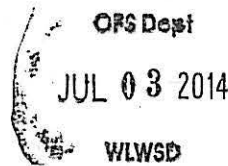


West Linn / Wilsonville



MIKE McCALLISTER  
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

**NOTICE OF LAND USE APPLICATION IN YOUR AREA**

**Date:** 06/30/2014  
**File Number:** Z0223-14  
**Application:** Partition (3 Lots Max)  
**From:** Clackamas County Planning and Zoning  
**Notice Mailed To:** Property owners within 500 feet  
Community Planning Organizations (CPO)  
Interested Citizens and Agencies

**Application Proposal:**

A Partition to divide the subject property into two parcels; one of 2.85 ac. with an existing home and one of two acres for a new home site. This request is enabled pursuant to State-approval of a Ballot Measure 49 (ORS 195.300 - 195.336) claim, Election No. E124319, providing for a modification of the lot size criteria of the RRFF-5 zoning district.

**Property Owner:** HOLMES RYAN & JULIE  
3025 KENSINGTON CT  
WEST LINN, OR 97068

**Applicant:** HOLMES RYAN & JULIE  
3025 KENSINGTON CT  
WEST LINN, OR 97068

**Address:** 760 S WILDA RD  
WEST LINN, OR 97068

**Location:** South side of S. Wilda Rd., just south of Rosemont Rd., West Linn area.

**Legal Description:** 21E22A 02000

**Acres:** 4.83

**Zone:** RRFF-5

**Staff:** Rick McIntire 503-742-4516

**E-mail:** rickmci@co.clackamas.or.us

**How to Comment on this Application:**

1. To be sure your comments will be considered prior to the decision, we need to have them within 15 days of the date of this notice.

**File Number:** Z0223-14

2. You may use the space provided below, mail a separate letter or e-mail the information. Please include the file number, address the information to the staff member handling this matter, and focus your comments on the approval criteria for the application.

3. Return your mailed comments to: Clackamas County Planning and Zoning, 150 Beaver Creek Rd, Oregon City, OR 97045; FAX to (503) 742-4550.

**Community Planning Organization:** The following recognized Community Planning Organization (CPO) has been notified of this application. This organization may develop a recommendation on this application. You are welcome to contact this organization and attend their meeting. If this Community Planning Organization is currently inactive, and you are interested in becoming involved in Land Use Planning in your area, please contact the Citizen Involvement Office at (503) 655-8552.

STAFFORD TUALATIN VALLEY CPO  
WALT GAMBLE 5037819314  
1786 SW GREENWAY CIRCLE  
WEST LINN OR 97068

**Decision Process:** In order to be approved, this proposal must meet the approval criteria in the Zoning and Development Ordinance, Section(s)

309, 1001, 1002, 1003, 1006, 1007, 1008, 1014 & 1106 except as modified by Measure 49 claim.

The Ordinance criteria for evaluating this application can be obtained from this office or viewed at [www.clackamas.us/planning/zdo.html](http://www.clackamas.us/planning/zdo.html). You may view the submitted application at the following link, <https://accela.clackamas.us/citizenaccess/> within five days of the date of this notice, or at our office during weekday lobby hours, 8:00 am to 3:00 pm, Monday through Friday.

A decision on this proposal will be made and a copy will be mailed to you. If you disagree with the decision you may appeal to the Land Use Hearings Officer who will conduct a public hearing. There is a \$250 appeal fee.

Comments:

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\_\_\_\_\_  
Your Name/Organization

\_\_\_\_\_  
Telephone Number



Planning & Zoning  
Development Services Building  
150 Beavercreek Road | Oregon City, OR | 97045  
Phone: (503) 742-4500 | Fax: (503) 742-4550  
E-mail: [zoninginfo@co.clackamas.or.us](mailto:zoninginfo@co.clackamas.or.us)  
Web: <http://www.clackamas.us/transportation/planning/>

**LAND USE APPLICATION**

**DEEMED COMPLETE**

ORIGINAL DATE SUBMITTED: 6/18/14  
FILE NUMBER: 20223.14.M  
APPLICATION TYPE: Partition

The Planning and Zoning Division staff deemed this application complete for the purposes of Oregon Revised Statutes (ORS) 215.427 on: 6/27/14

  
Signature

Sr. Planner  
Title

Rick McIntire  
Print Name

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Check one:**

- ☐ The subject property is located inside an urban growth boundary. The 120-day deadline for final action on the application pursuant to ORS 215.427(1) is:

\_\_\_\_\_

- ☒ The subject property is not located inside an urban growth boundary. The 150-day deadline for final action on the application pursuant to ORS 215.427(1) is:

