

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by Priscilla Jauron,)
et al., for a Property Line Adjustment of Two) FINAL ORDER NO. 52-2012
2-Acre Parcels Created under Measure 49)

WHEREAS, on July 26, 2012, Priscilla Jauron, along with family members Susan Jo, Sam, Joanna, and George Jauron, applied for a property line adjustment to enlarge two 2-acre parcels in the Forest-Agriculture 80 Zone (FA-80) that were created pursuant to a Measure 49 authorization. The subject property is identified as Tax Map Identification Numbers 4202-00-04000; 4202-00-04002; and 4202-00-04003, and is located on Sykes Road, between Brooks Road and Cater Road, approximately three miles west of the St. Helens city limits; and

WHEREAS, the application was deemed complete on July 30, 2012; and

WHEREAS, property line adjustments are typically administrative decisions; however, the applicant requested and was granted a public hearing; and

WHEREAS, on August 1, 2012, the Columbia County Board of County Commissioners ("Board") took jurisdiction over the application pursuant to Columbia County Zoning Ordinance (CCZO) Section 1612; and

WHEREAS, on September 18, 2012, the Board published and mailed notice of the public hearing, and on October 3, 2012, a Staff Report was made available. The Staff Report recommended denial of the application;

WHEREAS, in accordance with its notice, the Board held a hearing on the application at its regularly scheduled meeting on October 10, 2012. At the hearing, the Board admitted evidence that was submitted into the record prior to the publication of the staff report, a list of which was entered into the record as Exhibit 1. The Board also received testimony and additional evidence at the hearing, all of which was admitted into the record as Exhibits 2 through 7; and

WHEREAS, the Board then closed the hearing and left the record open for additional written evidence and testimony, rebuttal evidence and testimony, and final argument. The Board continued its deliberations to its regularly scheduled meeting on November 7, 2012; and

WHEREAS, the applicants' representative Al Petersen, Scott Jauron, the Oregon Department of Land Conservation and Development, and County staff timely submitted

additional written evidence on or before October 17, 2012; and

WHEREAS, rebuttal evidence and argument was timely submitted on or before October 24, 2012, from the applicants' representatives, Al Petersen and Agnes Petersen, and from Dave Hunnicutt, Oregonians in Action, and final argument was timely received from the applicants on October 26, 2012; and

WHEREAS, a list of all written materials admitted into the record is attached hereto as Attachment A; and

WHEREAS, on November 7, 2012, the Board deliberated and by unanimous vote, tentatively approved the application.

NOW, THEREFORE, the Board of County Commissioners makes the following findings based on the evidence submitted and received into the record on this matter:

1. The Board Adopts Staff's Findings and Conclusions that are Consistent with the Board's Decision.

The Board adopts the findings and conclusions in the Staff Report, attached as Attachment B and incorporated herein by this reference, and the Supplemental Staff Report, attached as Attachment C and incorporated herein by this reference, to the extent that those findings are consistent with the Board's decision. The Board specifically rejects those portions of Findings 8, 10, 11, 12, 14, 16, and 17 in the Staff Report, and Findings 1 through 6 in the Supplemental Staff Report, that do not support its decision.

2. The Board Finds that ORS 92.192 Allows for the Requested Property Line Adjustments.

ORS 92.192(2)(b) provides that a county may approve a property line adjustment in which "[b]oth abutting properties are smaller than the minimum lot size or parcel size for the applicable zone before and after the property line adjustment." That approval is subject to ORS 92.192(3), which prohibits the property line adjustment if it qualifies any of the resulting tracts for a dwelling that otherwise would not be approved. As discussed in Finding 6 on page 7 the Staff Report, the applications meet this criteria because all three parcels are smaller than the minimum lot size before and after the property line adjustments, and all three existing parcels have already been approved for dwellings under the applicant's Measure 49 home site authorization. The Board finds that the requested property line adjustments are allowed under ORS 92.192.

3. The Board Finds that Measure 49 Does Not Prohibit the Requested Property Line Adjustments.

The Board agrees with the interpretation advanced by the applicants¹ and Dave Hunnicutt of Oregonians in Action² and finds that Measure 49 does not prohibit the property line adjustments because the 2-acre restriction for parcels on high-value forest land applies only to the creation of *new* parcels. Measure 49 provides that “a new lot or parcel . . . may not exceed . . . [t]wo acres if the lot or parcel is located on high-value farmland, on high-value forestland[.]” (Sec. 11, ch. 424, Or Laws 2007). Although the site here is on high-value forestland, the requested property line adjustments do not create any *new* parcels. Rather, the application is for the adjustment of *existing* parcels.

The Board rejects the interpretation advanced by Staff and the Department of Land Conservation and Development (DLCD), both of whom relied on the intent of Measure 49 as controlling over the plain text of Measure 49 and ORS 92.192. As an initial matter, the Board finds no conflict between the plain text of Measure 49 and ORS 92.192. As explained in Finding 4 of the Supplemental Staff Report, parcels created under section 6 of Measure 49 are lawfully created. ORS 92.192 allows for property line adjustments between two lawfully created, undersized parcels, which is precisely what the applicants have requested here.

Even if the applicants’ interpretation circumvents Measure 49’s two-acre restriction, as Staff and DLCD contend, the legislature adopted ORS 92.192 a few months after the passage of Measure 49. The legislature is presumed to have knowledge of existing law. (*State v. Waterhouse*, 209 Or 424, 436 (1957)). The legislature could have, but did not, carve out an exception for parcels created by Measure 49. In ORS 92.192, the legislature only placed restrictions on lot line adjustments in forest and farm lands that would allow for the creation of additional parcels. (ORS 192(3)(a)-(c)). The applicants are not attempting to qualify for additional parcels. The Board is persuaded by Dave Hunnicutt’s explanation that the legislature authorized such adjustments between undersized parcels because parcels less than 80 acres are less capable of being put to productive forest use. The testimony of K.C. VanNatta, a tree farm manager and logger with over 40 years of experience in Columbia county, confirmed that timber harvesting constraints on the proposed three 19-acre parcels will be the same as the one 54-acre remnant parcel.

