



Multnomah County Oregon

Board of Commissioners & Agenda

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BOARD OF COMMISSIONERS

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JANUARY 22 & 24, 2008

BOARD MEETINGS

FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	10:00 a.m. Tuesday Briefing on Key Provisions and Impacts of Measure 49
Pg 2	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg 3	9:48 a.m. Thursday Briefing on Willamette River Bridge Funding
Pg 3	10:00 a.m. Thursday Approval of the Multnomah County 2008 Federal Legislative Agenda
Pg 3	10:10 a.m. Thursday Response to Grand Jury/Day Report on Jails
Pg 3	10:40 a.m. Thursday Opportunity for Board Comment on Non-Agenda Matters

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30

Saturday, 10:00 AM, Channel 29

Sunday, 11:00 AM, Channel 30

Tuesday, 8:15 PM, Channel 29

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Tuesday, January 22, 2008 - 10:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFING

- B-1 Briefing on Key Provisions and Impacts of Measure 49. Presented by Derrick Tokos and Jed Tomkins. 45 MINUTES REQUESTED.
-

Thursday, January 24, 2008 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM **DEPARTMENT OF COMMUNITY SERVICES**

- C-1 RESOLUTION Authorizing the Repurchase of a Tax Foreclosed Property by the Former Owners William J. and Joan G. Payne

DEPARTMENT OF COUNTY HUMAN SERVICES

- C-2 Budget Modification DCHS-22 Reclassifying Three Office Assistant 2 Positions to Office Assistant Senior Positions in the Community Services Division, Energy Services Program, as Determined by the Class/Comp Unit of Central Human Resources

DEPARTMENT OF HEALTH

- C-3 Budget Modification HD-28 Authorizing One Position Reclassifications within the Integrated Clinical Services Division of the Health Department as Determined by the Class/Comp Unit of Central Human Resources

REGULAR AGENDA **PUBLIC COMMENT - 9:30 AM**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

DEPARTMENT OF HEALTH – 9:30 AM

R-1 NOTICE OF INTENT to Submit a Proposal for \$32,500 to the Oregon Department of Human Services' *Addressing the Prevention, Early Detection, and Management of Chronic Diseases Phase 1 – Building Public Health Capacity Grant Program*

DEPARTMENT OF COUNTY MANAGEMENT – 9:35 AM

R-2 First Reading of a Proposed ORDINANCE Amending Multnomah County Code Sections 9.010 and 9.260 to Delete Confidential Employee References

DEPARTMENT OF COMMUNITY SERVICES – 9:38 AM

R-3 Briefing on Willamette River Bridge Funding. Presented by Karen Schilling and Cecilia Johnson. 15 MINUTES REQUESTED.

NON-DEPARTMENTAL - 9:50 AM

R-4 Budget Modification NOND-04 Authorizing Citizen Involvement Contingency Request for \$19,459 to Assist with Enhanced Citizen Involvement

R-5 Approval of the Multnomah County 2008 Federal Legislative Agenda

R-6 Response to Grand Jury/Day Report on Jails. Presented by Sgt. Phil Anderchuk. 30 MINUTES REQUESTED.

BOARD COMMENT

Opportunity (as time allows) for Commissioners to provide informational comments to Board and public on non-agenda items of interest or to discuss legislative issues.



Commissioner Jeff Cogen

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MEMORANDUM

TO: Chair Ted Wheeler
Commissioner Maria Rojo de Steffey
Commissioner Lisa Naito
Commissioner Lonnie Roberts
Clerk of the Board Deb Bogstad

FROM: Warren Fish
Staff Assistant to Commissioner Jeff Cogen

DATE: 1/22/08

RE: Executive Session Excused Absence

Commissioner Cogen is unable to attend the Executive Session / Board Briefing scheduled for 1/22/08 due to another commitment on his schedule.



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 01/22/08
Agenda Item #: B-1
Est. Start Time: 10:00 AM
Date Submitted: 01/08/08

Agenda Title: **Briefing on Key Provisions and Impacts of Measure 49**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: January 22, 2008 **Amount of Time Needed:** 45 minutes
Department: Community Services **Division:** Land Use & Transportation
Contact(s): Derrick Tokos
Phone: 503-988-3043 **Ext.** 22682 **I/O Address:** 455/1/116
Presenter(s): Derrick Tokos, Jed Tomkins

General Information

1. What action are you requesting from the Board?

The briefing will cover the key provisions of the Measure and its general impact on County claims and resources. Staff is also seeking direction from the Board on whether or not the County should take a position on what its historic F-2 agricultural zoning required because of its relevance to existing claims as well as the need for, and timing of, an implementing ordinance for new claims.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Measure 49 creates procedures and rules for evaluating claims filed by land owners who believe that land use regulations, enacted after they purchased their property, have had the effect of reducing the value of their land. The Measure was approved in November and went into effect on December 6, 2007. It substantially revises Measure 37, which was approved by voters in 2004. Measure 49 applies to claims previously filed, as well as new claims.

