

**NOTICE OF A MEASURE 49 CLAIM TENTATIVE  
DETERMINATION  
BY THE LANE COUNTY PLANNING DIRECTOR**

<b>Mailing Date:</b>	August 1, 2008
<b>Property Owner:</b>	Irwin C. Whitaker
<b>Applicant:</b>	Same as above
<b>Agent:</b>	Michael Reeder
<b>Acreage:</b>	16 acres
<b>Location:</b>	Western Edge of the City of Coburg
<b>Assessor's Map &amp; Tax Lot:</b>	16-03-32-11 #2500 and 16-03-32-14 #2000
<b>Base Zone:</b>	Traditional Residential (TR/UGB), CDC (portion) Exclusive Farm Use (E-30/RCP), LC 16.212 (portion)

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You own/occupy property near the above referenced property which is the subject of this Measure 49 claim review by the Lane County Planning Director. In the alternative, you are entitled to receive this notice per Section 10 of Measure 49. The purpose of this letter is to inform you about this claim, where you may receive more information about it, and advise you have 15 days to submit evidence and arguments in response to the tentative determination.

**PROPOSAL:**

This is a Measure 49 "Tentative Determination" on a previous Measure 37 waiver for property located, in whole or in part, within an urban growth boundary. Pursuant to Measure 49, if a County issued a Measure 37 waiver for property located, in whole or in part, within an urban growth boundary, the County 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 Measure 49. A 16 acre portion of the property is located within the Urban Growth Boundary of the City of Coburg. This claim is evaluated per the "temporary provisions" of Measure 49, Section 9.(1), (2)(a) and (c), (5)(a)-(k), (6), (7) and Section 10.(1).

**Enclosed is a vicinity map of the subject property and surrounding properties.**

**Tentative Determination: The property owner does not appear to be entitled to relief under Measure 49 and Lane County does not propose to authorize any additional single family dwellings. If you disagree and wish to request a hearing, please so advise in writing by 5:00 PM August 18, 2008, with responsive evidence and arguments supporting your position. If a hearing is requested, notice will be provided to all interested parties.**

The M37 claim application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's tentative review are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is **Kent Howe**, and the telephone number where more information can be obtained is (541) **682-3734**.

**Authorized by:** \_\_\_\_\_  
Kent Howe/Planning Director

**Date:** \_\_\_\_\_

# Measure 49 Claim Tentative Determination for a Portion of Property Located Within the Urban Growth Boundary of the City of Coburg

**Report Date:** August 1, 2008  
**Property Owner:** Irwin C. Whitaker  
**Applicant:** Same as above  
**Agent:** Michael Reeder  
**Acreage:** 16 acres  
**Location:** Western Edge of the City of Coburg  
**Assessor's Map & Tax Lot:** 16-03-32-11 #2500 and 16-03-32-14 #2000  
**Base Zone:** Traditional Residential (R1/UGB), CDC (portion)  
Exclusive Farm Use (E-30/RCP), LC 16.212 (portion)  
**Comprehensive Plan:** City of Coburg Comprehensive Plan  
Lane County Rural Comprehensive Plan

## I. BACKGROUND INFORMATION

The voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004. On June 20, 2007, via Order No. 07-6-20-21, the Lane County Board of Commissioners granted to Irwin C. Whitaker a waiver to the dwelling and land divisions standards and restrictions of LC 16.212, the Exclusive Farm Use Zone, which prevented him from developing the property as he might have been allowed at the time when he acquired an interest in the property on January 4, 1963.

On December 1, 2006, Mr. Whitaker filed a M37 claim with the State of Oregon, through its Administrative Services and the Department of Land Conservation and Development, Claim No. M132974, requesting to allowing Irwin C. Whitaker to use the subject property for the requesting one acre lots with dwellings, subject to the standards in effect on January 4, 1963.

On November 6, 2007, the voters of the State of Oregon passed Ballot Measure 49, which replaced Measure 37. The measure became effective on December 6, 2007. Under the relevant provisions of Measure 49 (Chapter 424, Oregon Laws 2007, printed following, ORS 195.305) if a County issued a Measure 37 waiver for property located, in whole or in part, within an urban growth boundary, the County 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 Measure 49. This report constitutes a "tentative determination" of whether Irwin C. Whitaker is entitled to relief under Measure 49.

## II. APPROVAL CRITERIA & FINDINGS OF FACT

This determination is being evaluated per Measure 49, Section 9.(1), (2)(a) and (c), (5)(a)-(k), (6), (7) and Section 10.(1). The ORS language is in **boldface** type, followed by the tentative determination by the Planning Director for each subsection.