Finally, the Board finds that at least five other Oregon counties that have interpreted ORS 92.192 to apply in the same manner, further supporting the above interpretation. Yamhill County, in particular, has approved similar property line adjustments, and those approvals were not appealed.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts and incorporates the above findings

¹ See Response to Planning Staff, submitted by Agnes Petersen, dated October 24, 2012.

² See Letter from David J. Hunnicutt, dated October 24, 2012.

and conclusions in support of its decision.

2. The Board of County Commissioners adopts and incorporates the above recitals as additional findings in support of its decision.

3. Based on the foregoing and the whole record in this matter, the Board hereby **APPROVES** PLA 13-02 and PLA 13-03 to allow the applicants' proposed property line adjustments, **subject to the following conditions:**

- a. The tracts of land to be transferred to Parcels 1 and 2 through the property line adjustments, as noted in the application materials, must be conveyed to the respective owners of Parcels 1 and 2. The conveyance must be recorded with the Columbia County Clerk's Office in compliance with state statute.
- b. No new lots or parcels shall be created by this Property Line Adjustment. Approval of this Property Line Adjustment does not indicate or imply that any future development of the affected properties can be accomplished consistent with the applicable regulations of the County and other agencies.

Dated this 12th day of December, 2012.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By:

Office of County Counsel

By:

Anthony Hyde, Chair

By:

Earl Fisher, Commissioner

By:

Henry Heimuller, Commissioner

Record for PLA 13-02 and PLA 13-03 (Jauron)

Items Entered into the Record after the Hearing:

1. Applicants' Final Argument, dated October 26, 2012
2. Responses to Additional Information Presented by Staff, submitted by Al Petersen, dated October 24, 2012
3. Response to Planning Staff Additional Information, submitted by Agnes Petersen, dated October 24, 2012
4. Letter from David Hunnicutt, dated October 24, 2012
5. Supplemental Staff Report, dated October 17, 2012
6. Responses to Commissioner Questions, submitted by Al Petersen, dated October 17, 2012
7. Letter from Sarah Marvin, Department of Land Conservation and Development (DLCD), dated October 17, 2012
8. Letter from Scott Jauron, dated October 12, 2012

Items Entered into the Record at the Hearing:

Exhibit 1, which includes the following items entered into the record:

- a. Board Communication from Land Development Services Director Todd Dugdale dated October 3, 2012, with the following attachments:
 - i. Board of County Commissioners Staff Report for PLA 13-02 and 13-03, dated October 3, 2012
 - ii. Comments from Sarah Marvin, DLCD, submitted by email September 20, 2012
 - iii. Memorandum to Jan Greenhalgh from Glen Higgins, dated August 28, 2012
 - iv. Correspondence to Jan Greenhalgh from Glen Higgins, dated August 9, 2012
 - v. Comments from Sarah Marvin, DLCD, submitted by email August 9, 2012
 - vi. Board Communication from Todd Dugdale, dated July 26, 2012
 - vii. Applications and Site Plans
 - viii. Partition Plat No. 2011-7
 - ix. Vicinity Map
- b. Notice of Public Hearing (Property Owner Notice) and Affidavit of Mailing, dated September 18, 2012
- c. Notice of Publication and Affidavit of Publication, dated September 18, 2012
- d. Newspaper article submitted by Al Petersen on August 22, 2012: "Measure 49 housing boom is a bust," by Eric Mortenson, OregonLive.com, dated September 1, 2010
- e. DLCD Final Order and Home Site Authorization (No. E132324, February 8, 2010)
- f. Columbia County Soils Survey, dated November 1986

Exhibit 2 - Letter from DLCD, dated October 9, 2012

Exhibit 3 - Applicant submittal, dated October 9, 2012

Exhibit 4 - Zoning Map of Property

Exhibit 5 - Letter from David Hunnicutt, Oregonians in Action, dated October 9, 2012

Exhibit 6 - Biography of K.C. VanNatta

Exhibit 7 - Supporters' Signatures

COLUMBIA COUNTY



COLUMBIA COUNTY

Land Development Services

COLUMBIA COUNTY COURTHOUSE
ST. HELENS, OREGON 97051

BOARD OF COMMISSIONERS STAFF REPORT

October 3, 2012

Property Line Adjustment

of

Measure 49 Authorized Parcels

Date of Hearing : October 10, 2012

FILE NUMBER: PLA 13-02 & 03

APPLICANT: Jauron, SJ, SS, J, GG, & Souther TG
c/o Pat Jauron
120 Oak Drive
St. Helens, OR 97051

OWNER: Same as Above **Representative:** Al Peterson
101 St. Helens Street
St. Helens, OR. 97051

LOCATION: The site is located approximately three miles west of the City of St. Helens, follow Sykes Road; between Brooks Road and Cater Road, both sides of 32568 Brooks Road.

MAP ID NUMBERS: 4202-00-04000; 4202-00-04002; 4202-00-04003

ZONING: Forest - Agriculture FA-80

SITE SIZE: 58.1 Acres, consisting of three tax lots:
TL 4000 = 54.13 Ac.
TL 4002 = 2.00 Ac.
TL 4003 = 2.00 Ac.

REQUEST: To enlarge the 2.00 acre parcels to more equally divide the total 58.13 acres into three units of land, approximately 19 acre each.