The County's Land Use and Transportation Planning Division implements land use regulations adopted by the Board of Commissioners for unincorporated areas, and processes claims. Since 2004 there have been 102 claims submitted to the County, primarily on rural farm and timber land. Most

of the claims seek compensation or the right to subdivide the land and construct dwellings. The total dollar amount of the claims is in excess of \$193 million. The claims seek to create over 1,300 subdivision lots. Almost all of these claims had not been decided or were not implemented when Measure 49 passed. At this briefing staff will explain how the new law impacts these claims, as well as claims that may be filed in the future.

While staff does not intend to discuss individual claims, large format maps will be available at the hearing to illustrate the distribution of claims within the county.

3. Explain the fiscal impact (current year and ongoing).

Fiscal impacts of the Measure are unclear. No funding was allocated for work local jurisdictions must undertake in evaluating existing claims; however, the State rather than the County is the lead agency and decision maker for most them. The Measure provides clear authority for local governments to impose a fee to cover expenses in evaluating future claims.

4. Explain any legal and/or policy issues involved.

No specific legal issues will be presented at this briefing. Policy considerations include the F-2 issue and the value of adopting an implementing ordinance. The F-2 agricultural zone applied to most rural lands from 1958 to 1975, before Statewide Planning. It is relevant to about 1/3 of the County's claims. A recent Measure 37 circuit court decision found that the district only allowed homes for the owner, operator, or help required to carry out farm or timber uses. This is different than how the rules were applied by the County. How the County views these rules, in light of the passage of Measure 49, could influence choices claimants make under the new law and how the State will decide claims.

Criteria and procedures in Measure 49 are fairly explicit and can be applied directly, if necessary. However, there are options that the Board may want to consider which would require action at a later date. These include imposition of a fee for new claims, whether or not a public hearing is required, who should receive notice of decisions, and delegation of decision making authority.

5. Explain any citizen and/or other government participation that has or will take place.

Staff consulted with the State Department of Land Conservation and Development, several Oregon counties, Metro, and City of Portland in advance of preparing these briefing materials.

