting forth the legal description for the subject property was not provided. The subject is identified by the Lane County Department of Assessment and Taxation as Tax Lot 2700 on Map 18-03-06-42.

Ownership & Sales History

Public records indicate ownership in the subject property is vested in *Elise A. Moore*. Research of available public records and private data services indicates that there have been no other transactions involving ownership of the subject property in the past three years.

Present Use

As of both dates of value, July 28, 2013 and July 28, 2015, the subject lot was a residential development lot improved with a small shed and perimeter fencing as well as a small concrete pad.

Pertinent Conditions of Title

A preliminary title report was not provided. A sewer line easement reportedly exists for the adjacent residence, which does not appear to impact the utilization of the site under its highest and best use. During the appraisal inspection, no other easements, encroachments or encumbrances were noted that would have a negative impact on the subject property when compared to competing properties. Therefore, a specific assumption of this report is that there are no conditions of title that would adversely affect the subject property. ***If questions arise concerning exceptions of title or other issues, further research is advised.***

Real Estate Tax Analysis

Owners of real and business personal property pay property taxes according to the assessed value of taxable residential, commercial, farm, industrial, utility and timber property. County assessors use permanent rates set for all taxing districts in fiscal year 1997-98, when taxes were significantly reduced with a statewide average 17% cut in tax levies. Certain types of levies are outside this reduction. The tax rates cannot exceed \$15 per \$1,000 of real market value. For 1997-98, all property was valued by county assessors at 90% of the July 1, 1995, levels. For subsequent years, assessed values are limited to a 3% annual growth rate. Construction since July 1, 1995, is valued at the average rate of similar properties in the area. One-third payment is due by November 15. If fully paid by November 15, a 3% discount is allowed. Special exemptions, tax relief programs and deferrals are available. The 2013 and 2015 certified real market and assessed values via the Lane County Department of Assessment and Taxation are set forth as follows:

Tax & Assessment Data (2013):

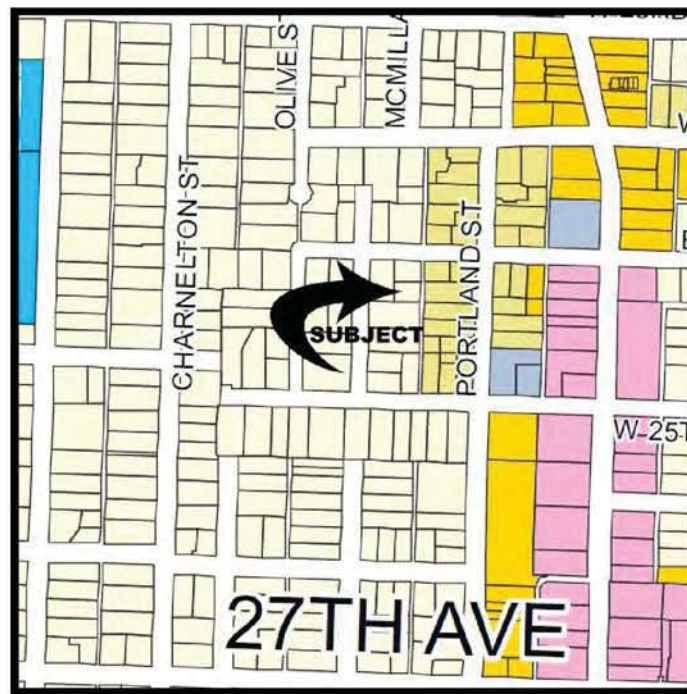
Identification		Real Market Value			Assessed Value	Taxes
Tax Lot	Account	Land	Improvements	Total	Total	
2700	0628279	\$73,870	\$0	\$73,870	\$5,402	\$102.61

Tax & Assessment Data (2015):

Identification		Real Market Value			Assessed Value	Taxes
Tax Lot	Account	Land	Improvements	Total	Total	
2700	0628279	\$79,963	\$0	\$79,963	\$5,731	\$107.64

Zoning

The subject is zoned R-1, Low Density Residential by the City of Eugene.



AG Agricultural	PL Public Land	NR Natural Resource	R-3 Limited High-Density Residential
C-1 Neighborhood Commercial	E-1 Campus Employment	PRO Park, Recreation & Open Space	R-4 High-Density Residential
C-2 Community Commercial	E-2 Mixed Use Employment	R-1 Low-Density Residential	S Special Area
C-3 Major Commercial	I-2 Light-Medium Industrial	R-1.5 Rowhouse	S-H Historic
GO General Office	I-3 Heavy Industrial	R-2 Medium-Density Residential	

Purpose

The purpose of the R-1, Low Density Residential, zone is to implement the Metro Plan by providing areas for low density residential use. The R-1 zone is designed for one-family dwellings with some allowance for other types of dwellings, and is also intended to provide a limited range of non-residential uses that can enhance the quality of low-density residential areas.

Additional Information

The development codes, which includes building standards and permitted uses, are available at the City of Eugene Planning Department website: <http://www.eugene-or.gov>

Ordinance No. 20541—

In 2014, Ordinance No. 20541 was enacted, which is an ordinance concerning single family code amendments for accessory buildings, alley access lots and secondary dwellings; amending Sections 9.0500, 9.1245, 9.2740, 9.2741, 9.2750, 9.2751, 9.2775, 9.6775 and 9.8030, of the Eugene Code, 1971; and providing an effective date. For the subject lot, the most applicable section of this ordinance relates to modifications of Section 9.2751 (18), which introduced additional development restrictions associated with alley access lots. Prior to this ordinance (i.e. the 2013 valuation), there were no substantial restrictions associated with alley lot development. Rather, an existing alley lot could be developed to the same standards as a typical residential lot as provided in the code. Below is the pertinent section of Ordinance No. 20541 which impacts the development allowance for the subject lot as of the 2015 valuation date.

**9.2751 Special Development Standards for Table 9.2750
(18) Alley Access Lots in R-1.**

(a) General Standards.

1. Applicability. Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.

2. Use Regulations. Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.

3. **Building Size.** The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.

4. Lot Coverage. Alley access lots shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage.

5. Building Height/Interior Setback.

- a. Interior yard setbacks shall be at least 5 feet, including along the alley frontage. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line perpendicular to the alley until a point not to exceed a maximum building height of 18 feet.
- b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in a. above, except that eaves and chimneys are allowed to project into this setback no more than 2 feet. **(See Figure 9.2751(16)(b)3.)**
- c. These standards may be adjusted in accordance with EC 9.8030(35).

6. Windows, Dormers and Balconies.

- a. Any window on the upper story must be located a minimum of 10 feet from any property line.
- b. Up to two dormers are allowed on the side of the dwelling facing the alley. Dormers are limited to a maximum width of 10 feet. Dormers are not allowed on the remaining sides of the dwelling.
- c. Balconies and other second floor outdoor areas are only allowed on the side of the dwelling facing the alley, and shall be setback at least 10 feet from the alley.
- d. Notwithstanding b. and c. above, dormers and balconies are not allowed on the second floor of a dwelling on any nonalley facing property line unless the affected adjacent property owner consents in writing on a form approved by the city.

7. Bedrooms. The dwelling shall contain no more than 3 bedrooms.

8. Primary Entrance. The primary entry to the dwelling shall be defined by a covered or roofed entrance with a minimum roof depth and width of no less than 3 feet.

9. Pedestrian Access. The dwelling shall be served by a minimum three foot wide hard-surfaced/hard-scaped (paved, concrete or pavers) pedestrian walkway from the alley, or from the front street via an easement. The pedestrian walkway must be recognizable and distinct (different color, materials and/or texture) from the driveway and parking area, but is not required to be separated from the driveway or parking area.

10. Parking Spaces. There shall be a minimum of 1 and a maximum of 2 parking spaces on the lot.

11. Parking and Driveway.

- a. Only one covered or enclosed parking space may be provided (carport or garage). The covered or enclosed parking space shall be counted towards the total number of parking spaces.
- b. The maximum dimensions for a garage shall be 16 feet by 24 feet, with a maximum garage door width of 9 feet.
- c. The minimum setback for a garage shall be 5 feet from the alley. If the garage is setback greater than 5 feet from the alley, it must be setback a minimum of 15 feet and the area between the garage and the alley shall be counted towards one parking space.
- d. The maximum width for a driveway accessing a garage or carport shall be 12 feet.
- e. The maximum dimensions for one parking space located perpendicular to the alley shall be 12 feet in width by 20 feet in depth.
- f. The maximum dimensions for two side by side parking spaces perpendicular to the alley shall be 20 feet in width by 20 feet in depth.
- g. The maximum dimensions for tandem parking spaces shall be 12 feet in width by 33 feet in depth.
- h. Only one parking space parallel to the alley shall be allowed, and such space shall not exceed 10 feet in width and 20 feet in length along the length of alley.
- i. The total vehicle use area, including but not limited to driveways and on-site parking, but not including parking space in garage, shall not exceed 400 square feet.
- j. No parking shall occur outside of the vehicle use area. **(See Figure 9.2751(18)(a)11.)**

12. Distance from Street/Fire Safety. If any portion of the exterior walls of the first story of the dwelling is greater than 150 feet from the centerline of the alley where it intersects with the curb of the street, as measured by a route approved by the fire code official, the dwelling shall be equipped throughout with multi-purpose residential sprinklers as defined in National Fire Protection Association Standard 13D.

13. Trash and Recycling. Outdoor storage and garbage areas shall be screened from view from adjacent properties and those across the alley with a minimum 42-inch tall 100-percent site obscuring fence or enclosure on at least three sides.

14. Accessory Buildings. Detached accessory buildings are allowed subject to the standards at EC 9.2751(16), except that the total square footage of all accessory buildings on an alley access lot is limited to 400 square feet.

15. Adjustment Review. For alley access lots, EC 9.2751(18)(a)5 is the only standard that may be adjusted. This standard is not adjustable for dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association.

(b) Area-Specific Alley Access Lot Standards in R-1. Except as provided below, the standards in subsection (a) of this section apply to alley access lots existing as of April 12, 2014, in the R-1 zone within the city recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association. In lieu of EC 9.2751(18)(a)3. Building Size, the following applies:

1. Building Size. An alley access lot dwelling shall not exceed 1,000 square feet of total building square footage, measured at the exterior perimeter walls. For alley access lots, total building square footage is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.
2. This standard may not be adjusted.

SUBJECT PHOTOGRAPHS



Subject lot.



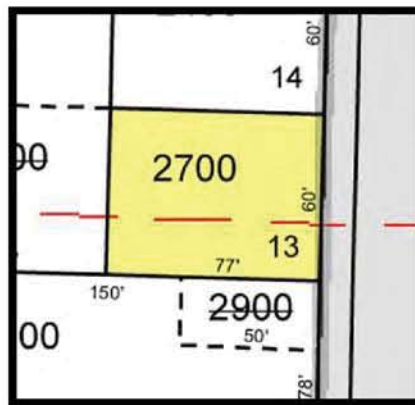
Access to subject lot via Portland Alley.

PROPERTY DESCRIPTION



Parcel Size:

The subject site contains 0.11 acre or 4,620 square feet per the Lane County plat map.



Zoning:

R-1, Low Density Residential. Please refer to the zoning section of this report for additional details.

Flood Hazard Area:

Zone X, areas determined to be outside of 500-year flood; FEMA Map 41039C1137F.

Access:

The site is accessed via Portland Alley which is a graveled public alley.

Property Description

Topography:	The site is generally level and at grade with the alleyway. Surrounding properties slope upward to the west, with the adjacent property owner's retaining wall bordering the western boundary.
Utilities:	All public utilities are available to the subject site.
Wetlands/Soils:	There are no known wetlands located on the subject property. A soil survey has not been supplied to the appraisers. During the property inspection, there were no conditions observed that would suggest any problem with development of the site. It is assumed there are no soil conditions that would affect development of the subject site to its highest and best use.
Hazardous Wastes:	A Phase I Environmental Assessment of the subject site was not provided. The appraisers' final value estimate is predicated on the assumption that there are no hazardous wastes on or in the property that would cause a loss in value. No responsibility is assumed for any environmental conditions or for any expertise or engineering knowledge required to discover them. The appraisers' descriptions and resulting comments are the result of the routine observations made during the appraisal process. It should be understood the appraisers are not experts in this field and if there is further concern with regard to hazardous materials, further research is advised.
Improvements:	The property is improved with a concrete pad, a small shed and perimeter fencing.