APPLICATION COMPLETE: 7/30/12

150 DAY DEADLINE: 12/27/12

APPLICABLE REVIEW CRITERIA:

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BACKGROUND SUMMARY

This is an application by Priscilla (Pat) Jauron to change property boundaries between three parcels, none of which meets the minimum size standard for parcels in the FA-80 zone (Forest-Agriculture 80-acre minimum). The three undersized parcels were lawfully created in 2011, in accordance with the applicant's State Ballot Measure 49 home site authorization. That Measure 49 authorization allowed the applicant to create two new homesite parcels but required the two new homesite parcels to be a maximum of 2 acres. In 2011, the property was partitioned by Partition Plat PP2011-003143 into two 2-acre parcels and one remainder parcel of 54.1 acres. Now, the owner wants to increase the size of the two smaller parcels to 17 - 19 acres thus reducing the size of the remainder parcel, via property line adjustments.

The issue before the County is whether the new homesite parcels can be enlarged to be greater than two acres, such that the parcels no longer meet the criteria in the Measure 49 authorization that allowed their creation. The State DLCD has stated that the 2-acre parcel requirement is not temporary in nature and must remain long term to maximize suitability of the remnant parcel.

The applicant argues that the two acre standard was not made to be permanent; if it were, the legislature would have placed standards, a Deed Restriction, or some other restraining inference. By not placing a condition requiring a deed restriction or covenant for permanent parcel size, the applicant contends that the State has left any review and decision on adjusting their size to the city or county, local jurisdictions.

REVIEW CRITERIA, DISCUSSION & FINDINGS:

Beginning with the Columbia County Zoning Ordinance (CCZO) Sections:

ARTICLE II – GENERAL PROVISIONS

212 **Property Line Adjustment:** Property lines may be adjusted between legal lots or parcels provided that no lot or parcel conforming to the minimum lot or parcel size requirement of the district is reduced below that minimum lot or parcel size, and any lot or parcel changed by the property line adjustment shall satisfy or not decrease compliance with the minimum width, depth, frontage, yard, and setback requirements of the district.

- .1 Lot Line Adjustments may be allowed between undersized lots, or between an undersized lot and a complying lot, in any district provided that the resulting lots satisfy the minimum width, depth, frontage, and yard requirements of the district, and setbacks to existing structures are not reduced by the lot line adjustment below the minimum setback requirements.

Finding 1 : Each of the three properties are legally created parcels and are undersized (non-conforming) to the zoning district, minimum lot size of 80 acres. The two 2-acre parcels have no structures or dwellings; setbacks will likely not be impaired. Each reconfigured parcel, as shown in the maps in the application, far exceeds minimum width, depth and frontage requirements of the zone, which are 100 feet minimum lot width & depth and 50 feet of frontage on a public right-of-way. The application meets this standard.

Continuing with CCZO Forest/Agriculture Zone Section 406:

406 **Property Line Adjustments.** All property line adjustments require review and approval by the Planning Director or his designate, subject to compliance with the

following criteria:

- .1 Adjustments may be made between one parcel larger than the minimum lot size and one parcel smaller than the minimum lot size as long as the exchange results in the same number of parcels larger than the minimum lot size;
- .2 The property boundaries resulting from the adjustment will maintain compliance with building setbacks including primary and secondary fire breaks, access standards and environmental health regulations;
- .3 The adjustment will create no additional lot(s) or parcel(s);
- .4 Property line adjustments in the FA-80 Zone may not be used to:
 - A. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller 80 acres and contains an existing dwelling or is approved for the construction of a dwelling if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - B. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than 80 acres if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
 - C. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

Finding 2: The review and decision for these applications are not being made by the Planning Director. The applicant requested a Planning Commission review and decision. Staff initially told the applicant that the two newly created M49 parcels could not be enlarged via a property line adjustment; so, the applicant requested that the application be heard by a higher review authority of the Planning Commission with public hearing. After considering the matter the Board assumed jurisdiction of the case. This case requires County interpretation of Measure 49 law as it applies to local governments; and, the Board is the most appropriate body to render the County's interpretation of laws.

Finding 3: The subject property is zoned Forest-Agriculture (FA-80), minimum lot size is 80 acres. All three parcels of this request are undersized, i.e. 54 acres, 2 acres and 2 acres. There is one dwelling and associated outbuildings located approximately in the center of the 54 acre

parcel. The two 2-acre parcels have no improvements or structures. Most of this tract is undeveloped, and it is not anticipated that the reconfiguring of property lines will impair required structure setbacks and firebreaks. These applications for a PLA would create no new parcels; there are three parcels beginning and three parcels after the property line adjustments. Furthermore, in accordance with CCZO 406.4, the proposed PLAs would not adjust acreage of the parcels in a manner which would qualify the vacant tract for a dwelling that would otherwise not be allowed. Each of the parcels, in their current configuration, already qualify for a dwelling under the applicant's Measure 49 final order, and the proposed property lines will not qualify the subject property for any additional dwellings. Section 406.4, therefore, would not preclude the proposed PLA. The application meets this standard.

Oregon Revised Statutes (ORS) Chapter 92 - Subdivisions & Partitions

92.010 Definitions for ORS 92.010 to 92.192. As used in ORS 92.010 to 92.192, unless the context requires otherwise:

- (9) "Partitioning land" means dividing land to create not more than three parcels of land within a calendar year, but does not include:
 - (b) Adjusting a property line as property line adjustment is defined in this section;
- (12) "Property line adjustment" means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

Finding 4: Property line adjustments do not create parcels. The three parcels are already in existence and were created by partition in 2011, PP 2011-003143, creating parcels of 2 acre, 2 acre and 54.1 acres.