11/24/14



Geographic Information Systems  
168 Warner-Milne Rd  
Oregon City, OR 97045

## Property Report

HOLT JOHN B III CO-TRUSTEE  
5 N SHORE RD  
LAKE OSWEGO, OR 97034

Site Address: 760 S WILDA RD  
Taxlot Number: 21E22A 02000  
Land Value: 348434  
Building Value: 480020  
Total Value: 828454

Acreage:  
Year Built: 1978  
Sale Date: 03/18/2005  
Sale Amount: 0  
Sale Type: S

Land Class:  
401  
Building Class:  
16  
Neighborhood:  
West Linn/Lake Oswego  
Taxcode Districts: 003004

Location Map:



Site Characteristics:

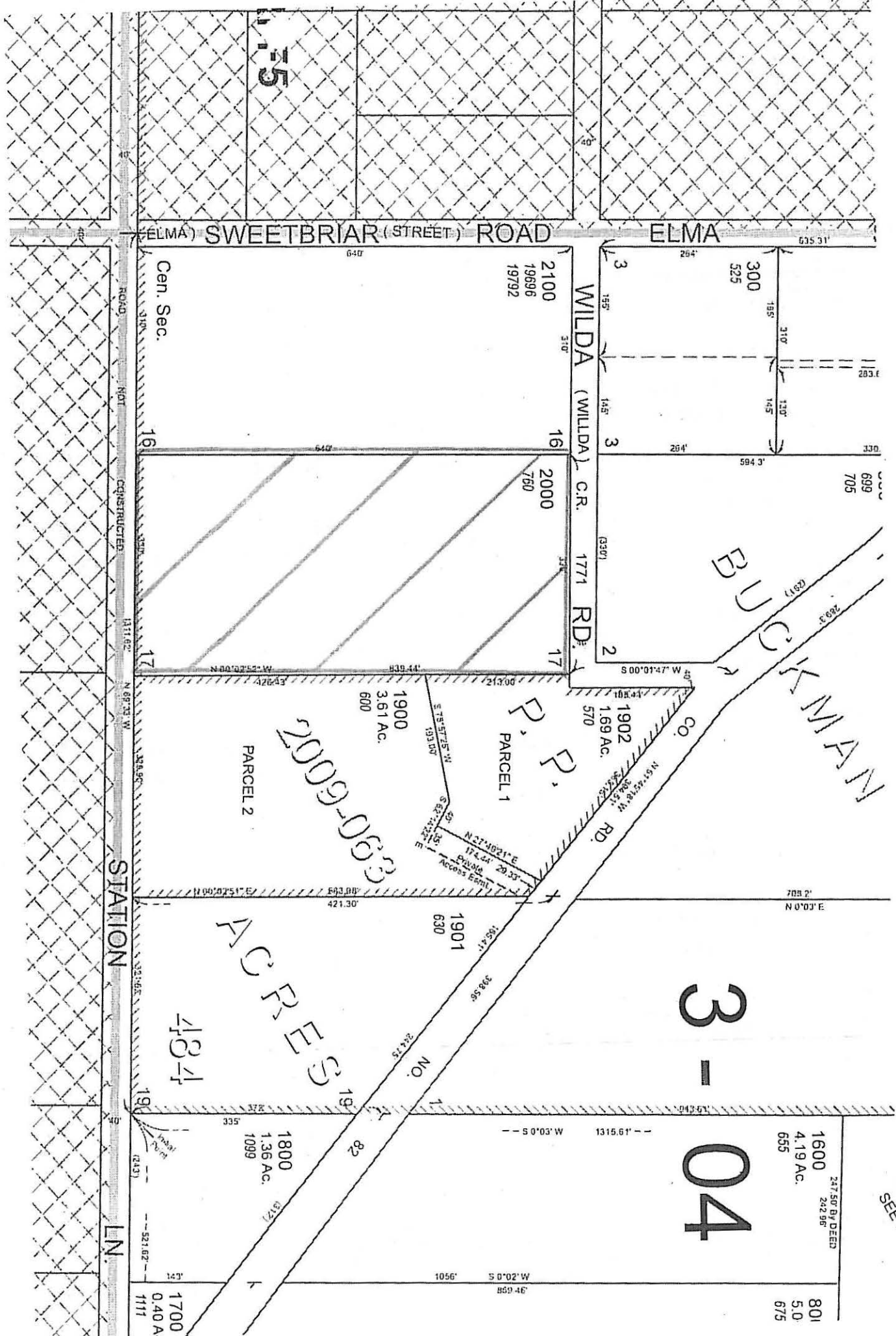
UGB: OUT  
Flood Zone: Not Available

Zoning Designation(s):

| <u>Zone</u> | <u>Overlays</u> | <u>Acreage</u> |
|-------------|-----------------|----------------|
| RRFF5       |                 | 4.83           |

|             |                               |
|-------------|-------------------------------|
| Fire        | Tualatin Valley Fire & Rescue |
| Park        | N/A                           |
| School      | SCH 3 WLINN/WILS              |
| Sewer       | N/A                           |
| Water       | N/A                           |
| Cable       | Comcast of Oregon II, Inc.    |
| CPO         | Stafford-Tualatin Valley      |
| Garb/Recyc  | Allied Waste (Rossman)        |
| City/County | Clackamas Co.                 |