HIGHEST AND BEST USE

The term “Highest and Best Use”, which was previously defined, applies specifically to the highest and best use of land. It is recognized that, in the case where the site has existing improvements, highest and best use may very well be determined to be different from the present use. The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use.

In order to pass the test of highest and best use, a property use must be legally permissible, physically possible, and financially feasible or marketable. Therefore, in the measurement of highest and best use, the ability of the subject property to meet these criteria was analyzed.

As Vacant, Before Ordinance (July 28, 2013)

The physical characteristics of the subject property have previously been described. The property is well located, properly served, and has all public utilities available. The property’s location in a desirable South Eugene neighborhood is good; however, the smaller size and location on a graveled alley reduces the appeal of the site compared to a typical single family lot in the area. All governmental hurdles have been cleared, and the property is located in a growing area. The site is zoned R-1, Low Density Residential and could be developed with any allowable use within the zone. Therefore, the concluded highest and best use as of the 2013 date of value would be development with an allowable residential use in the R-1 zone, subject to general development standards within the zone. There was no specific prohibitive development restriction associated with alley access lot development as of the 2013 date of value.

As Vacant, After Ordinance (July 28, 2015)

As of the 2015 date of value, all physical characteristics remain unchanged. Aside from some slight improvements in market conditions, the legal considerations are the primary changed element between the 2013 and 2015 dates of value. In 2014, Ordinance No. 20541 was enacted, which concerns single family code amendments for accessory buildings, alley access lots and secondary dwellings; amending Sections 9.0500, 9.1245, 9.2740, 9.2741, 9.2750, 9.2751, 9.2775, 9.6775 and 9.8030, of the Eugene Code, 1971; and providing an effective date.

For the subject lot, the most applicable section of this ordinance relates to modifications of Section 9.2751 (18), which introduced additional development restrictions associated with alley access lots. The most pertinent restriction relates to a building size restriction to a maximum of 10% of the total lot area, or 462 square feet for the subject site. Therefore, the concluded highest and best use as of the 2015 date of value would be development with an allowable residential use in the R-1 zone, subject to alley access lot development standards within the zone, which restricts the building size to a maximum of 462 square feet.

APPRAISAL PROCESS

The appraisal process that is applied to most real estate properties is designed to evaluate all factors that influence value. Regional, city, and neighborhood information has been presented to inform the reader of general outside influences that may affect value. The Highest and Best Use section has been provided to evaluate the effect of legal, physical, and market considerations that influence the use of the property. The next portion of the appraisal process deals directly with the valuation of the subject property.

Generally, there are three approaches to value a property: the Cost Approach, the Sales Comparison Approach, and the Income Capitalization Approach. The Cost Approach and Income Approaches are not applicable in the valuation of vacant land.

The Sales Comparison Approach will be utilized in the valuation. This approach is based on the principle that an informed purchaser would pay no more for a property than the cost of acquiring an existing property with the same utility. For vacant land, properties are generally compared in their entirety or on a price-per-acre basis. For this analysis, sale properties will be compared to the subject in their entirety, which is typical for residential lots.

The lack of uniformity within the marketplace prevents direct extraction of adjustments from the market. General analysis reflecting market behavior is utilized to determine which comparables are superior or inferior to the subject. In estimating the value of the subject site, research and analysis was conducted of recent sales in the local market of similarly zoned sites deemed competitive. All sales were cash or cash-equivalent transactions and were arm's-length, with no noted duress reported by the parties involved. The lack of uniformity within the marketplace prevents direct extraction of adjustments from the market. General analysis reflecting market behavior is utilized to determine which comparables are superior or inferior to the subject.

Lot Sale Trends & Sale Selection

In the last 5 to 7 years there have been very few lot sales in the subject neighborhood and competitive neighborhoods in Eugene. This is in part due to the limited lot inventory and also due in part to the recession which slowed lot sale activity through 2015 as existing inventory was absorbed and the market entered into a sustained recovery from the recession. Over the past two years, there has been a substantial increase in lot sale activity, but sales of properties similar in location and size to the subject remain scarce, again due to limited inventory. In all of Eugene in the last 84 months, 127 lots under 7,000 square feet have sold at prices ranging from \$25,000 to \$200,000 with an average sale price of \$67,000 and median sale price of \$60,000. Very few of these sales were in the subject's neighborhood and even fewer were located on an alley.

Due to the unique characteristics of the subject lot, as well as the limited sale activity, the search for comparable data was expanded both geographically and in terms of dates of sale. Given the trends during the recession, lot sales which occurred between 2010 and 2015 would be appropriate comparables for the 2013 and 2015 valuation dates. There was some slight appreciation noted in lot values, which will be considered when comparing lot sales from differing sale dates than the dates of value, but notable appreciation in lot prices did not begin until late 2016 and into 2017 in the local market, allowing for utilization of a broad date range for comparable data. Other attributes for consideration will be location on an alley or typical residential street, topography, lot size, and overall locational appeal.

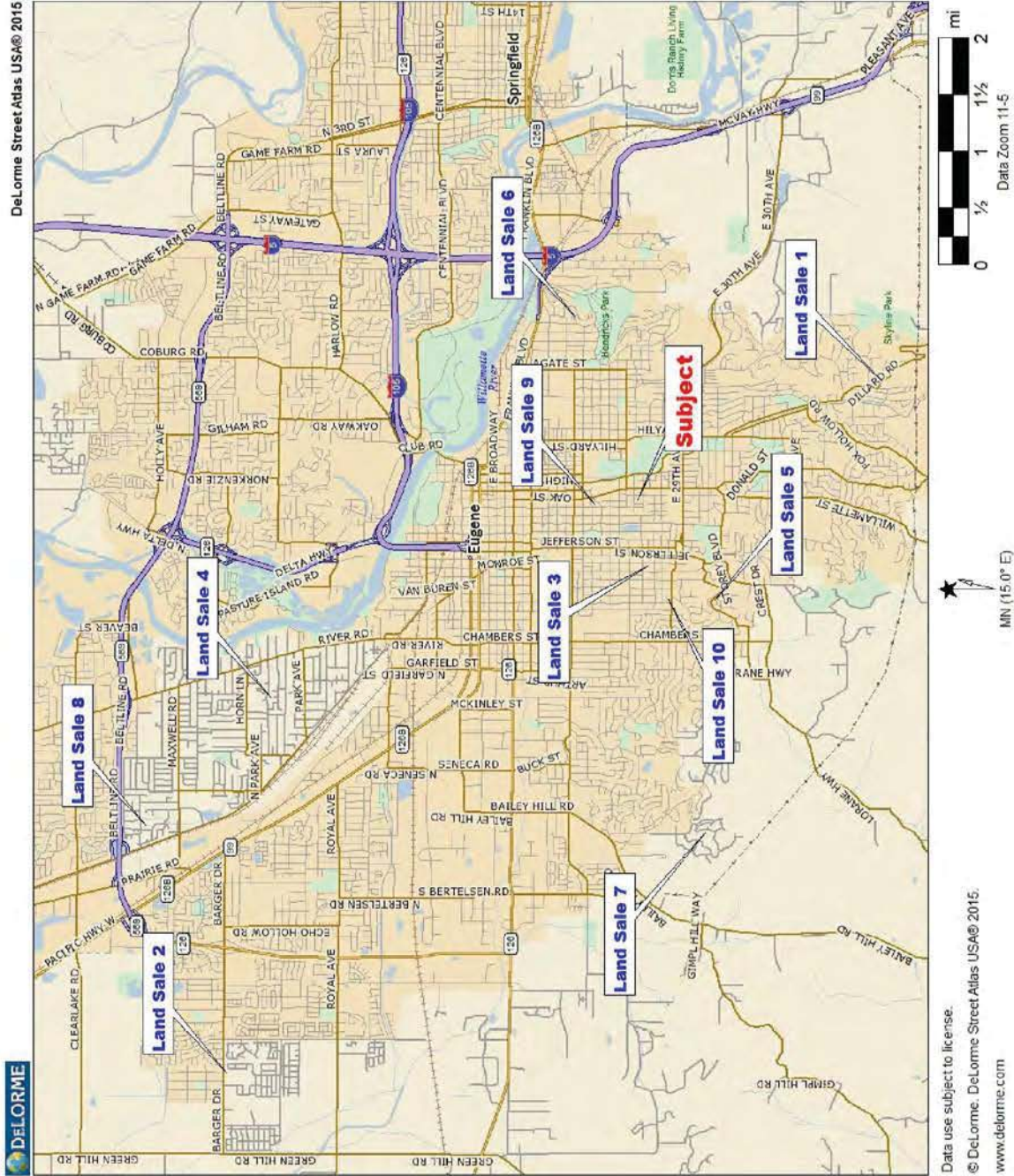
VALUATION

July 28, 2013

The comparables below are the best available data for utilization in the valuation of the property as of July 28, 2013. As of this date, the lot could be developed under the same development standards as a typical residential lot. The site is relatively small and located on a graveled alley, but is very well located in a central South Eugene neighborhood and is level and easily developable. The sales reflect a range of sites considered comparable in development utility and appeal.

LAND SALES SUMMARY CHART

No.	Location	Sale Date	Sale Price	Size (Acres)	Zoning	Comments
1	Woodhill Drive Eugene	4/14	\$30,000	0.07	R-1	Small lot located on Woodhill Drive, a private dead-end street off of Old Dillard Road. All utilities available. Area of newer homes. Sloped topography. Inferior lot size and topography. Low Indicator.
2	Tel Estates Eugene	4/13 3/14 3/14	\$43,500 \$42,500 \$42,500	0.13 0.08 0.09	R-1	Tel Estates is a 64-lot residential project located off Barger Drive with homes in the \$250,000+ range. The lots are accessed via a concrete paved alleyway and back up to Barger Drive. Inferior lot sizes for two of the sales and inferior location. Low Indicators.
3	25 th & Monroe Eugene	9/11	\$44,750	0.13	R-1	Lot in front of 2575 Monroe. Purchaser of improved property purchased the lot for cash at a discounted price. Generally level with all utilities available. Superior lot size but purchased at a discount. Also slightly inferior market conditions in 2011 compared to 2013. Low Indicator.
4	W. Hilliard Eugene	5/14	\$35,000	0.10	R-1	Lot located on W. Hilliard. Water and power to property with septic line installed. Flat lot in established neighborhood. Similar lot size but inferior location. Low indicator.
5	Van Buren & Lorane Eugene	4/11	\$50,000	0.16	R-1	Vacant lot at the corner of Lorane Highway and Van Buren Street. All utilities available. Sloped lot. Superior size but inferior topography. Slightly inferior market conditions in 2011 compared to 2013. Low Indicator.
6	Sunset Drive & Sunset Aly Eugene	6/15	\$55,000	0.10	R-1	Small lot located in University area. Sloped lot but with views. Access from street and alley. All utilities available. Similar lot size but inferior topography. Superior access and location. Slightly superior market conditions in 2015 compared to 2013. Low indicator due primarily to topography.
7	3377 Bentley Avenue Eugene	12/12	\$57,500	0.12	R-1/PD	Lot in Somerset Hills PUD. All utilities available. Gentle slope. Circular shape lot with common areas associated with PUD. Superior lot size, but inferior shape and utility. Low indicator.
8	Wildcreek Woods Off Bushnell Lane Eugene	12/14 12/14 12/14 11/14 11/14 11/14 10/14 6/15 4/15	\$52,500 \$55,000 \$65,000 \$52,500 \$49,900 \$52,500 \$55,000 \$52,500 \$52,500	0.10 0.11 0.23 0.08 0.07 0.09 0.08 0.13 0.10	R-1	Lots in a newer subdivision in River Road area. Small lots with all utilities available accessed from a public street. Level and readily developable. Area of entry level homes. Low to slightly high indicators.
9	Grand View Drive Eugene	6/15	\$60,000	0.15	R-1	Gently sloped lot located on Grand View off Willamette Street. Lot sold with right of first refusal with adjacent home at 55 Grand View. Vacant lot with all utilities available. Superior lot size, similar location, inferior topography. Reasonable indicator.
10	W. 27 th Place Eugene	1/11	\$90,000	0.10	R-1	Small lot located in cul-de-sac off of Tyler Street & W. 28 th Avenue. All utilities available. Hallin Park Subdivision. Area of newer homes. Similar location overall but superior access and lot appeal. Slightly inferior market conditions in 2011 compared to 2013. High Indicator.
	Portland Alley Eugene	7/10	\$55,550	0.11	R-1	Subject lot, purchased by the buyer of the adjacent residence. Motivated seller. Slightly inferior market conditions in 2010 compared to 2013.