**Sec. 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act [December 6, 2007] 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.

**Tentative determination:**

As stated in the background section, Lane County issued a Measure 37 waiver on June 20, 2007, (Order No. 07-6-20-21), for the subject property, Map 16-03-32-11 #2500 and 16-03-32-14 #2000. The issuance of that Order was prior to the effective date of Measure 49 on December 6, 2007. A 7.5 acre portion of the subject parcel is located within the Urban Growth Boundary of the City of Coburg.

On January 29, 2008, a letter was sent to the claimant requesting more information addressing Measure 49 to which we have received no response.

This tentative determination is being issued on August 1, 2008, which is no later than 240 days after Measure 49 took effect.

Notice of this tentative determination is being served the Department of Land Conservation and Development, as well as to other parties entitled to such notice per this section and under the county procedures utilized to evaluate Measure 37 claims.

This tentative determination addresses land division and development allowed on the 16 acre portion of the property within the Cottage Grove Urban Growth Boundary.

The notice for this tentative determination states that the recipient of the notice has 15 days to submit evidence or arguments in response to this determination. After that Lane County will issue a final determination by October 1, 2008 (i.e., within 300 days of the effective date of the measure). The notice also indicates the property owner does not appear to be entitled to any relief and Lane County does not propose to authorize any additional dwellings.

**Sec. 9. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] 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 [December 6, 2007] or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;**

**(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.**

**Tentative determination:**

The Measure 37 waiver filed by the Applicant, and issued by Lane County on June 20, 2007, did not provide relief to the 7.5 acre portion of the property located within the City Limits and Urban Growth Boundary of the City of Coburg. The county's waiver was issued before the adjournment of the 2007 regular session (on June 28, 2007), and before the effective date of Measure 49 on December 6, 2007. No analysis or information addressing Section 9.(2)(c) has been provided by the claimant so compliance with this standard has not been established.

**(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;**

**Tentative determination:**

The Measure 37 claim established Irwin C. Whitaker as owner and the current Lane County Assessment and Taxation records indicates that Irwin C. Whitaker is owner of the subject property.

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

**Tentative determination:**

Irwin C. Whitaker consented to the Measure 37 claim filed with Lane County.

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

**Tentative determination:**

A 7.5 acre portion of tax lot 2500 is located within the Urban Growth Boundary of the City of Coburg.

**(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;**

**Tentative determination:**

On January 4, 1963 (claimant's acquisition date) the 7.5 acre portion of the property located within the City Limits of Coburg was unzoned and the claimant could have established the number of dwellings that are authorized under this section of Measure 49.

**(e) The property is zoned for residential use;**

**Tentative determination:**

The 7.5 acre portion of the property within the Coburg Urban Growth Boundary is zoned Traditional Residential (TR), in the City of Coburg.

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

**Tentative determination:**

The 7.5 acre portion of the property within the Coburg Urban Growth Boundary is zoned Traditional Residential (TR) which is a City of Coburg land use regulation that allows the establishment of single-family dwellings but is not within the jurisdiction of Lane County.

**(g) The establishment of the single-family dwellings is not prohibited by a land use**

regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

**Tentative determination:**

To the extent there is a land use regulation that restricts dwellings, the zoning that applies does not fit within the land use regulations described in ORS 195.305 (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;**

**Tentative determination:**

The Traditional Residential (TR) is a City of Coburg land use regulation enacted by the City of Coburg upon the property being brought into the Coburg 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;**

**Tentative determination:**

The property is not located within the boundaries of the Portland 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**

**Tentative determination:**

The 7.5 acre portion of the property within the Coburg Urban Growth Boundary is also located within the City Limits of Coburg.

**(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.**

**Tentative determination:**

There has been no Measure 37 relief granted for this portion of the property within the Coburg Urban Growth Boundary, the claimant has provided no analysis under Sections 6 and 7, and the 7.5 acre portion of property within the City of Coburg is zoned Traditional Residential (TR) which is not within the jurisdiction of Lane County.

#### **IV. CONCLUSION**

The 7.5 acre portion of the property located within the Coburg Urban Growth Boundary is zoned Traditional Residential (TR) which allows land divisions and dwellings. The Traditional Residential (TR) is a City of Coburg land use regulation that is not within the jurisdiction of Lane County and the property owner did not seek or establish a basis for relief for the 16 acre portion of the property within the Coburg Urban Growth Boundary. Therefore, the tentative determination is that the property owner is not entitled to relief under Measure 49 from Lane County for the portion of the property located within the Coburg Urban Growth Boundary and Lane County cannot authorize any additional single-family dwellings for the portion of the property within the Urban Growth Boundary.