Continuing with the Oregon Revised Statutes Chapter 92:

92.060 Marking subdivision, partition or condominium plats with monuments; types of monuments; property line adjustment.

- (7) Except as provided in subsections (8) and (9) of this section, a property line adjustment must be surveyed and monumented in accordance with subsection (3) of this section and a survey, complying with ORS 209.250, must be filed with the county surveyor.
- (8) Unless the governing body of a city or county has otherwise provided by ordinance, a survey or monument is not required for a property line adjustment when the abutting properties are each greater than 10 acres.

Nothing in this subsection exempts a local government from minimum area requirements established in acknowledged comprehensive plans and land use regulations.

- (9) The requirements of subsection (7) of this section do not apply to property transferred through a property line adjustment as described in ORS 92.010 (9)(e).

Finding 5: The two 2-acre parcels have been surveyed and monumented, via Partition Plat 2011-003143. The 54-acre parcel was not surveyed. If this application were approved and the 2-acre parcels were enlarged by property line adjustment to greater than 10 acres, a survey and monuments would not be required. However, the surveyor would be required to prepare legal descriptions for each of the resultant properties where a property line was adjusted.

Continuing with the Oregon Revised Statutes Chapter 92:

92.192 Property line adjustment; zoning ordinances; lot or parcel size. (1) Except as provided in this section, a unit of land that is reduced in size by a property line adjustment approved by a city or county must comply with applicable zoning ordinances after the adjustment.

(2) Subject to subsection (3) of this section, for properties located entirely outside the corporate limits of a city, a county may approve a property line adjustment in which:

(a) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or

(b) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.

(3) On land zoned for exclusive farm use, forest use or mixed farm and forest use, a property line adjustment under subsection (2) of this section may not be used to:

(a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

- (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
- (c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard. [2008 c.12 §2]

Finding 6: All properties associated with these proposed PLAs are abutting and are less than 80 acres, the minimum lot size for the Forest-Agriculture -80 zoning district (see related Findings 1 and 3). If the proposed PLAs application was approved each reconfigured parcel will remain under 80 acres. Paragraph Sub 2(b) in this statute allows a county to property line adjust these undersized properties. The proposed PLAs are not being used to qualify a vacant tract for a dwelling or to qualify another tract for a dwelling that would otherwise not be allowed. The currently configured 2-acre parcels have already been authorized for dwellings by the Measure 49 approval and Final Order. Because the proposed property lines will not qualify the subject property for additional dwellings that would otherwise not be allowed, the application meets this criteria.

Oregon Revised Statutes Chapter 195 — Local Government Planning Coordination

ORS 195.300 - Definitions for ORS 195.300 to 195.336.

11) "High-value forest land" 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.

Finding 7: The subject tract is high value forest land. According to the "Soil Survey of Columbia County", US Dept. of Agriculture (NRCS) the soils of the subject 58 acres is approximately made up of the following soil types with the corresponding douglas fir growth capabilities (CMAI):

<u>Soil Type</u>	<u>CMAI</u>	<u>% of parcel/acreage</u>	<u>Annual production</u>
22C Goble silt loam, 3-15 %	150 cu. ft./ac/yr	5%, 2.9 ac	435.0 cu. ft./yr
14B Cornelius silt loam, 3-8%	176 cu. ft./ac/yr	10%, 5.8 ac	1020.8 cu. ft./yr
14C Cornelius silt loam, 8-15%	176 cu. ft./ac/yr	15%, 8.7 ac	1531.2 cu. ft./yr
49E Scaponia-Braun, 30-60%	183 cu. ft./ac/yr	30%, 17.4 ac	3184.2 cu. ft./yr
6D Bacona silt loam, 3-30%	172 cu. ft./ac/yr	40%, 23.2 ac	3990.4 cu. ft./yr
Total Annual Tract Capable Production =			10,161.6 cu. ft./yr
Subtract power lines easement	183 cu. ft./ac/yr	4.1 ac =	- 750.3 cu. ft./yr
Total Tract Capable Production			9,411.3 cu. ft./yr

All of the soil types of the subject tract can produce more than 120 cu. ft. per acre per year of wood fibre. The tract is capable of producing more than 5,000 cu. ft. per year, in fact the table above shows the tract capable of producing 9,411 cu. ft. per year.

Continuing with the Oregon Revised Statutes Chapter 195. 301:

195.301 Legislative findings. (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 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, 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. [2007 c.424 §3]

Finding 8: This purpose statement is for Claims established under Ballot Measure 49 and subsequent rule making. Staff notes of importance is the last sentence "[These rules] 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." (Emphasis added.) One critical way Oregon law protects farm and forest use is to regulate the lot size for newly created lots to ensure that lots remain large enough to support agriculture and forest production. Measure 49 accomplishes this protection while allowing home sites by requiring the home sites to be on small-acre parcels. By

restricting the size of new parcels, Measure 49 seeks to preserve the remainder parcel for farm/forest production. Accordingly, for high value farm/forest lands, Measure 49 limits new parcels to two acres. Under Oregon land use administration, forest and farm protection remains in force until the resource zoning designation is no longer applicable, i.e. a zone change to a higher density or more active use. In this instance, the applicant should not be allowed to increase the size of the already created Measure 49-authorized 2-acre home site parcels, unless such an increase brings the parcels into conformance with the FA-80 zone standards. To allow an enlargement of the maximum 2 acre lot size through subsequent PLAs would be to, in essence, throw away the rule, no farm and forest protection. The application does not meet the intent statement of this statute.

Section 6, chapter 424, Oregon Laws 2007¹

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.