Comparable 1



Comparable 2



Comparable 3



Comparable 4



Comparable 5



Comparable 6



Comparable 7



Comparable 8
entire project highlighted



Comparable 9



Comparable 10

Conclusion

The comparable lot sales above reflect prices from \$30,000 to \$90,000 per lot. The lots range in size from 0.07 to 0.23 acre (most under 0.16 acre) and are located in generally comparable locations throughout Southeast and Southwest Eugene. The only alley access lots which could be located are within a newer subdivision (Tel Estates), so while these are alley lots, the alleys are concrete paved and the lots have superior appeal to the subject's alley access. These lots are located in an inferior location. Some of the sale lots are sloped, which increases the cost of development compared to a flat lot, but also allows for some view amenity, which the subject does not have.

As previously discussed, the sale dates were expanded to include sales from 2011 through 2015, which is considered in this analysis. Consideration is given to improved market conditions between 2010 and 2015, but no quantitative data exists for extraction of a market conditions adjustment. Consideration is also given to the 2010 sale of the subject at \$55,550. The subject lot sold in conjunction with the adjacent improved residence and the seller indicated that they were motivated to sell and discounted the lot slightly for the transaction of both properties to occur at once. Based on the available data, the as-is market value of the subject property as of July 28, 2013 is concluded to be **\$65,000**.

Marketing Time & Exposure Time

Marketing time is defined as, "An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal."²¹ Exposure time is defined as, "[The] estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal."²² Exposure time is always presumed to occur *prior to* the effective date of the appraisal. The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but also adequate, sufficient and reasonable effort. In estimating marketing and exposure time for the subject property, sales that have occurred in the marketplace and properties that have been offered for sale were considered. Based on historical and current market information, marketing time and exposure time for the subject property are each estimated to be approximately 12 to 18 months as of the date of value.

21. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed. (Chicago: Appraisal Institute, 2015), p. 140.

22. *Ibid.*, p. 83

VALUATION

July 28, 2015

As discussed previously, there have been very few lot sales similar to the subject (either before or after the zoning ordinance) in the last 5+ years. Ordinance No. 20541 was enacted in July 2014. There have been even fewer sales since the modification in the zoning that reflect similar development restrictions. This is due in part to a limited number of infill lots, but also due to the restrictive nature of the zoning ordinance. For lots smaller than 8,000 square feet, which is very typical of alley access lots, the restriction on the size of new building structures to 10% of the site area is very restrictive and reduces the price which can be paid for lots subject to this ordinance. Most market participants would look to an alternative lot rather than build a structure less than 800 square feet in size. Considering the costs to construct, many of which are constant regardless of the size of the home and the resulting higher construction costs per square foot for a small home, a structure of this size would typically not be feasible or economical. There are no economies of scale and a very limited market of purchasers who would find this type of site appealing. For those buyers who are looking to build a very small residence, the maximum building size puts downward pressure on the price which can be paid for the land. Consequently, many owners of lots like the subject choose not to sell the lot, but rather, assemble with an adjacent lot to create a larger site rather than sell at a lower price. This reduces the number of transactions of this type due both to the limited market of buyers but also the limited number of willing sellers.

Only two sales could be located of alley lots sold after the ordinance was enacted. The search included discussions with local market participants, a search of sold, expired, cancelled and active/pending sales in the Multiple Listing Service, and a review of individual Lane County deed records for lot sales after July 2014. The sales below reflect the only known market data for lots of this type.

LAND SALES SUMMARY CHART

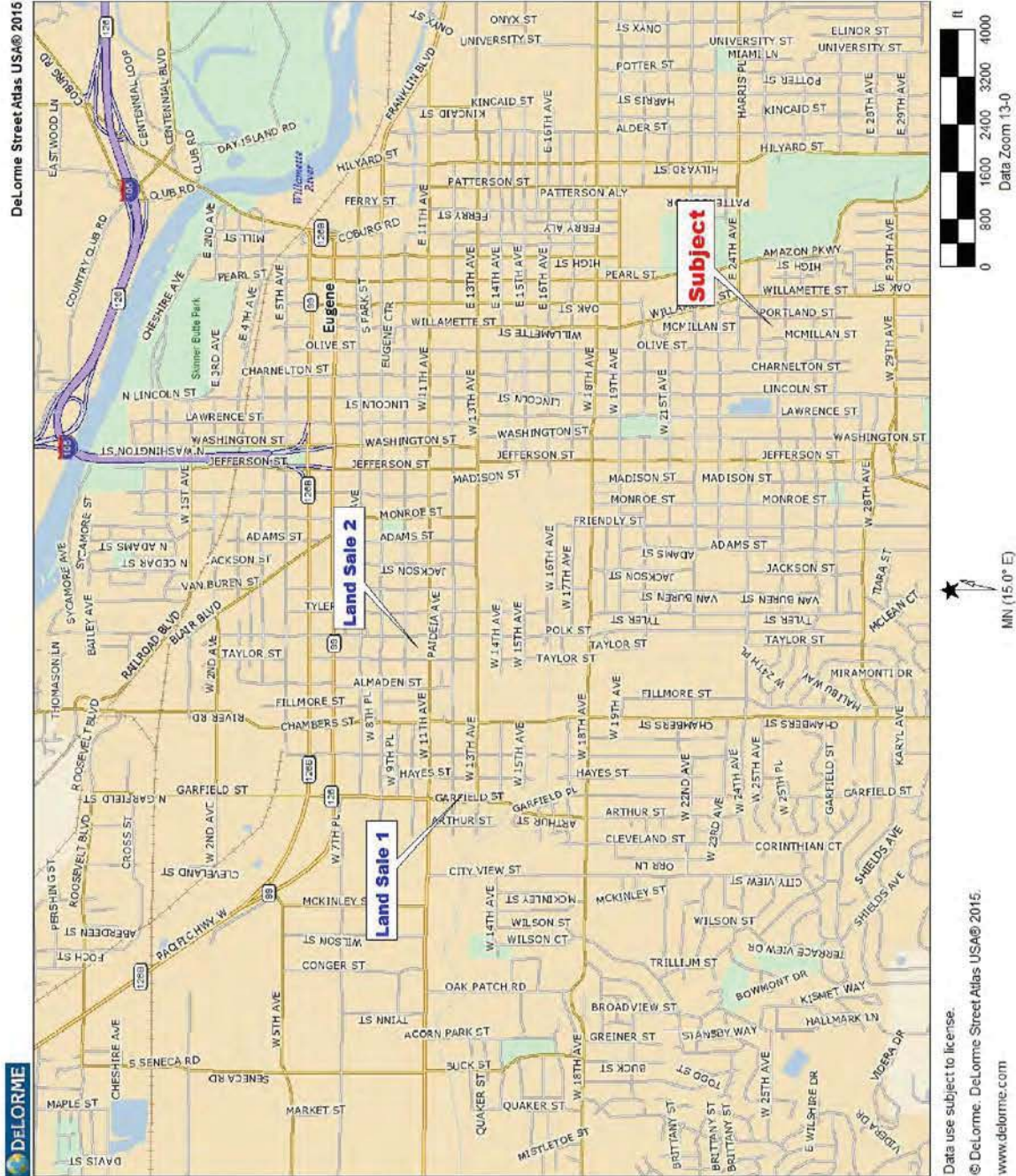
No.	Location	Sale Date	Sale Price	Size (Acres)	Zoning	Comments
1	1981 W. 12 th Aly Eugene	6/16	\$44,000	0.09	R-1	Undeveloped alley access lot. Development limited to 10% of total lot coverage or 400 square feet for this parcel. Usable lot area only approximately 2,500 square feet. Utilities available.
2	W. 10 th Alley Eugene	9/14	\$46,050	0.10	S-C/R-2	Lot located on W. 10 th Alley. Not listed on the Multiple Listing Service. Small alley lot similar to the subject, but zoning allows for superior development being located in the S-C/R-2 zone. Alley open space requirements and other development standards apply but less restrictive than the R-1 zone standards. Inferior in overall location.
	Portland Alley Eugene			0.11	R-1	



Comparable 1



Comparable 2



Conclusion

The comparable lot sales above reflect prices from \$44,000 to \$46,050 for lots located on alleys. Sale 1 is the only sale of a lot with a similar development restriction and occurred under superior market conditions. Sale 2 is the sale of a very physically similar alley lot, but this lot is located in a slightly less restrictive zone. This lot is, however, inferior in overall location compared to the subject. These are slightly high indicators of value for the subject but are the best available data for valuation after the ordinance was enacted. Additional consideration is also given to the less appealing small lot /alley lot sales presented in the prior data set, as the appeal of the subject is substantially diminished due to the restrictions imposed by the ordinance. In the absence of directly comparable data, it would be appropriate to compare the subject with the lots of lesser appeal that were previously presented; these ranged in value from \$30,000 to \$45,000 per lot. Based on the available data, the as-is market value of the subject property as of July 28, 2015 is concluded to be **\$40,000**.

Marketing Time & Exposure Time

Based on historical and current market information, marketing time and exposure time for the subject property are each estimated to be approximately 9 to 12 months.



ADDENDA

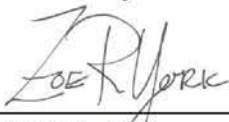
*Vacant Residential Lot
Portland Alley
Eugene, Lane County, Oregon
Map 18-03-06-42, Tax Lot 2700*

**CERTIFICATION
PLAT MAP
APPRAISERS' QUALIFICATIONS**

CERTIFICATION

We, Zoe R. York, MAI, and Richard J. Duncan, MAI, SRA, do hereby certify that:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Zoe R. York, MAI and Richard J. Duncan, MAI, SRA inspected the subject property.
- No one provided significant professional assistance to the persons signing this report.
- The appraisers have performed no services, as appraisers or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Richard J. Duncan, MAI, SRA has completed the requirements of the continuing education program for Designated Members of the Appraisal Institute.
- As of the date of this report, Zoe R. York, MAI has completed the requirements of the continuing education program for Designated Members of the Appraisal Institute.
- We have had a level of training and experience considered necessary for the formation of a reliable opinion of value of the subject property.
- Our analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with the applicable Internal Revenue Service Valuation Guidelines.