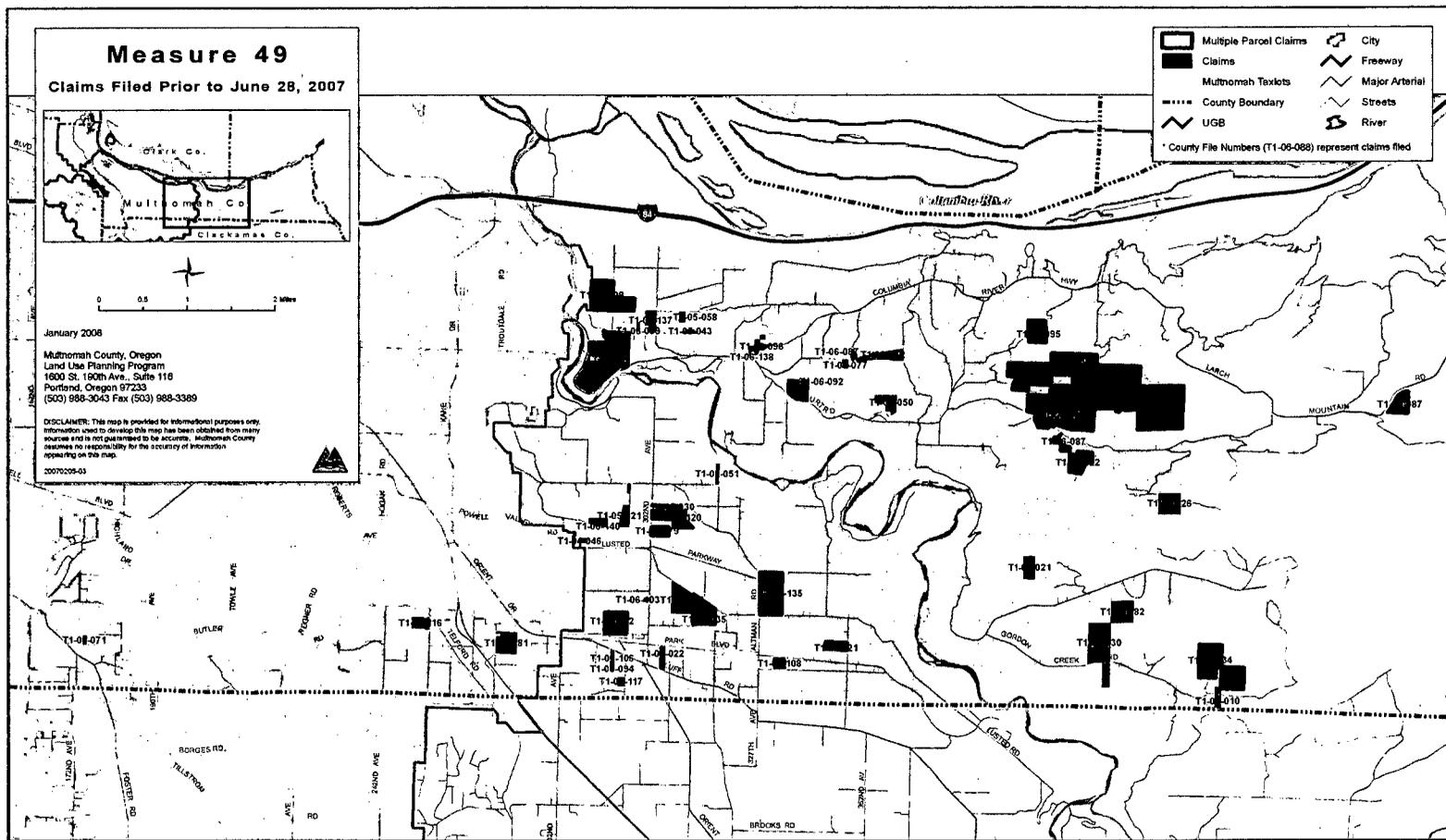
Required Signature

**Elected Official or
Department/
Agency Director:**

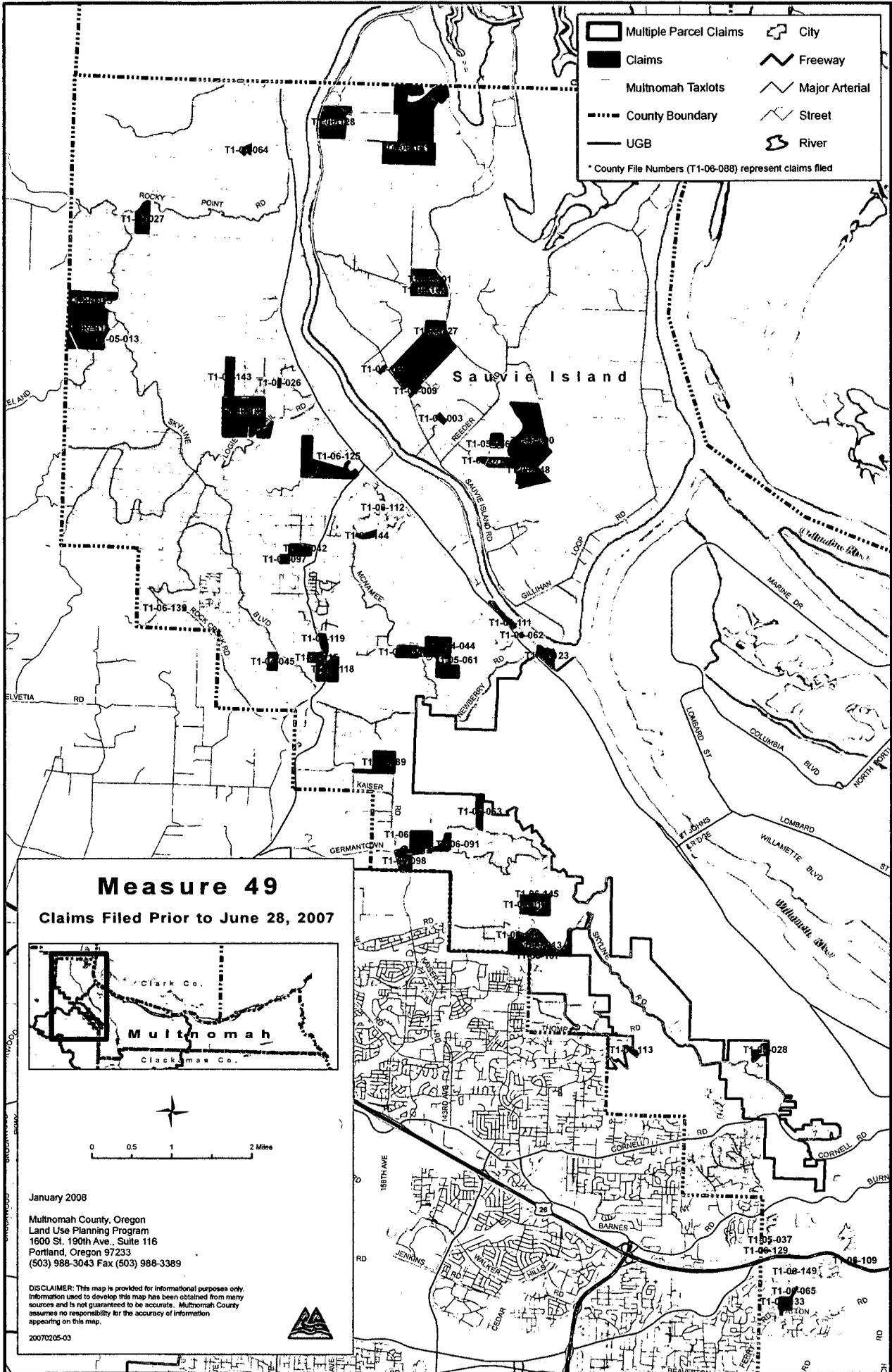


Date: 01/08/08

EAST

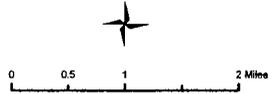
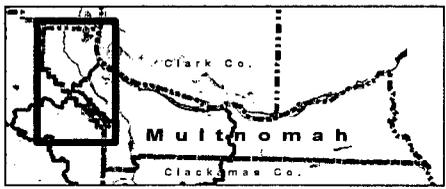


WEST



- Multiple Parcel Claims
 - Claims
 - Multnomah Taxlots
 - County Boundary
 - UGB
 - City
 - Freeway
 - Major Arterial
 - Street
 - River
- * County File Numbers (T1-06-088) represent claims filed

Measure 49
Claims Filed Prior to June 28, 2007



January 2008
 Multnomah County, Oregon
 Land Use Planning Program
 1600 St. 190th Ave., Suite 116
 Portland, Oregon 97233
 (503) 988-3043 Fax (503) 988-3389

DISCLAIMER: This map is provided for informational purposes only. Information used to develop this map has been obtained from many sources and is not guaranteed to be accurate. Multnomah County assumes no responsibility for the accuracy of information appearing on this map.

20070205-03



Implementing Measure 49

Presentation to the
Board of Commissioners

By Multnomah County
Land Use & Transportation Planning Division

January 2008

What Does Measure 49 Do?

- Creates new rules and process for M37 claims filed with the state and county prior to *sine dine* (June 28, 2007);
- Prohibits new claims challenging land use rules enacted prior to January 1, 2007;
- Limits claims to loss of residential use;
- Clarifies terminology;
- Modifies form of judicial review.

Claims Filed Prior to June 28, 2007

- Eligible only if filed with the state and county;
- Claimants with state and county waivers may continue to act upon them if they have a "common law vested right" to establish the use;
- Claims outside the Urban Growth Boundary (UGB) will be re-evaluated by the State;
- Claims inside the UGB are evaluated by the appropriate city or county;
- Relief for valid claims is a specific number of home sites (lot, parcel, or dwelling);
- All but one of the County's 102 claims were filed prior to this date.

How is a Vested Right Established?

Case by case determination made by a court or government body, considering:

- The amount of money spent to develop the use in relation to the total cost of establishing it;
- Whether or not work has been initiated to establish the use versus preparation;
- The good faith of the property owner; and
- Whether improvements can be used by another use permitted under the law.

While significant to most jurisdictions, it is not an issue for Multnomah County because only one claimant started construction.

Claims Outside the UGB

- Impacts 90% of the County claims;
- Allows 1-3 home sites if the property is high-value farm or timberland (2/3 of our claims);
- Up to 4-10 home sites are allowed on other lands when substantiated with a qualifying appraisal (less than 20% of our claims);
- Guarantees at least 1 home site per valid claim;
- Limits a single owner to 20 home sites for all parcels owned;
- Relief is transferable, but if new owner is to divide or build they must act within 10 years.