Finding 9: Section 6, which this Staff Report does not restate in its entirety, essentially allows a Measure 37 claimant to obtain up to three home sites through a Measure 49 supplemental review if certain criteria are met. In this case, DLCD found that the applicant met the criteria, and DLCD issued a Measure 49 final order authorizing two additional home sites on the subject property (DLCD Order No. E132324, issued February 8, 2010). That authorization is subject to Section 11 of the Act, which is addressed next.

Section 11, chapter 424, Oregon Laws 2007

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*

¹ Measure 49 provides just compensation for “unfair burdens” caused by land use regulations. Measure 49 defines “just compensation” as “relief under sections 5 to 11, chapter 424, Oregon Laws 2007 . . . for land use regulations enacted on or before January 1, 2007[.]” ORS 195.300(13)(a). The 80-acre parcel size requirement for the applicant’s property was enacted before January 1, 2007.

*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.)*

Finding 10: Section 11(1) clarifies that the County is required to apply current zoning standards, including the FA-80 zone parcel size standards, unless those standards prohibit the authorized dwelling, lot or parcel. In other words, only an *authorized* dwelling, lot or parcel is exempt from the land use regulations that prohibit it. Here, the only parcels that Measure 49 authorizes for the applicant's property are two parcels that are 2 acres or less and one remainder parcel. If the applicant seeks to create a parcel larger than 2 acres, other than the remainder parcel, such parcel is unauthorized and therefore subject to the FA-80 zone parcel size standards. In contrast and for purposes of illustration, if the applicant had applied to reconfigure the 2-acre parcels into different 2-acre parcels that met the Measure 49 final order conditions, such parcels would be authorized and consequently, exempt from prohibitory FA-80 zone parcel size standards.

Continuing with Section 11, chapter 424, Oregon Laws 2007

- (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.

Finding 11: This criterion will apply when the applicant applies to construct dwellings on authorized parcels.

Continuing with Section 11, chapter 424, Oregon Laws 2007

- (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.
(Emphasis added.)

Finding 12: The above criteria identifies the County-State partnership for implementing and permitting homesite development under Measure 49. Measure 49 allows the County Land Development Services to accept and approve county applications for new parcels and dwellings authorized by the DLCD final order. It also establishes criteria for the creation of authorized parcels and dwellings, which the County is required to apply. This criteria is also incorporated into DLCD's final order in conditions 10 and 11.

Here, the County approved and accepted recording of Partition Plat 2011-003143, consistent with Section 11(3) of Measure 49, which created the currently configured three parcels for the Jaurons.

The current parcels met the criteria because they were two acres (except for the remnant parcel, which is allowed to be greater than two acres) and clustered to maximize suitability of the remnant parcel for farm or forest uses. One 2 acre parcel was created near Brooks Road, clustered with development along that access. The other was created near Cater Road, clustered near development along the road and with neighboring properties. This application, however, fails to comply with this criteria because the parcels are on high-value forestland, but are proposed to be 17-19 acres, which far exceeds Measure 49's 2-acre maximum for such parcels. Moreover, the proposed property line adjustment creates a parcel configuration that does not maximize the suitability of the larger remnant parcel for forest use. The application does not meet this criteria and does not meet the terms of the Measure 49 Home Site Authorization final order.

Continuing with Section 11, chapter 424, Oregon Laws 2007

- (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.

Finding 13: The applicant has not applied for more than 20 home sites and therefore meets this criterion.

Continuing with Section 11, chapter 424, Oregon Laws 2007

- (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.
(Emphasis added.)

Finding 14: The application here attempts to circumvent the express requirements of Measure 49 by obtaining approval for two new parcels pursuant to the applicant's Measure 49 authorization, then subsequently seeking a property line adjustment to create parcels that would not have complied with Measure 49. But the proposed property line adjustment cannot be permitted because, as this provision clarifies, the Measure 49 authorizations run with the land. Consequently, the conditions of the authorizations also run with the land and continue to apply. Further indication that the order and conditions run with the land can be found in ORS 205.246(1)(aa), which lists Measure 49 final orders as instruments that the County Clerk shall record.

The applicant's two additional parcels must either meet the requirements of her Measure 49 final order or the requirements of the FA-80 zone. The Measure 49 final order expressly limits the size of the applicant's two additional parcels to two acres. The FA-80 zone prohibits parcels less than 80 acres. The proposed reconfiguration of the parcels is neither less than the 2-acre maximum required by Measure 49, nor greater than the 80 acres minimum required by the FA-80 zone. The proposal thus meets neither the Measure 49 nor the FA-80 parcel size standard.

Oregon Administrative Rules Chapter 660 - Department of Land Conservation and Development
Division 41 - Measure 49

660-041-0090 - Procedures for Supplemental Review of Measure 37 Claims under Measure 49

- (7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either will deny the authorization of home sites or a dwelling; or will approve a the specific number of home sites under section 6 or section 7 of Measure 49 or a dwelling, and lot or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010. If approved, the Final Decision will authorize the county with land use jurisdiction over the

Measure 37 Claim Property to approve a permit to allow the number of home sites approved or the approved dwelling, and unless the property includes a vacant lot or parcel, a lot or parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

- (8) Following issuance of the Final Decision, the owner of the Measure 37 Claim Property may file an application with the county with land use jurisdiction over the Measure 37 Claim Property for a permit to establish home sites authorized or to establish an authorized dwelling, and unless the property includes a vacant lot or parcel, a lot or parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

Finding 15: As described above, the County approved Partition Plat 2011-003143 to create the three existing homesite parcels for the Jaurons. Through this property line adjustment, the applicant now seeks to alter the previously approved home sites. As this regulatory provision makes clear, the County is the review authority for permits to establish home sites authorized by Measure 49. The County is therefore the review authority for any proposed property line adjustments of these parcels.