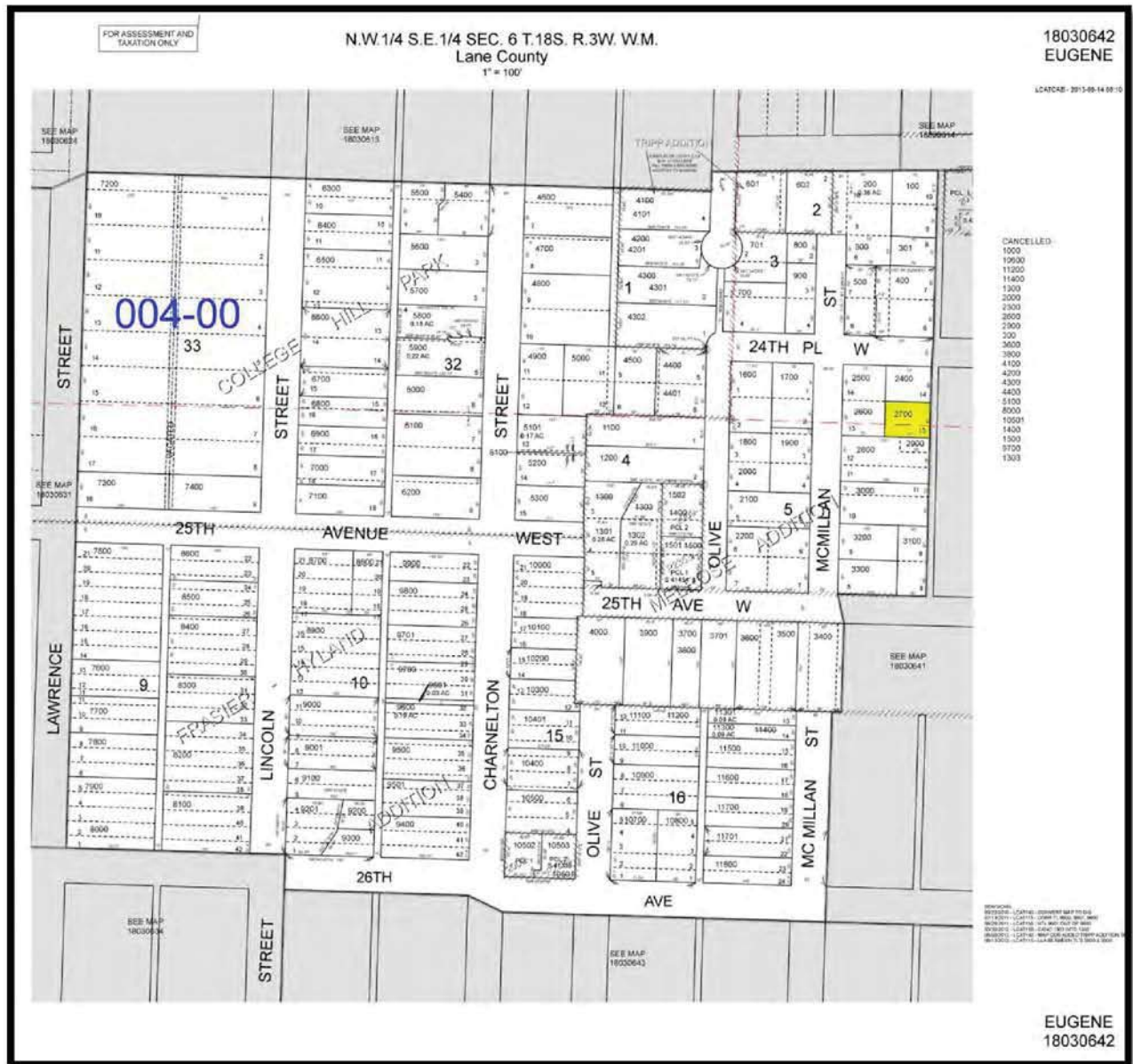


Zoe R. York, MAI
Certification No. C001053
Expiration 7/31/18



Richard J. Duncan, MAI, SRA
Certification No. C000106
Expiration 7/31/17

PLAT MAP



ZOE R. YORK, MAI

Qualifications

PROFESSIONAL DESIGNATIONS

MAI – Appraisal Institute	2014
---------------------------	------

FORMAL EDUCATION

Bachelor of Science Degree	2008
University of Oregon, Department of Mathematics	

APPRAISAL EDUCATION

Appraisal Institute

Uniform Appraisal Standards for Federal Land Acquisitions	2015
Data Verification & Methods	2014
Business Practices & Ethics	2014
Advanced Concepts and Case Studies	2011
Advanced Income Capitalization	2011
Finance Statistics and Valuation Modeling	2010
Business Practices and Ethics	2010
Advanced Applications Course 550	2010
General Appraiser Income Approach Part 2	2009
General Appraiser Income Approach Part 1	2009
General Appraiser Report Writing and Case Studies	2009
General Appraiser Site Valuation & Cost Approach	2008
General Appraiser Sales Comparison Approach	2008

Additional Courses

National USPAP Update	2014
National USPAP Update	2011
National USPAP Update	2009
Basic Appraisal Procedures	2007
Basic Appraisal Principles and Practice	2007
Uniform Standards of Professional Practice	2007
Supervising Appraiser/Appraiser Assistant Trainee Course	2007

Seminars

Navigating ODOT Appraisals & Reviews	2013
Eminent Domain	2014

LICENSE

Certified General Appraiser – State of Oregon, 2011	Certificate No. C001053
---	-------------------------

PROFESSIONAL EXPERIENCE

Certified General Appraiser	2011 – Present
Duncan & Brown, LLC	
Appraiser Assistant	2008 – 2011
Duncan & Brown, Inc.	

PROFESSIONAL AFFILIATIONS

Appraisal Institute – Member, Newsletter Editor	2014-Present
Appraisal Institute – Candidate for designation, Appraisal Institute	2013

Appraisal Institute – general Associate Member of the Appraisal Institute	2011 – 2012
Appraisal Institute – Affiliate Member	2007 – 2011

BUSINESS AFFILIATIONS

Zonta of Eugene-Springfield, President	Eugene, Oregon
Sponsors, Inc., Secretary	Eugene, Oregon
Eugene Active 20-30 Club, Member, Bulletin Editor	Eugene, Oregon

RICHARD J. DUNCAN, MAI, SRA

Qualifications

PROFESSIONAL DESIGNATIONS

SRA – Appraisal Institute	1991
MAI – Appraisal Institute, Certificate No. 7961	1988
Eugene Planning Commissioner	

FORMAL EDUCATION

Graduate Study in Real Estate	1978
University of Oregon, Eugene, Oregon	
Master Degree	1975
Business Administration – Quantitative Methods	
University of Oregon, Eugene, Oregon	
Bachelor of Science Degree	1973
Business Administration – Marketing	
University of Nebraska at Lincoln	

APPRAISAL EDUCATION

University Courses

Real Estate Principles and Practice
Real Estate Economics
Real Estate Investment Analysis
Real Estate Appraising
Real Estate Finance
Property Taxation
Land Use Planning

Appraisal Institute

Easement Valuation
Standards of Professional Practice
Wetlands Valuation
Litigation and Court Preparation
Developments in Income Property Valuation
Argus Software Training
Contemporary Issues of Appraisal Theory
Management of an Appraisal Office
Subdivision Analysis
Limited Appraisals & Reporting Options
Uniform Standards of Professional Appraisal Practices
High-Tech Appraisal Office
Internet and Appraising
Litigation Skills for the Appraiser
Automated Valuation Models
Standards of Professional Appraisal Practice, Part B
Special Purpose Properties-Greater Oregon Chapter
Partial Interest Valuation

Appraisal Institute, cont'd

Standards of Professional Appraisal Practice – Part A
Industrial Search Strategies for R.E. Appraisers
Feasibility, Market Value, Investment Timing: Option Value
Valuation of Detrimental Condition
Standards of Professional Appraisal Practice – Part B
Analyzing Operating Expenses
Uniform Appraisal Standards for Federal Land Acquisitions
Small Hotel/Motel Valuation
Appraisal Scope of Work: Burden or Blessing
Income Capitalization – Advanced
Business Practices and Ethics
ODOT R/W Training
Appraisal Review-USPAP Standard 3

Appraiser Certification & Licensing Board

Administrative Rule Overview

American Institute of Real Estate Appraisers

Course 1A – Principles of Appraising
Capitalization A&B
Capitalization – Theory and Techniques
Depreciation Analysis
Highest and Best Use Analysis
Case Studies in Real Estate Valuation
Standards of Professional Practice
Valuation Analysis and Report Writing
Cash Equivalency
Analyzing Cash Flows
R/E Investment and Discounted Cash Flow Analysis
Feasibility Analysis – Non-Residential Properties

Society of Real Estate Appraisers

Appraising Residential Condominiums
Income Property Valuation – Course 201/202
Contemporary Appraising of Income Property
Investment Feasibility Analysis
Appraisal Office Management

American Society of Farm Managers and Rural Appraisers

Fractional Interest Seminar
Appraising Undivided Interests in Real Estate

Other Appraisal Courses

Private Appraisal Assignments
Ad Valorem Tax Consultation

USGA Regional Green Section Conference

Golf Course Construction

Oregon Planning Institute

Urban Planning/Smart Growth-2003
Annexation/Transportation Modeling/Econ. Dev.-2004
Green Construction/Wetland/Transplan Model-2005
Long Range Transportation Planning/Big Look-2006
Planning Full Spectrum-2007

EXPERT WITNESS

Lane County Circuit Court
Federal Bankruptcy Court
Lane County District Court
Klamath County District Court
Deschutes County District Court

LICENSE

Certified General Appraiser – State of Oregon

Certificate No. C000106

PROFESSIONAL EXPERIENCE

Partner/Appraiser Duncan & Brown Real Estate Analysts	1994 to present
Partner/Appraiser Duncan, Morgan & Brown	1988 – 1994
Partner/Appraiser/Broker Duncan, Morgan & Associates	1985 – 1988
Partner/Broker Duncan, Cox & Associates	1980 – 1985

BUSINESS AFFILIATIONS

Board of Realtors	Eugene, Oregon
Home Builders Association	Eugene, Oregon
Rotary International	Eugene, Oregon



NOTICE OF CITY COUNCIL DECISION

Wilson Measure 49 Claim

City File No. M49 16-1

On June 26, 2017, the Eugene City Council adopted Resolution No. 5202 denying a Measure 49 claim filed by Chad and Katie Wilson for property located at 1777 E. 30th Avenue, Eugene, Oregon. A copy of the resolution is attached.

For additional information, please contact:

Alissa Hansen, Principal Planner
City of Eugene Planning Division
99 West 10th Avenue
Eugene, Oregon 97401

alissa.h.hansen@ci.eugene.or.us
541-682-5508

Date Mailed: June 29, 2017



COUNCIL RESOLUTION NO. 5202

**A RESOLUTION DENYING A MEASURE 49 CLAIM FOR
PROPERTY LOCATED AT 1777 E. 30TH AVENUE, EUGENE,
OREGON (ASSESSOR'S MAP 18-03-08-11, TAX LOT 602).**

PASSED: 7:0

REJECTED:

OPPOSED:

ABSENT: Ward 4 seat vacant

CONSIDERED: June 26, 2017



RESOLUTION NO. 5202

A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY LOCATED AT 1777 E. 30TH AVENUE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-08-11, TAX LOT 602).

The City Council of the City of Eugene finds that:

A. Chad and Katie Wilson submitted a claim to the City seeking compensation or a waiver of regulations under Ballot Measure 49. Claimants alleged that the maximum height limit provision in subsection (17)(c)9. of Section 9.2751 of the Eugene Code, 1971 (EC), that applies to detached secondary dwellings on the subject property restricts the residential use and diminished the fair market value of the property at 1777 E. 30th Avenue, Eugene, Oregon (the Property).

B. The City Manager has caused the claim to be investigated and has submitted to the Council a Report and Recommendation, attached as Exhibit A to this Resolution, recommending that the claim be denied.

C. Considering the requirements of Measure 49, the materials related to the claim submitted to the City by the claimants and others, and the City Manager's recommendation and conclusion as to the validity of the claim, the City Council finds that the claim should be denied.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings, which are adopted, and the findings and analysis contained in the Report and Recommendation of the City Manager attached as Exhibit A to this Resolution, the City Council hereby denies the Measure 49 claim submitted by Claimants Chad and Katie Wilson, for the property located at 1777 E. 30th Avenue, Assessor's Map 18-03-08-11, Tax Lot 602.

Section 2. A copy of this Resolution shall be forwarded to Chad and Katie Wilson at 1777 E. 30th Avenue, Eugene, Oregon 97405, to their representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to the City's Planning & Development Department, and to any person who submitted written arguments or evidence before the close of the record. A copy of this Resolution shall also be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 26th day of June, 2017.