Process for Claims Outside the UGB

- State is lead agency and decision maker;
- Claimants receive option letters and must respond within fixed timeframe;
- Claimants do not have to submit new claims, but may need to supplement what they provided;
- State reviews claims in the order responses are received. There is no deadline for a decision;
- State must copy claims to the County and provide an opportunity to comment;
- Claims transferred to the County if State determines that only local regulations restrict the claimant's use of the land.

Claims Inside the UGB

- Impacts 11 County Claims;
- Is limited to residentially zoned land;
- Challenged regulations must have been enacted after the property was brought into the UGB;
- Allows 1-10 home sites per property when substantiated with a qualifying appraisal;
- Relief is transferable, but if new owner is to divide or build they must act within 10 years.

Process for Claims Inside the UGB

- County is lead agency and decision maker;
- Claimants receive notice of right to seek relief and must respond within fixed timeframe;
- Claimants do not have to submit new claims, but may need to supplement what they provided;
- Notice of the County's tentative decision must be provided to the claimant and State;
- The County is subject to a timeline within which it must issue a final order (180 days).

Next Steps for Valid Claims

- State (outside UGB) or County (inside UGB) issues final order specifying the number of home sites authorized;
- Claimants obtain County land use permits;
- County permit fees, siting and development criteria and procedures apply;
- A home site cannot be prohibited unless necessary to abate nuisance, protect health and safety or comply with federal law;
- M49 limits parcel sizes and requires properties be clustered if they are on high-value farm or timberlands.

New Claims Under Measure 49

- Applies to rules enacted after January 1, 2007;
- Similar to M37 with clearer process and criteria;
- Limited to residential use or farm/forest practices;
- County must grant relief if appraisal shows that regulations restrict use and reduce the value;
- County may provide monetary compensation or waive the regulations;
- Claim must be filed within 5 years of the date the regulation is enacted;
- A fee may be imposed to off-set review costs;
- Final order must be made within 180 days.

Judicial Review Under M49

- Limited to evidence in the public entity's record at final determination;
- Available only for issues raised before the public entity with sufficient specificity for the public entity to respond;
- Does not speak to pending M37 litigation.

Other M49 Highlights

- Claimants cannot ask for more home sites than they sought in their original claim;
- All owners of the property must consent;
- Definition of owner clarified, and expanded to include spousal interest;
- Relies upon date current owner, not family member, acquired property;
- M37 claims for non-residential uses are void;
- Transferability is not addressed for M37 claimants who implemented a use.

Steps Taken Since M49 Passed

- County website has been updated with a link to State M49 information;
- Claimants with property inside the UGB have received notice of their options;
- Claimants with property outside the UGB have been notified of the process the State will be following to re-evaluate their claims.

M49 Impact to County Resources

- Existing M37 Litigation will continue;
- A small number of M49 claims inside the UGB may need to be processed;
- A modest increase in land use applications may occur from claimants that receive relief;
- County permitting will be more straightforward because rules will be applied as they have been adopted;
- The impact is substantially less than M37 due to smaller number of eligible claims and reduced scale of development.

Additional Action Items

- County's stance on what was required to establish a residential use in its historic F-2 agricultural zone district;
- Adoption of a M49 implementing ordinance for future claims.

Summary of F-2 Zoning

- Pre-dates Statewide Planning;
- Applied to most rural lands in the County from 1958 to 1975;
- Allowed homes for the owner, operator, or help required to carry out farm or timber uses;
- Included a 2 acre minimum lot size;
- Implemented a County Comprehensive Plan Policy that sought to preserve these lands for agricultural, open space and similar low density rural uses.

Why Address the F-2 Issue?

- Because the County's practice in applying the rules differs substantially from a recent M37 court decision on the issue;
- It is relevant to 1/3 of the County's claims;
- It gives the State and claimants clear guidance;
- Limits imposed with M49 make it possible to quantify the likely number of home sites allowing us to present policy options.

Recommendation: Staff believes the Board should state its views on this issue, and can present alternatives at a subsequent meeting.

M49 Ordinance Considerations

- Not pressing because the County has not enacted regulations since January 1, 2007 that generate a significant risk of claims;
- Criteria and procedures in the law are fairly explicit and can be applied directly if necessary;
- Near term options the Board may want to consider, and which staff can bring back for action include:
 - Imposition of a fee;
 - Whether a public hearing should be required;
 - Parties entitled to notice;
 - Delegation of decision making authority.

Questions?