Continuing with Oregon Administrative Rules Chapter 660, Division 41

660-041-0180

County Implementation of Measure 49 Authorizations

- (1) The county with land use jurisdiction over the Measure 37 Claim Property must approve an application for a county permit submitted as provided in OAR 660-041-0090(8), based on current local standards, if the county finds that:
 - (a) the approval of the proposed lots, parcels or dwellings is not prohibited by one or more current local siting or development standard(s) that the county finds are reasonably necessary in order to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law; and
 - (b) the owner has not received county permits for more than a total of 20 home site approvals statewide pursuant to Measure 49 Authorizations.
- (2) If the Measure 37 Claim Property is zoned for farm, forest or mixed farm and forest use, the county must also determine and find:
 - (a) if the property is located on high-value farm or forest land, or on land

within a ground water restricted area, as defined in these rules, each new lot or parcel does not exceed two acres; or

- (b) if the property is not located on high-value farm or forest land, and is not on land within a groundwater restricted area, as defined in these rules, each new lot or parcel does not exceed five acres; and
- (c) all new lots or parcels are located on the property in a manner that maximizes suitability of the remnant lot or parcel for farm or forest use.

Finding 16: This criteria codifies portions of the Measure 49 laws previously described in this Staff Report. As explained, Columbia County Land Development Services (LDS) has jurisdiction to issue local permits for approved Measure 49 Claims. To implement the M49 Claim, LDS must find that the home site authorization is valid given the regulation in statute, and determine if there are development constraints identified in the Comprehensive Plan, such as the presence of wetlands, flooding, slide hazards, etc. The county must also verify resource zoning, determine whether the parcel is a high-value forest parcel, restrict the size of any newly created parcels to the regulatory standard, and determine if the parcelization is in a manner that maximizes suitability of the remnant parcel for forest use. As stated earlier in this staff report, the claim property is zoned for mixed farm and forest use. The County has approved the homesite parcels by the recording of PP 2011-7, creating two 2 acre parcels and the remainder. The applicant now seeks to alter the configuration of the home sites through this property line adjustment application. However, the Measure 49 standards continue to apply as the home sites are only authorized because of Measure 49. Moreover, as described above, the conditions associated with the Measure 49 authorization run with the land and continue to apply to the property. Therefore, when reviewing the proposed application, reconfiguration through the PLAs, the County is required to apply the Measure 49 standards, which remain in effect while the property is zone for mixed farm and forest use. Even if there may be unique characteristics of the property that may qualify the parcels for a variance, the State has no variance procedures. The proposed parcels do not meet the requirements of their Measure 49 authorization. They are not 2 acres or less, and the configuration does not maximize suitability of the remnant parcel for farm and forest uses. The PLA applications, as proposed, would approximately equally divide the entire claim property. The application does not meet this standard.

Continuing with the Oregon DLCD Final Order and Homesite Authorization dated February 8, 2010:

Measure 49 Final Order and Home Site Authorization No.E132324 for Priscilla A. Jauron dated February 8, 2010: (Relevant Portions)

IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for three home site approvals. As explained in Section III above, after taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for two additional lots or parcels and two additional dwellings on the property on which the claim is eligible for Measure 49 relief, subject to the following terms:

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/ Purposely skip paragraphs 1-8, 12 & 13.

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9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimant is eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
10. Because the property is located in a mixed farm and forest zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland or high-value forest land or on land within a ground water restricted area. However, existing lots or parcels may exceed two acres.
11. Because the property is located in a mixed farm and forest zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone, or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.

Finding 17: The above conditions restate the Measure 49 criteria previously discussed in this Staff Report. For the reasons described above, the application does not meet the terms of the Measure 49 Home Site Authorization final order.

COMMENTS:

Property Owners within 750 feet of Subject Property: No comments received.

Oregon Department of Land Conservation and Development: E-mail dated August 9, 2012. The conditions on the final order have no temporal limitation and therefore continue to apply to the authorization. (Attached)

Oregon Department of Justice: Letter dated September 20, 2012. Concludes that the Measure 49 final order and its conditions apply to the property even after the establishment of the home site(s) authorized in the final order. (Attached)

No other comments have been received as of the date of this report, October 4, 2012. _____

CONCLUSION, & RECOMMENDATION:

The subject property of these two PLA applications is a high-value forest tract. The Oregon Measure 49 property owner relief established a land use authorization for approved claims, while protecting farm, forest and water resources uses. If new homesites are to be allowed in forest zones through the M49 process then protection of forest uses are important to Columbia County and to our citizens. Restricting the size and clustering of new homesite parcels in our forest zones is foremost in this protection. To increase the size of the homesite parcel after its creation is a fatal flaw of its interpretation.

Based on the facts, findings and comments herein, Planning Staff recommends the Board of County Commissioners **DENY the Property line Adjustments PLA 13-02 and PLA 13-03** to enlarge the 2.00 acre parcels created for M49 homesite approvals for Jauron located on Brooks and Cater Roads, further identified as Tax Map ID Nos. 4202-00-04000, 04002 and 04003.

ATTACHMENTS: letters received:

Oregon Department of Land Conservation and Development, dated August 9, 2012

Oregon Department of Justice, dated September 20, 2012

Application PLA 13-02 & 03 and maps.

cc: Applicant

Applicant Representative

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

BOARD OF COUNTY COMMISSIONERS
SUPPLEMENTAL STAFF REPORT

October 17, 2012

Jauron Applications for Property Line Adjustments (PLA 13-02 and 13-03)

Staff submits this supplemental staff report to address issues raised during the public hearing on October 10, 2012.

1. **Issue raised:** The applicant contends that at the time the Measure 49 claim was approved, the subject property was zoned FA-19 (Forest Agriculture 19 acres), which would have allowed the three adjusted 19-acre parcels.