Deputy City Recorder - RAWSON BAYLOR-PINO

**BALLOT MEASURE 49
(ORS 195.300 – ORS 195.336)**

CLAIM FOR COMPENSATION

REPORT AND RECOMMENDATION OF THE CITY MANAGER

NAME OF CLAIMANTS:	Chad and Katie Wilson
PROPERTY ADDRESS:	1777 E. 30th Avenue Eugene, OR 97405
CLAIMANTS' REPRESENTATIVE:	Bill Kloos
PROPERTY IDENTIFICATION:	Tax Lot 602 of Assessor's Map 18-03-08-11
ZONING:	Low Density Residential; R-1

I. Summary of Claim

Chad and Katie Wilson (Claimants) submitted a claim under Ballot Measure 49 for compensation for the alleged reduction in fair market value to their property located at 1777 E. 30th Avenue in Eugene, Oregon. The property currently contains a residence, built in 2004, located on the southwest portion of the property. Claimants assert that EC 9.2751(17)(c)9., which limits and prescribes a certain method of measuring the height/sloped setback of detached secondary dwelling units, restricts the residential use of their property, as it prevents the existing residence on their property from automatically qualifying as a secondary dwelling. Claimants also contend that EC 9.2751(17)(c)9., enacted in 2014, reduces the fair market value of their property. Claimants assert a \$60,000 decline in the value of their property, but do not specifically articulate a request for compensation. Rather, Claimants request that the City waive EC 9.2751(17)(c)9., allowing them to construct a new primary dwelling on their property and to convert the existing dwelling into a legal detached secondary dwelling unit.

II. Summary of City Manager's Recommendation

Measure 49 generally grants a property owner of residentially zoned land the right to compensation or to waiver of a land use regulation adopted by the City if five substantive requirements are met. First, the regulation must constitute a "land use regulation" as that term is defined by Measure 49. Second, the City must have enacted the regulation after January 1, 2007, but not more than five years before the date the claim was filed. Third, the regulation must "restrict the residential use" of residentially zoned private property. Fourth, the effect of the regulation must be to cause a reduction of the fair market value of the property. Fifth, the regulation must not fall within one of Measure 49's six exemptions.

As discussed below, the claim submitted by the Wilsons meets two of the five substantive requirements of Measure 49: 1) the regulation that is the subject of this claim, EC 9.2751(17)(c)9., was enacted after January 1, 2007, and less than five years before the date the claim was filed; and 2) EC 9.2751(17)(c)9. does not fall within one of Measure 49's six exemptions. However, as discussed in more detail below, the City Manager finds that: 1) EC 9.2751(17)(c)9. does not qualify as a land use regulation as defined by Measure 49; 2) EC 9.2751(17)(c)9. does not effectively restrict a previously allowed residential use on claimants' residentially zoned property; and 3) Claimants have not adequately demonstrated that their property value has been reduced as required by Measure 49. For these reasons, the City Manager recommends that the Council deny the Wilsons' claim.

III. Analysis of Claim

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for "owners" of real property. Measure 49 defines "owner" to include "[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]" ORS 195.300(18).

Based on the information submitted by the Claimants (Warranty Deed 2003-082408 and Deed 2014-049003, and information from the Lane County Regional Land Information Database), the City Manager concludes that the subject property was acquired by Claimant Chad Wilson on August 26, 2003, and an undivided one-half interest in the property was transferred to Claimant Katie Wilson on December 9, 2014. Accordingly, both Claimants are owners.

B. "Land Use Regulations"

Measure 49 requires compensation (or waiver) only for those regulations that constitute "land use regulations" as that term is defined by Measure 49. Further, the regulation must have been enacted after January 1, 2007, but within five years of the date of the claim. Measure 49 defines "land use regulation," with respect to cities, as a "provision of a city comprehensive plan, zoning ordinance or land division ordinance *that restricts the residential use of private real property zoned for residential use.*" ORS 195.300(14)(c). (Emphasis added).

EC 9.2751(17)(c)9. is a provision of the City's zoning ordinance, and it regulates residential uses on property zoned for residential uses. EC 9.2751(17)(c)9. was adopted as part of Ordinance No. 20526, which became effective April 12, 2014. The Wilsons' Measure 49 claim was filed on February 24, 2016. EC 9.2751(17)(c)9. was enacted after January 1, 2014, and within five years of the date of the Wilsons' claim. However, as discussed in more detail in section C, below, EC 9.2751(17)(c)9. does not restrict the residential use of the Wilson's property; therefore, EC 9.2751(17)(c)9. does not qualify as a "land use regulation" for purposes of Measure 49.

C. Restriction on Residential Use

A "land use regulation" only gives rise to a Measure 49 claim if the regulation restricts the residential use of private real property zoned for residential use. EC 9.2751(17)(c)9. provides a height limit for new attached and detached secondary dwelling units within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood, and

proscribes a method for determining the height of a building. Claimants allege that EC 9.2751(17)(c)9. restricts the residential use of their property, as it prevents the existing residence on their property from automatically qualifying as a secondary dwelling.

Adopted on March 12, 2014 (by Ordinance No. 20526) and effective on April 12, 2014, EC 9.2751(17)(c)9. establishes the following limitations for detached secondary dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood:

(17) Secondary Dwellings in R-1

....

(c) Area-Specific Secondary Dwelling Standards. The following standards apply to all new attached or detached secondary dwellings in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association:

....

9. Building Height/Interior Setback. For detached secondary dwellings:

- a. The interior yard setback shall be at least 5 feet from the interior lot line. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet.
- b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.

Prior to the Council's adoption of the above-quoted code provision, the code-prescribed manner for measuring the building height of a detached secondary dwelling would have allowed conversion of the Claimants' existing dwelling into a lawful detached secondary dwelling. See Section 2 of Ordinance No. 20417. That is, under the code provisions that existed prior to the adoption of Ordinance No. 20526, the Claimants' existing structure met the height requirement for a detached secondary dwelling. However, the code-prescribed manner for measuring the building height of a detached secondary dwelling that went into effect on April 12, 2014 (quoted above), prevents the Claimants from converting the existing structure to a lawful detached secondary

dwelling. Based on the measuring method adopted in 2014, the Claimants' existing structure exceeds the maximum height allowed for a detached secondary dwelling.

Claimants assert that EC 9.2751(17)(c)9. is a "land use regulation" that "restricts the residential use" of their property because prior to the 2014 adoption of Ordinance No. 20526, the existing residence on Claimants' property would have automatically qualified as a detached secondary dwelling unit. However, following the adoption of Ordinance No. 20526, the existing residence no longer automatically qualifies as a detached secondary dwelling unit because, based on the way the structure must be measured, the existing residence is too tall to qualify as a detached secondary dwelling unit.

However, despite the height restrictions imposed by EC 9.2751(17)(c)9., staff has identified a number of additional ways claimants could construct a secondary dwelling on the subject property. In a memo dated June 5, 2017, Alissa Hansen, Principal Planner, identified the following four options that would allow the Claimants to develop a secondary dwelling on the existing property:

1. The existing dwelling could remain the primary residence, and a secondary dwelling could be built on the property.
2. The kitchen could be removed from the existing dwelling (and the existing dwelling would therefore be considered detached accessory living space rather than a secondary dwelling unit), and a new primary dwelling and a secondary dwelling could be built on the property.
3. The entire structure containing the existing dwelling could be demolished, and a new dwelling and a secondary dwelling could be built on the property.
4. The structure containing the existing dwelling could be altered to meet the current height limit for secondary dwelling (this would likely require removing the top floor, and using the lower portion, currently a garage, for the dwelling) and then be converted to a secondary dwelling in conjunction with a new primary dwelling built on the property.

As Planning staff point out, while EC 9.2751(17)(c)9. prevents claimants from treating the existing structure on the property as a secondary dwelling without alterations, EC 9.2751(17)(c)9. does not foreclose the Claimants from developing both a primary dwelling and a secondary dwelling on the subject property. The Claimants argue that their use of the property is restricted because prior to EC 9.2751(17)(c)9., the structure on their property would have automatically qualified as a secondary dwelling and now it does not. However, Measure 49 requires that a land use regulation restrict a residential *use* and as noted above, EC 9.2751(17)(c)9. does not prevent the residential use of the property generally, nor does it prohibit Claimants from establishing both a primary and a secondary dwelling on the subject property. Paul Conte and Carolyn Jacobs also submitted testimony into the record arguing that EC 9.2751(17)(c)9. does not restrict the use of Claimant's property.

Because there are other ways for Claimants to place a secondary dwelling unit on the subject property, the City Manager concludes that EC 9.2751(17)(c)9. does not restrict the residential use of Claimants' property as required by Measure 49.

D. Reduction in Value

To succeed on their Measure 49 claim, claimants must show that EC 9.2751(17)(c)9. reduced the fair market value of their property. To show a reduction in fair market value, Measure 49 requires that Claimants provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after enactment. The appraisals submitted by the Claimants must comply with the Uniform Standards of Professional Appraisal Practice. ORS 195.310(2)(b). Claimants submitted appraisals of the fair market value of the property one year before the adoption of EC 9.2751(17)(c)9. (March 12, 2013), and one year after the adoption of EC 9.2751(17)(c)9. (March 12, 2015). The March 12, 2013, appraisal identifies a property value of \$470,000. The March 12, 2015, appraised identifies a property value of \$410,000.

Evidence submitted by Paul Conte, Carolyn Jacobs and Bill Aspergren calls the Claimants' appraisals into question in several particulars. First, Claimants originally submitted a set of appraisals with dates that did not comply with Measure 49 requirements. Claimants rectified that issue when it was brought to their attention by City staff. However, testimony submitted by Carolyn Jacobs and Bill Aspergren points out that although the dates of the appraisals changed, the value of the property in the appraisals did not. In addition, testimony in the record raises questions about properties selected by the appraiser for use as comparables as well as the choice to base the appraisal on the value of a hypothetical primary residence and secondary dwelling unit, rather than on the structure that actually exists on the property.

Finally, an appraisal review conducted by C. Spencer Powell and included in the record concludes that the appraisals submitted by the Claimants do not comply with the Uniform Standards of Professional Appraisal Practice in several particulars. The claimants had an opportunity to review Mr. Powell's findings and conclusions and to submit evidence and argument rebutting those findings and conclusions. Claimants failed to provide any evidence or argument challenging Mr. Powell's findings and conclusions. The City Manager finds Mr. Powell's findings and conclusions credible. Based on the evidence and argument in the record, the City Manager concludes that the appraisals submitted by the applicant do not comply with the Uniform Standards of Professional Appraisal Practice as required by ORS 195.310(2)(b). The City Manager further concludes that Claimants have not shown that EC 9.2751(17)(c)9. has caused a reduction in the fair market value of their property as required by Measure 49.

E. Exemptions

Finally, a Measure 49 claim is not valid if the challenged regulation falls within one of the exemptions listed in ORS 195.305(3). The regulation at issue in this claim does not fall within any of the exemptions listed in ORS 195.305(3).

IV. Conclusion and Recommendation

Based on the findings and analysis set forth above, the City Manager recommends that the City Council deny the Wilsons' Measure 49 claim.

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 3:02 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R
Subject: Draft resolution denying M49 18-1 (Moore) claim
Attachments: ResolutionDenyingM49_18-1_DRAFT.pdf; Resolution5202DenyingM49_17-1_ADOPTED.pdf

September 11, 2018

Mayor and Councilors,

The City Manager should provide you with TWO resolutions and supporting findings for you to consider at your September 24th meeting. One should be for granting the M49 claim and the other for denying the M49 claim.

If, however, the City Manager were to neglect this responsibility, the Council would be in a jam because, to defend a denial on appeal, the City needs to have set forth its analysis and basis for denial in a resolution. It would be virtually impossible to construct that on-the-fly.

Consequently, the Mayor and Council should direct the City Manager to produce both alternative Resolutions and Findings.

In the eventuality that the City Manager nevertheless does not provide an alternative resolution, I've attached a DRAFT Resolution to deny the M49 18-1 (Moore) claim. I've also attached the ADOPTED Resolution that denied the M49 17-1 (Wilson) claim. You can easily see that the draft is worded exactly as the adopted resolution, except that the particulars of the claimant, the basis of the claim and the property are changed.

The supporting version of the City Manager's Report could be created very efficiently by "cloning" the City Manager Report for the M49 17-1 (Wilson) claim. If the short time that the record is open permits, I will attempt to provide a draft for at least the analysis sections. Obviously, this *should* be a task that the legal and staff completes, but

This message and attachments are submitted as testimony re the M49 18-1 (Moore) claim.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

**Accredited Earth Advantage
Sustainable Homes Professional**

RESOLUTION NO. 5202

A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY LOCATED AT 1777 E. 30TH AVENUE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-08-11, TAX LOT 602).

The City Council of the City of Eugene finds that:

A. Chad and Katie Wilson submitted a claim to the City seeking compensation or a waiver of regulations under Ballot Measure 49. Claimants alleged that the maximum height limit provision in subsection (17)(c)9. of Section 9.2751 of the Eugene Code, 1971 (EC), that applies to detached secondary dwellings on the subject property restricts the residential use and diminished the fair market value of the property at 1777 E. 30th Avenue, Eugene, Oregon (the Property).

B. The City Manager has caused the claim to be investigated and has submitted to the Council a Report and Recommendation, attached as Exhibit A to this Resolution, recommending that the claim be denied.

C. Considering the requirements of Measure 49, the materials related to the claim submitted to the City by the claimants and others, and the City Manager's recommendation and conclusion as to the validity of the claim, the City Council finds that the claim should be denied.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings, which are adopted, and the findings and analysis contained in the Report and Recommendation of the City Manager attached as Exhibit A to this Resolution, the City Council hereby denies the Measure 49 claim submitted by Claimants Chad and Katie Wilson, for the property located at 1777 E. 30th Avenue, Assessor's Map 18-03-08-11, Tax Lot 602.

Section 2. A copy of this Resolution shall be forwarded to Chad and Katie Wilson at 1777 E. 30th Avenue, Eugene, Oregon 97405, to their representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to the City's Planning & Development Department, and to any person who submitted written arguments or evidence before the close of the record. A copy of this Resolution shall also be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 26th day of June, 2017.


Deputy City Recorder - RAWSON BAYLOR-PINO

RESOLUTION NO. _____

**A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY
LOCATED AT 70 WEST 24th PLACE, EUGENE, OREGON
(ASSESSOR'S MAP 18-03-06-42, TAX LOT 2700).**

The City Council of the City of Eugene finds that:

A. Elise Moore (Claimant) submitted a claim to the City seeking compensation or a waiver of EC 9.2751(18)(a)3. under Ballot Measure 49. Claimant alleges that the limits on building size on alley access lots to 10% of the lot size or 800 square feet (whichever is smaller) restricts the residential use and diminishes the fair market value of her property located at 70 West 24th Place, Eugene, Oregon (the subject property).

B. The City Manager has caused the claim to be investigated and has submitted to the Council a Report and Recommendation, attached as Exhibit A to this Resolution, recommending that the claim be denied.

C. Considering the requirements of Measure 49, the materials related to the claim submitted to the City by the claimant and others, and the City Manager's recommendation and conclusion as to the validity of the claim, the City Council finds that the claim should be denied.

**NOW, THEREFORE, BE IT RESOLVED BY THE
CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of
Oregon, as follows:**

Section 1. Based on the above findings, which are adopted, and the analysis contained in the Report and Recommendation of the City Manager attached as Exhibit A to this Resolution, the City Council hereby denies the Measure 49 claim submitted by claimant Elise Moore for the property located at Assessor's Map 18-03-06-42, Tax Lot 2700.

Section 2. A copy of this Resolution shall be forwarded to Elise Moore at 70 West 24th Place, Eugene, Oregon 97405, to her representative, Bill Hoos at 375 . 4th Street, Suite 204, Eugene, Oregon 97401, and to the City's Planning & Development Department. A copy of this Resolution shall be recorded with the Lane County Records Department.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 24th day of September, 2018.

City Recorder

LAWLER Daniel R

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, September 11, 2018 12:36 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: LAWLER Daniel R; BROTHERTON Kathryn
Subject: Zelenka clarifies "use"; staff confirms "use" NOT restricted; City Attorney advice to Council could violate "Equal Protection"

September 11, 2018

Mayor and Councilors,

Thank you for the unanimous decision to reopen the record for the "Moore" Measure 49 Claim (City File M49 18-1).

Although the discussion was brief, there were several very important "takeaways":

1. **Councilor Zelenka clarified the "use" that is at issue in this claim.**
2. **Staff member Dan Lawler confirmed that the "use" allowed for the subject property has not been restricted.**
3. **The City Attorney provided legal advice to the Council that, while not clear, could be misinterpreted in this (and other) M49 decisions, resulting in the City Council violating the "Equal Protection" provisions of the U.S. and Oregon Constitutions.**

I will submit more extensive testimony prior to the deadline; however, I wanted to point out these items while councilors had their discussion fresh in their minds.

1. Councilor Zelenka clarified the "use" that is at issue in this claim.

In an exchange with Dan Lawler, Councilor Zelenka clarified Eugene Code's "One-Family Dwelling" as the use permitted in the R-1 zone and which is the subject use of this M49 claim. Zelenka's question to staff was answered by Lawler stating:

"This isn't about an ADU, the claimant desires to build a primary, single-family dwelling, not an ADU."

Eugene Code variously uses "single-family dwelling" and "one-family dwelling" in a synonymous manner. The code defines "Dwelling, One-Family" (EC 9.0500). The code states the purpose of the R-1 zone, in part, as: "The R-1 zone is designed for one-family dwellings with some allowance for other types of dwellings, * * * * *." (EC 9.2700) The code lists "One-Family Dwelling (1 Per Lot in R-1)" as the first "Residential" use under the Table 9.2740, which "identifies those uses in the residential zones that are: (P) Permitted * * * * *."

The second "Residential" use Table 9.2740 is (now) "Accessory Dwelling," which was previously "Secondary Dwelling."

As Councilor Zelenka helpfully clarified, the *codified* use at issue in this claim is precisely "One-Family Dwelling."

2. Staff member Dan Lawler confirmed that the "use" allowed for the subject property has not been restricted.

Perhaps unintentionally, Dan Lawler stated in precise terms the situation in this claim:

"Where we see the restriction of use is her desired residential use was to build a 1,200 square foot primary dwelling, single-family home. Now her use is restricted to only a 462 square foot home."

Lawler has confirmed that: a) Moore's desired "use" is to build a primary dwelling (i.e., one-family dwelling); and b) her currently permitted use is a "home" (i.e., one-family dwelling). There can be no question that both before and after the cited 2014 regulation was adopted, the code allowed "One-Family Dwelling" as a use of Moore's property.

It's worth reminding councilors that you have adopted a definition of "use" in the Eugene Code:

EC 9.0500 Definitions.

Use. The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is occupied or maintained.

Note how "Use" is defined as "[t]he purpose . . .," which ties the term directly to the purpose of the residential zones (above), which is "designed for one-family dwellings" as well as the table of "residential uses."

Nowhere in the code's definition of "use", nor in the purpose of residential zones, nor in the table of residential uses is there any mention at all of the *physical characteristics* of a one-family dwelling. The code is quite clear that a small one-family dwelling and a large one-family dwelling are *identical uses*.

And Mr. Lawler has confirmed for the Council that the land use code allows the use of the subject property to build a one-family home. His statement of that fact dovetails perfectly with what Glenn Klein stated in the findings that you, the Council, *unanimously* adopted in Council Resolution No. 5202 denying the Wilson M49 claim:

"The Claimants argue that their use of the property is restricted because prior to EC 9.2715(17(c)9. the structure on their property would have automatically qualified as a secondary dwelling and now it does not. However, Measure 49 requires that a land use regulation restrict a residential ***use*** and as noted above, EC 9.2715(17(c)9. does not prevent the residential use of the property generally, nor does it prohibit Claimants from establishing both a primary and a secondary dwelling on the subject property. Paul Conte and Carolyn Jacobs also submitted testimony into the record arguing that EC 9.2715(17(c)9. does not restrict the use of Claimant's property. [***use*** is emphasized with bold-italic in the original report.]

"Because there are other ways for Claimants to place a secondary dwelling unit on the subject property, the City Manager concludes that EC 9.2715(17(c)9. does not restrict the residential use of Claimants' property as required by Measure 49. Page 4 -- "Report and Recommendation of the City Manager"

The situation with the Moore M49 claim is even simpler than the prior (Wilson) M49 claim. The permitted ***use*** before and after the cited regulation is simply a one-family dwelling. A 1,200 s.f. one-family dwelling is the same ***use*** as a 462 s.f. one-family dwelling, regardless that the two dwellings have different *physical characteristics*.

3. The City Attorney provided legal advice to the Council that, while not clear, could be misinterpreted in this (and other) M49 decisions resulting in the City Council violating the "Equal Protection" provisions of the U.S. and Oregon Constitutions.

The following exchange took place between Councilor Zelenka and the City Attorney:

Councilor Zelenka: "A tiny home. And, City Attorney, what ... would this set a precedence for other cases associated with Measure 49 and/or ADUs or alley access lots?"

City Attorney: "Ya know, consistency is always good, but it doesn't bind (emphasis in speech) you in any way. What your decision would do this evening is ... if you decided ... if you chose to grant the Measure 49 waiver or deny the Measure 49 waiver, it won't mean that the next Measure 49 decision [*sic*] that came in would somehow be bound to that. You're allowed to change your approach and factual situations are also different and look at the individual specs[?]. So, if you're asking if a decision in this case, one way or another, to grant or deny, would somehow mean that all your future decisions would be bound by that, no. It wouldn't be."

Councilor Zelenka: "In this case it seems to be almost be ... the original idea behind the 2014 amendment was to treat these smaller lots like an ADU and have those kind of restrictions make sense. But this seems to be an unintended consequence of that language; and that this lot is not a tiny lot and it could easily accommodate a 1,200 square foot home as the, that the person wants to build. And, it does kind of cry out in my mind for an exemption, er, exception from this rule."

The City Attorney's advice was not perfectly clear. The City Attorney ("CA") is correct that approving this M49 claim would not require the Council to approve all future M49 claims, nor would denying this M49 claim require the Council to deny all future M49 claims. As the CA correctly states, the Council would base future decisions on the specific facts of each case.

However, the CA should make certain that the Council understands that their interpretation and application of the *law must* remain consistent in order to meet the constitutional requirements for "equal protection under the law." (I won't provide a length legal discussion; but as the CA certainly is aware, the "Equal Protection" constitutional rights apply to a local government's decisions regarding development.)

In this case, if the Council were to adopt the staff's interpretation that the M49 statutes consider a restriction on a dwelling's *physical characteristics* to be a restriction on *use*, then the Council would be bound to apply that same interpretation to all M9 claims. In fact, the Wilson's would likely have a legal basis to reinstate their prior M49 claim by asserting the City Council had violated their equal protection rights in denying their claim based on an inconsistent and prejudicial application of the law. (Believe me, Bill Kloos will be out drumming up lots of M49 claims if the Council makes this mistake.)

The City Attorney needs to clarify her advice to the City Council to avoid this issue. This isn't an abstract potential problem, as demonstrated by Councilor Zelenka's comments immediately following the CA's advice. Understandably, just hearing the CA's advice, Councilor Zelenka posited that Moore's dilemma was an "unintended consequence of that language," and (in his opinion) Moore's lot "could easily accommodate a 1,200 square foot home." Based on these points, Councilor Zelenka suggested to his colleagues that "it does kind of cry out in my mind for an exemption, er, exception from this rule."

The exact same intuitive (and potentially reasonable) argument could have been made for the Wilson's M49 claim or any future claim by other property owners. But following that approach would make each decision an arbitrary, "gut" decision, which would inevitably run afoul of the equal protection clause for M49 claims that were denied.

The proper solution to Councilor Zelenka's assessment is very simple and legally proper: amend the provision, e.g., by changing the 10% of lot size limitation to 20%, 25% or 30%. This would perhaps delay resolution for Mrs. Moore, but it would address what Council may believe is a fundamental flaw in the existing code.