Response: The subject property was zoned FA-19 until January 5, 2011, when it became FA-80. However, the proposed 19-acre parcels would not have been allowed under the FA-19 zoning in effect when the applicant submitted her Measure 49 claim in November 2006. If 19-acre parcels had been allowed, a Measure 49 authorization would not have been necessary to create the three 19-acre parcels the applicant now seeks. The applicant needed a Measure 49 authorization to create additional parcels because ORS 215.780 has required a minimum of 80-acres for new parcels in farm and forest zones since the passage of House Bill 3661 in 1993.

Local land use regulations must be interpreted to be consistent with state statutes. The Columbia County Zoning Ordinance was in noncompliance with ORS 215.780 until January 5, 2011, the effective date of Ordinance 2010-11, aptly titled *In the Matter of Amending the Columbia County Zoning Ordinance and Comprehensive Plan to Bring Columbia County Forest and Agriculture Zones into Compliance with State Law*. Accordingly, between 1993 and 2011, the 80-acre minimum parcel size required by ORS 215.780 would have applied directly to the property.

Thus, at the time of the applicant's Measure 49 claim, the minimum lot size for the subject property was 80 acres. A Measure 49 authorization was the only mechanism available to allow the division of the applicant's 58-acre forest-zoned property. As explained in the first staff report, that authorization allowed for the creation of new parcels on the applicant's property, provided those parcels were 2 acres or less. Consistent with her Measure 49 authorization, the applicant requested and received approval in 2011 for a land division to carve out two 2-acre parcels from the 58-acre parcel.

Conclusion: Although the subject property was zoned FA-19 until 2011, the minimum

lot size in the FA-19 zone has been 80 acres since 1993.

2. **Issue raised:** The applicant argues that County planning staff have interpreted Measure 49 to prohibit property line adjustments.

Response: Planning staff does not contend that Measure 49 prohibits property line adjustments. Rather, staff has explained that on high value forest land, Measure 49 prohibits property line adjustments that result in parcels greater than two acres. In other words, Measure 49 would not prohibit the applicant from reconfiguring her existing 2-acre parcels into two different 2-acre parcels.¹ Because the applicant's proposed property line adjustments result in parcels larger than two acres (other than the remnant parcel), the applicant's proposal is inconsistent with Measure 49.

Conclusion: The County has not interpreted Measure 49 to prohibit subsequent property line adjustments that are consistent with a Measure 49 home site authorization.

3. **Issue raised:** The applicant argues that "nowhere in the text of Measure 49, nor in the legislative history, does [M]easure 49 restrict the use of property line adjustments to modify the size of a parcel created under Measure 49." David Hunnicutt of Oregonians in Action also submitted written testimony to the same effect.

Response: The applicant argues essentially that Measure 49's 2-acre restriction applies only to the creation of *new parcels* and does not prohibit subsequent property line adjustments to enlarge the existing parcels beyond two acres.

Whether Measure 49's 2-acre restriction applies only to the creation of new parcels and not the enlargement of existing Measure 49-authorized parcels through subsequent property line adjustments is an issue of statutory construction. While one could interpret Measure 49's lot size restriction to apply only to new lots, such an interpretation fails the statutory construction analysis. In construing a statute, an examination of not just the text of a statute, but its context as well as any relevant legislative history and canons of statutory construction is required.² Because Measure 49 was referred to the voters by legislature, the goal in interpreting the statute, therefore, is to discern the intent of the voters.³

As an initial matter, much of Measure 49 was codified in ORS 195.300 *et seq.*; however, portions of the measure reside only in chapter 424 of the 2007 Oregon Laws. Specifically, sections 5 through 11 of Measure 49 – which directly apply in this case –

¹ See Staff Report dated October 10, 2012, page 10, Finding 10.

² *State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009).

³ *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 56-57, 11 P3d 228 (2000).

can only be found in chapter 424 of the 2007 Oregon Laws.⁴

Beginning with the text of Measure 49, it is undisputed that Measure 49 limits new lots on high value forest land to two acres in area. To interpret that requirement to apply only to the creation of the lot and not the lot itself after creation would render that 2-acre requirement meaningless. In other words, the 2-acre restriction has no effect if the lot can be subsequently enlarged through a property line adjustment. Such an interpretation yields a result that is incongruous with an express requirement of Measure 49.

Furthermore, even if the County were to allow the proposed property line adjustments, Measure 49 prohibits the establishment of dwellings on the enlarged parcels. Under Measure 49, the County can only waive those regulations that prohibit the establishment of an authorized dwelling.⁵ The applicant's Measure 49 home site approval only authorizes dwellings on 2-acre parcels (except for the remnant parcel).

Moreover, the applicant here received an authorization to divide her property into three parcels and establish two additional dwellings pursuant to section 6 of Measure 49. That authorization, which contains a condition that limits the parcels to two acres, runs with the land, as provided in Measure 49:

“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.”⁶

The applicant posits that the above provision speaks only to the ability to transfer or inherit the rights in the authorization. But that interpretation contradicts the express language of the provision. If the legislature and the voters intended the provision to apply only to transfer and inheritance, it would have omitted the words “runs with the property” from the sentence to achieve that intent. Construing section 11(6) to apply only for transfer and inheritance purposes interprets that provision to omit the term “runs with the property.” As the applicant has noted, a rule of statutory construction is “not to insert

⁴ As explained in the first Staff Report, Oregon Laws 2007, chapter 424 §§ 5-11, apply here because “just compensation” for land use regulations enacted on or before January 2007 (such as the 80-acre lot size regulation enacted in 1993) is defined as “[r]elief under sections 5 to 11, chapter 424, Oregon Laws 2007[.]” ORS 195.300(13)(a).