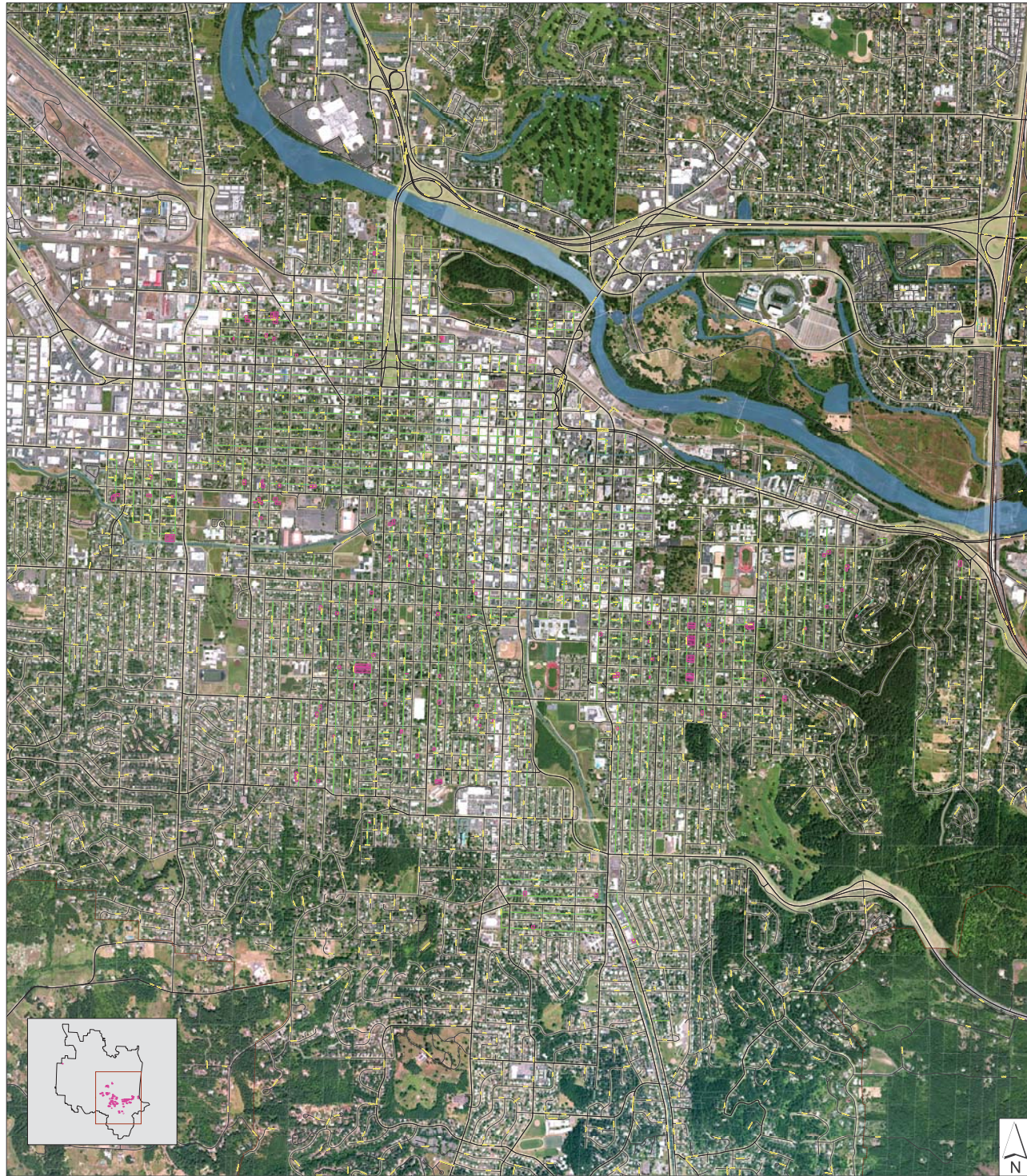
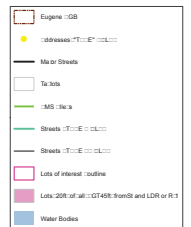
Thank you for your consideration.

This is submitted as testimony during the re-opened record period.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
Ward 1

**Accredited Earth Advantage
Sustainable Homes Professional**

DRAFT Working Map: Potential Existing Alley Lots - R1 & LDR



Jul 22, 2013

Caution:
This map is based on
imprecise source data,
subject to change, and for
general reference only.

0 850 1700 3400 Ft

RESOLUTION NO. _____**A RESOLUTION GRANTING A MEASURE 49 CLAIM AND WAIVING A PROVISION OF CHAPTER 9 OF THE EUGENE CODE, 1971, FOR PROPERTY LOCATED ADJACENT TO 70 WEST 24th PLACE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-06-42, TAX LOT 2700).****The City Council of the City of Eugene finds that:**

A. Elise Moore (Claimant) submitted a claim to the City seeking compensation or a waiver of EC 9.2751(18)(a)3. under Ballot Measure 49. Claimant alleges that the limit on building size on alley access lots of 10% of the lot size or 800 square feet (whichever is smaller) restricts the residential use and reduces the fair market value of her property identified as Assessor's Map 18-03-06-42, Tax Lot 2700 and located adjacent to 70 West 24th Place, Eugene, Oregon (the subject property).

B. The City Manager has caused an investigation of the claim to be made, has determined the claim to be valid, and has submitted to the Council a Report and Recommendation, attached as Exhibit A to this Resolution, recommending that EC 9.2751(18)(a)3. be waived to allow Claimant to construct a 1,200 square foot dwelling that complies with all other residential lot standards on the subject property. The recommended waiver does not address the applicability of any other provision that might preclude such construction.

C. Considering the requirements of Measure 49, the materials related to the claim submitted to the City by Claimant and others, the City Manager's report and recommendation, and the lack of City funds with which to pay compensation to the Claimant, the City Council finds the public interest will be best served by waiving EC 9.2751(18)(a)3. as set forth herein.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings, which are adopted, and the analysis contained in the Report and Recommendation of the City Manager attached as Exhibit A to this Resolution, the City Council hereby waives EC 9.2751(18)(a)3. for the property owned by Claimant Elise Moore, Assessor's Map 18-03-06-42, Tax Lot 2700, to the extent necessary to allow Claimant to construct a 1,200 square foot dwelling that complies with all other applicable residential development standards.

Section 2. A copy of this Resolution shall be forwarded to Elise Moore at 70 West 24th Place, Eugene, Oregon 97405, to her representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to any person who submitted written arguments or evidence before the close of the record, and to the City's Planning & Development Department. A copy of this Resolution shall be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 24th day of September, 2018.

City Recorder

**Exhibit A to Resolution Approving
Moore Measure 49 Claim**

**BALLOT MEASURE 49
(ORS 195.300 – ORS 195.336)**

CLAIM FOR COMPENSATION

REPORT AND RECOMMENDATION OF THE CITY MANAGER

NAME OF CLAIMANT:	Elise Moore
PROPERTY ADDRESS:	West 24th Place & Portland Alley Eugene, OR 97405
CLAIMANT’S REPRESENTATIVE:	Bill Kloos
PROPERTY IDENTIFICATION:	Tax Lot 2700 of Assessor’s Map 18-03-06-42
ZONING:	R-1 Low Density Residential

I. Summary of Claim

Elise Moore (Claimant) submitted a claim under Ballot Measure 49 for compensation or waiver of land use regulations alleging a reduction in fair market value to her vacant property located near the intersection of West 24th Place and Portland Alley in Eugene, Oregon. The property is a vacant alley access lot that is zoned R-1 Low-Density Residential. Claimant asserts that EC 9.2751(18)(a)3., which limits building size on alley access lots to 10% of the lot size or 800 square feet (whichever is smaller), restricts the residential use of her property and reduces its value. Specifically, Claimant contends that she purchased the lot in 2010 to build a 1,200 square foot house on the property and that EC 9.2751(18)(a)3., enacted in 2014, limits maximum building size on the lot to 462 square feet. She claims the regulation reduced the property’s value by \$25,000 and asks the City to compensate her for the lost value or to waive EC 9.2751(18)(a)3. to allow construction of a 1,200 square foot dwelling that complies with all other residential development standards.

A City Council public hearing on this Measure 49 claim was held on July 16, 2018. The claimant’s attorney, Bill Kloos, testified in favor of granting the claim. No other testimony was received at the public hearing.

Following the hearing, the Council left the record open one week, until 5:00 p.m. on July 24, 2018, for submission of written testimony and provided the claimant an additional week, until 5:00 p.m. on July 31, 2018, to rebut evidence and arguments submitted. At the Council meeting on July 23, 2018, the Council voted to extend the open record period until 5p.m. on July 27, 2018, and to extend the claimant’s rebuttal period until 5p.m. on August 3, 2018. On September 10, 2018, the Council voted to leave the record open until 5:00 p.m. on Wednesday, September

12, 2018, and to extend Claimant's rebuttal period until 5:00 p.m. on Wednesday, September 19, 2018.

II. Summary of City Manager's Recommendation

Measure 49 generally grants a property owner of residentially zoned land located within an urban growth boundary the right to compensation or waiver of a land use regulation (at the option of the government) if five substantive requirements are met. First, a claimant must own the property subject to the claim. Second, the regulation must constitute a "land use regulation" as that term is defined by Measure 49 and it must have been enacted after January 1, 2007, but not more than five years before the date the claim was filed. Third, the regulation must "restrict the residential use" of residentially zoned private property. Fourth, the regulation must cause a reduction of the fair market value of the property. Fifth, the regulation must not fall within one of Measure 49's six exemptions.

As discussed below, the City Manager finds that the Moore claim is valid because it satisfies the five requirements of Measure 49: 1) Claimant Elise Moore owns the property that is the subject of the claim; 2) EC 9.2751(18)(a)3. qualifies as a land use regulation and was enacted after January 1, 2007 and fewer than five years before the date the claim was filed; 3) EC 9.2751(18)(a)3. restricts a previously allowed residential use on the residentially zoned property; 4) EC 9.2751(18)(a)3. reduces the property's fair market value; and 5) EC 9.2751(18)(a)3. does not fall within one of the six Measure 49 exemptions. Therefore, this report concludes that the claim is valid.

If a claim is valid under Measure 49, a local government must either (1) compensate the claimant for the reduction in the fair market value of the property, or (2) authorize the claimant to use the property without application of the land use regulation "to the extent necessary to offset the reduction in the fair market value of the property." The Claimant requests compensation or a waiver of EC 9.2751(18)(a)3.. Accordingly, the City Manager recommends that the City Council waive EC 9.2751(18)(a)3. as it relates to the Claimant's property and to the extent that waiver is needed to allow construction of a 1,200 square foot residential dwelling that complies with all other residential development standards.

III. Analysis of Claim

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for "owners" of real property. Ballot Measure 49 defines "owner" to include "[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]" ORS 195.300(18).

Based on information that the Claimant submitted (Warranty Deed 2010-033733) and information from the Lane County Regional Land Information Database (RLID), the City Manager concludes that Claimant Elise Moore acquired fee title to the subject property on July 8, 2010. Accordingly, Claimant Elise Moore is the owner of the property.

B. “Land Use Regulations”

Measure 49 requires compensation (or waiver) for only those regulations that constitute “land use regulations” as Measure 49 defines the term. Measure 49 defines “land use regulation,” with respect to cities, as a “provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.” ORS 195.300(14)(c). Further, land use regulations eligible for waiver under Measure 49 must have been enacted after January 1, 2007, but within five years of the date of the claim.

EC 9.2751(18)(a)3. is a land use regulation as defined by Measure 49 because it is a provision of the city’s zoning ordinance and it regulates residential uses on property in a residential zone. This land use regulation was adopted by Ordinance No. 20541, which became effective August 29, 2014. The Claimant filed her Measure 49 claim on January 29, 2018. Thus, EC 9.2751(18)(a)3. is a qualifying land use regulation under Measure 49 because it was enacted after January 1, 2007, but within five years of the date of the claim.

C. Restriction on Residential Use

A “land use regulation” gives rise to a Measure 49 claim only if the regulation restricts the residential use of private real property. The specific regulation that is the subject of the Claimant’s Measure 49 claim is EC 9.2751(18)(a)3., which limits the square footage of new dwellings built on alley access lots. The Claimant alleges that EC 9.2751(18)(a)3. restricts the residential use of her property because it prevents her from building a home that would have been allowed before the regulation took effect.

Adopted on July 28, 2014 (by Ordinance No. 20541) and effective on August 29, 2014, EC 9.2751(18)(a)3. establishes the following limitations on square footage of buildings on alley access lots:

(18) Alley Access Lots in R-1.

(a) General Standards.

- 1. Applicability. Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.**
- 2. Use Regulations. Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.**
- 3. Building Size. The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.**

Prior to the Council’s adoption of the above-quoted code provision, general R-1 zoning regulations applied to alley access lots and allowed lot owners to build dwellings with total square footage that covered up to 50% of the lot. Thus, prior to EC 9.2751(18)(a)3. going into effect, the Claimant could have built a more than 2,000 square foot house on her 4,620 square foot alley access lot. Now, however, EC 9.2751(18)(a)3. limits any structure on the Claimant’s lot to a maximum of 462 square feet, which restricts the Claimant’s ability to construct her desired 1,200 square foot dwelling on the property. Planning staff evaluated the feasibility of the Claimant using

other land use mechanisms, including adjustment review, conditional use permits, planned unit developments, and variances, to build the 1,200 square foot home while also complying with EC 9.2751(18)(a)3. and determined that none of those options were feasible.

Because EC 9.2751(18)(a)3. reduces the maximum lot coverage for Claimant's alley access lot from 50% to 10% or 800 sq. ft., whichever is smaller, thereby reducing the Claimant's maximum dwelling size from a 2,000+ square foot dwelling to a 462 square foot dwelling, and because the Claimant has no viable option for constructing her desired 1,200 square foot dwelling while also complying with EC 9.2751(18)(a)3., the City Manager concludes that EC 9.2751(18)(a)3. restricts the Claimant's residential use of her property.

D. Reduction in Value

A "land use regulation" gives rise to a Measure 49 claim only if, in addition to restricting the residential use of private real property, it reduces the fair market value of the property. Claimant submitted appraisals showing the fair market value of the property one year before the adoption of EC 9.2751(18)(a)3. (July 28, 2013) and one year after the adoption of EC 9.2751(18)(a)3. (July 28, 2015). The July 28, 2013 appraisal provides a property value of \$65,000. The July 28, 2015 appraisal provides a property value of \$40,000. The City Manager concludes that the appraisals comply with the requirements of ORS 195.310 and establish that EC 9.2751(18)(a)3. reduces the fair market value of the Claimant's property.

E. Exemptions

Finally, a Measure 49 claim is not valid if the challenged regulation was enacted before the Claimant acquired the property or if it falls within one of the six exemptions under the Measure. Regulations adopted to 1) protect the public health and safety, 2) prevent nuisances, or 3) comply with federal law, are exempt under Measure 49, even if they otherwise constitute "land use regulations" that "restrict the residential use" and "reduce the fair market value" of property. In addition, regulations that (4) restrict or prohibit the use of the property for selling pornography or performing nude dancing, (5) plan and rezone land for industrial zoning to be included in the UGB, or (6) plan and rezone land already within a UGB to industrial zoning, are also exempt under Measure 49.

EC 9.2751(18)(a)3. was enacted after the Claimant acquired the property and EC 9.2751(18)(a)3. does not fall within any of Measure 49's six exemptions.

IV. Conclusion and Recommendation

Based on the analysis set forth above, the City Manager recommends that the City Council grant Claimant Elise Moore's Measure 49 claim. In lieu of compensation, the City Manager recommends that the City Council waive EC 9.2751(18)(a)3. to the extent such waiver is necessary to allow Claimant to construct a 1,200 square foot dwelling on the subject property that complies with all other residential lot standards. The recommended waiver does not address the applicability of any other provision that might preclude such construction.

RESOLUTION NO. _____**A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY LOCATED ADJACENT TO 70 WEST 24th PLACE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-06-42, TAX LOT 2700).****The City Council of the City of Eugene finds that:**

A. Elise Moore (Claimant) submitted a claim to the City seeking compensation or a waiver of EC 9.2751(18)(a)3. under Ballot Measure 49. Claimant alleges that the limit on building size on alley access lots of 10% of the lot size or 800 square feet (whichever is smaller) restricts the residential use and reduces the fair market value of her property identified as Assessor's Map 18-03-06-42, Tax Lot 2700 and located adjacent to 70 West 24th Place, Eugene, Oregon (the subject property).

B. Considering the requirements of Measure 49, and the materials related to the claim submitted to the City by the claimants and others, and the Findings, attached as Exhibit A to this Resolution, the City Council finds that the claim should be denied because EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings and the Findings attached as Exhibit A to this Resolution, which are adopted, and the testimony and evidence in the record for this claim, the City Council hereby denies the Measure 49 claim submitted by Claimant Elise Moore, for the property located adjacent to 70 West 24th Place, Eugene, Oregon, Assessor's Map 18-03-06-42, Tax Lot 2700.

Section 2. A copy of this Resolution shall be forwarded to Elise Moore at 70 West 24th Place, Eugene, Oregon 97405, to her representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to any person who submitted written arguments or evidence before the close of the record, and to the City's Planning & Development Department. A copy of this Resolution shall also be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 24th day of September, 2018.

City Recorder

**Exhibit A to Resolution Denying
Moore Measure 49 Claim**

**BALLOT MEASURE 49
(ORS 195.300 – ORS 195.336)**

CLAIM FOR COMPENSATION

FINDINGS

NAME OF CLAIMANT:	Elise Moore
PROPERTY ADDRESS:	West 24th Place & Portland Alley Eugene, OR 97405
CLAIMANT’S REPRESENTATIVE:	Bill Kloos
PROPERTY IDENTIFICATION:	Tax Lot 2700 of Assessor’s Map 18-03-06-42
ZONING:	R-1 Low Density Residential

I. Summary of Claim

Elise Moore (Claimant) submitted a claim under Ballot Measure 49 for compensation or waiver of land use regulations alleging a reduction in fair market value to her vacant property located near the intersection of West 24th Place and Portland Alley in Eugene, Oregon. The property is a vacant alley access lot that is zoned R-1 Low-Density Residential. Claimant asserts that EC 9.2751(18)(a)3., which limits building size on alley access lots to 10% of the lot size or 800 square feet (whichever is smaller), restricts the residential use of her property and reduces its value. Specifically, Claimant contends that she purchased the lot in 2010 to build a 1,200 square foot house on the property and that EC 9.2751(18)(a)3., enacted in 2014, limits maximum building size on the lot to 462 square feet. She claims the regulation reduced the property’s value by \$25,000 and asks the City to compensate her for the lost value or to waive EC 9.2751(18)(a)3. to allow construction of a 1,200 square foot dwelling that complies with all other residential development standards.

A City Council public hearing on this Measure 49 claim was held on July 16, 2018. The claimant’s attorney, Bill Kloos, testified in favor of granting the claim. No other testimony was received at the public hearing.

Following the hearing, the Council left the record open one week, until 5:00 p.m. on July 24, 2018, for submission of written testimony and provided the claimant an additional week, until 5:00 p.m. on July 31, 2018, to rebut evidence and arguments submitted. At the Council meeting on July 23, 2018, the Council voted to extend the open record period until 5p.m. on July 27, 2018 and to extend the claimant’s rebuttal period until 5p.m. on August 3, 2018.

On September 10, 2018, the Council voted to leave the record open until 5:00 p.m. on Wednesday, September 12, 2018, and to extend Claimant's rebuttal period until 5:00 p.m. on Wednesday, September 19, 2018.

II. Requirements of Measure 49

Measure 49 generally grants a property owner of residentially zoned land located within an urban growth boundary the right to compensation or waiver of a land use regulation (at the option of the government) if five substantive requirements are met. First, a claimant must own the property subject to the claim. Second, the regulation must constitute a "land use regulation" as that term is defined by Measure 49 and it must have been enacted after January 1, 2007, but not more than five years before the date the claim was filed. Third, the regulation must "restrict the residential use" of residentially zoned private property. Fourth, the regulation must cause a reduction of the fair market value of the property. Fifth, the regulation must not fall within one of Measure 49's six exemptions.

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for "owners" of real property. Ballot Measure 49 defines "owner" to include "[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]" ORS 195.300(18).

Based on information that the Claimant submitted (Warranty Deed 2010-033733) and information from the Lane County Regional Land Information Database (RLID), the City Council finds that Claimant Elise Moore acquired fee title to the subject property on July 8, 2010. Accordingly, the City Council finds that Claimant Elise Moore is the owner of the property.

B. "Land Use Regulations"

Measure 49 requires compensation (or waiver) for only those regulations that constitute "land use regulations" as Measure 49 defines the term. Measure 49 defines "land use regulation," with respect to cities, as a "provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use." ORS 195.300(14)(c). Further, land use regulations eligible for waiver under Measure 49 must have been enacted after January 1, 2007, but within five years of the date of the claim.

The City Council finds that EC 9.2751(18)(a)3. is a provision of the city's zoning ordinance and it regulates residential uses on property in a residential zone. The City Council further finds that EC 9.2751(18)(a)3. was adopted by Ordinance No. 20541, which became effective August 29, 2014. The City Council finds that Claimant timely filed her Measure 49 claim on January 29, 2018. However, as discussed in more detail below, the City Council finds that EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property.

C. Restriction on Residential Use

A "land use regulation" gives rise to a Measure 49 claim only if the regulation restricts the residential use of private real property. The specific regulation that the is the subject of Claimant's Measure 49 claim is EC 9.2751(18)(a)3., which limits the square footage of new dwellings built

on alley access lots. The Claimant alleges that EC 9.2751(18)(a)3. restricts the residential use of her property because it prevents her from building a home that would have been allowed before the regulation took effect.

Adopted on July 28, 2014 (by Ordinance No. 20541) and effective on August 29, 2014, EC 9.2751(18)(a)3. establishes the following limitations on square footage of buildings on alley access lots:

(18) Alley Access Lots in R-1.

(a) General Standards.

1. **Applicability.** Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.
2. **Use Regulations.** Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.
3. **Building Size.** The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.

The City Council finds that EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property because EC 9.2751(18)(a)3. does not restrict Claimant's ability to use her property for a single family residence, it simply limits the size of the single family residence Claimant may construct. Because Claimant retains the ability to construct a single family residence on her property both before and after the adoption of EC 9.2751(18)(a)3., the City Council finds that EC 9.2751(18)(a)3. does not restrict Claimant's residential use of her property.

D. Reduction in Value

A "land use regulation" gives rise to a Measure 49 claim only if, in addition to restricting the residential use of private real property, it reduces the fair market value of the property. Claimant submitted appraisals showing the fair market value of the property one year before the adoption of EC 9.2751(18)(a)3. (July 28, 2013) and one year after the adoption of EC 9.2751(18)(a)3. (July 28, 2015). The July 28, 2013 appraisal provides a property value of \$65,000. The July 28, 2015 appraisal provides a property value of \$40,000. The City Council finds that appraisals comply with the requirements of ORS 195.310 and establish that EC 9.2751(18)(a)3. reduces the fair market value of the Claimant's property.

E. Exemptions

Finally, a Measure 49 claim is not valid if the challenged regulation was enacted before the Claimant acquired the property or if it falls within one of the six exemptions under the Measure. Regulations adopted to: 1) protect the public health and safety, 2) prevent nuisances, or 3) comply with federal law, are exempt under Measure 49, even if they otherwise constitute "land use regulations" that "restrict the residential use" and "reduce the fair market value" of property. In addition, regulations that (4) restrict or prohibit the use of the property for selling pornography or performing nude dancing, (5) plan and rezone land for industrial zoning to be included in the UGB,

or (6) plan and rezone land already within a UGB to industrial zoning, are also exempt under Measure 49.

The City Council finds that EC 9.2751(18)(a)3. was enacted after the Claimant acquired the property and EC 9.2751(18)(a)3. does not fall within any of Measure 49's six exemptions.