⁵ See Or Laws 2007, ch. 424 § 11(1) (“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*[.]”) (emphasis added).

⁶ Or Laws 2007, ch. 424 § 11(6) (emphasis added).

what has been omitted, or to omit what has been inserted[.]”⁷ The applicant’s interpretation omits what has been inserted in contravention of ORS 174.010.

In addition, viewing the 2-acre limitation in context with Measure 49 as a whole, it is clear that the limitation is intended to apply for as long as a Measure 49-authorized parcel remains on high value forest land in order to preserve the land for forest use. For example, Measure 49 also requires lots to be clustered “to maximize the suitability of the remnant lot or parcel for farm or forest use.”⁸ A property line adjustment that results in equally-sized parcels cannot be clustered. The applicant’s interpretation would therefore render another provision of Measure 49 meaningless. Such an interpretation fails under ORS 174.010.

Finally, as already stated in the staff report and in DLCD’s comments, the legislative intent of Measure 49 is evident in its purpose statement, which is to provide just compensation for land use regulations that create unfair burdens, “while retaining Oregon’s protections for farm and forest uses[.]”⁹ Preserving as much of the remnant parcel as possible is consistent with Oregon’s long-standing requirement (nearly 20 years since HB 3661 in 1993) for farm and forest land to remain in large parcels. An interpretation that the 2-acre provision applies only to new lots neither squares with legislative intent nor with the state statutory land use program, when read in context.

Conclusion: A Measure 49-authorized parcel cannot be subsequently modified through a property line adjustment to no longer meet the requirements of Measure 49 without running afoul of Measure 49 text, context, and legislative intent. Because the applicant’s parcels as proposed exceed the 2-acre maximum allowed by her home site authorization, the property line adjustments are not allowed.

4. **Issue raised:** The applicant asserts that ORS 195.310(7) applies to the subject property and establishes that the property is a legal nonconforming use.

Response: The applicant is incorrect. ORS 195.310(7) does not apply to the subject property. ORS 195.310(7) provides, in pertinent part: “A use authorized by this section has the legal status of a lawful nonconforming use[.]” However, ORS 195.310 applies to claims for relief from land use regulations *enacted after January 1, 2007*.¹⁰ The regulation from which the applicant sought relief is the 80-acre minimum lot size for forest zones, which was enacted in 1993. Therefore, as explained above, the applicant’s relief is contained in sections 5 to 11 of chapter 424, Oregon Laws 2007, which

⁷ ORS 174.010.

⁸ Or Laws 2007, ch. 424 § 11(3)(b).

⁹ ORS 195.301(2).

¹⁰ ORS 195.300(13)(b) and 195.310(c) (emphasis added).

establishes relief for land use regulations *enacted on or before January 1, 2007*.¹¹

Although the applicant's existing parcels are not nonconforming uses *per se*, they were lawfully created and have legal status. Measure 49 provides:

"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 the 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."¹²

Thus, as long as the applicant's use is consistent with her Measure 49 authorization, it is a permitted use. Moreover, the above provision underscores the lasting effect of the Measure 49 authorization and supports staff's position that Measure 49 authorizations run with the land.

Conclusion: The applicant's property is not a legal nonconforming use but a permitted use as long as it is consistent with the Measure 49 authorization.

5. **Issue raised:** The applicant and Dave Hunnicutt, Oregonians in Action, both argue that ORS 92.192 allows the requested property line adjustments.

Response: Staff disagrees. Although ORS 92.192 does allow for property line adjustments between undersized lots that result in undersized lots, the application here must also meet Measure 49 criteria. As stated in the first Staff Report, the application meets ORS 92.192, but does not meet section 11 of Measure 49. Nor does it meet the conditions of approval of the Measure 49 authorization, which runs with the land. To the extent that ORS 92.192 conflicts with Measure 49, Measure 49 controls because its lot size restrictions for high value forest land are more particular than the general lot size provisions in ORS 92.192. As required by ORS 174.020(2) in construing statutes: "When general and particular provisions are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent."

Conclusion: ORS 92.192 is not the only criteria applicable here. The Measure 49 criteria must also be met. To the extent the two provisions are inconsistent as to the Measure 49-authorized home sites, Measure 49 controls.

¹¹ ORS 195.300(13)(a) (emphasis added).

¹² Or Laws 2007, ch 424 § 11(6)(b) (emphasis added).

6. **Issue raised:** The applicant presented evidence in support of the position that forest production is as easily performed on 19-acre parcels as it is on 50-acre parcels.

Findings: Staff does not disagree. However, state law preserves and protects resource zones primarily by requiring large parcels. The state lot size requirements are inflexible.

Conclusion: Even if forest production will not be hampered by the 19-acre parcels proposed here, state law establishes requirements for large parcels and provides no mechanism for flexibility.

7. **Issue raised:** Planning staff met with the Board of Commissioners during a Board of Commissioners' staff meeting without providing notice to the applicant. Minutes of the meeting were not included in the record.

Response: The Board of Commissioners met with Planning staff at its regularly scheduled staff meeting on August 1, 2012. No public hearing was held, and therefore, the notice requirements of ORS 197.763 did not apply. Minutes from the staff meeting were inadvertently omitted from the record and will be submitted for inclusion.

Conclusion: The staff meeting was not a public hearing requiring notice to the applicant under ORS 197.763. The inadvertently omitted minutes will be submitted into the record to allow for the applicant's review and rebuttal.

RECOMMENDATION

Based on the facts, findings and conclusions in the October 3, 2012 Staff Report and this Supplemental Staff Report, Planning Staff recommends that the Board of County Commissioners Deny the Property Line Adjustments PLA 13-02 and 13-03.