This map and all other information have been compiled for preliminary and/or general purposes only. This information is not intended to be complete for purposes of determining land use restrictions, zoning, title, parcel size, or suitability of any property for a specific use. Users are cautioned to field verify all information before making decisions.





Planning & Zoning  
Rick McIntire, Sr. Planner / Steve Koper, Planner  
150 Beavercreek Road | Oregon City, OR | 97045  
Phone: (503) 742-4516 or 4551 | Fax: (503) 742-4550  
E-mail: [rickm@co.clackamas.or.us](mailto:rickm@co.clackamas.or.us)  
[stevekop@co.clackamas.or.us](mailto:stevekop@co.clackamas.or.us)  
Web: <http://www.clackamas.us/transportation/planning/>

## SUPPLEMENTAL APPLICATION

### PARTITION (February, 2012)

#### APPLICATION INFORMATION

Name Ryan & Julie Holmes Pre-Application File No. 20223-14.m  
Date 4/18/14

#### WHAT IS A PARTITION?

A partition is the division of land into two or three parcels in one calendar year.

#### WHAT IS NEEDED FOR APPROVAL?

All partition permits are discretionary and MAY be permitted after evaluation according to criteria in the ZDO. The County must make written findings to support the decision. The applicant is responsible for providing evidence to support the partition request according to the ZDO. Conditions may be applied to any approval.

#### WHAT ARE THE CHANCES FOR APPROVAL?

Staff cannot predetermine the decision on this or any application. A decision of approval or denial will only be made after the complete application is processed. This includes review of citizen and agency comments. The decision is based upon ZDO, Comprehensive Plan and County Roadway Standards criteria relevant to this application as listed in the ordinance. In order to address the necessary criteria, the information requested in this supplemental application should be as thorough and as complete as possible.

#### APPLICATION PROCESS

Partitions are subject to the Administrative Action process and public notice. Public comments received from the Community Planning Organizations (CPO's), property owners, agencies and other interested parties may affect the decision on the application. Special conditions may be attached to any approvals. Any decision on this application can be appealed to the County Land Use Hearings Officer and to the State Land Use Board of Appeals (LUBA) by the applicant or any other interested person.

NOTE: A PRE-APPLICATION CONFERENCE is required prior to filing this application. For a copy of the Pre-Application Form, go to [www.clackamas.us/transportation/permits](http://www.clackamas.us/transportation/permits).

#### STAFF WILL ATTACH THE FOLLOWING PERTINENT INFORMATION

|                            |                           |
|----------------------------|---------------------------|
| _____ Land Use Application | _____ CPO Information     |
| _____ Sample Plot Plan     | _____ Application Process |
| _____ ZDO Section 1106     | _____ ZDO Section 1014    |

#### HOW LONG WILL IT TAKE TO RECEIVE A FINAL DECISION ON AN APPLICATION?

Processing time is dependent upon existing workload at the time of application. Decisions on your application may take from 6 to 10 weeks to process. A final County decision must be made, inclusive of any potential appeals to the Hearings Officer, within 120 days if in the UGB and 150 days if outside the UGB.

COMPLETE APPLICATIONS REQUIRE THE FOLLOWING:

1. Land Use Application – Information on applicant and land involved in the application.
2. Supplemental Application – Information requested on this form. Please be as complete and thorough as possible. Use additional sheets of paper as necessary.
3. Preliminary Statement of Feasibility from the water provider, sanitary sewer provider and surface water management authority – if applicable.
4. Completed Pre-Application Conference meeting with staff.
5. Application Fee: \_\_\_\_\_ (Fee is nonrefundable upon decision or staff report; partial refund if withdrawn after notice; full refund if withdrawn prior to notice.)
6. Plan – Drawn to scale with all information required by Section 1106.05 of the ZDO. The scale should not be less than 1" = 50' nor more than 1" = 200'. Please have the plan drawn on 8" by 14" or 11" by 17" sheet of paper.
7. Additional Information
  - A. If the application involves property designated Open Space by the County Comprehensive Plan, how will the requirements of the ZDO Section 1102.06 be met?

N/A

- B. If any of the property is capable of redevelopment, you must describe your redevelopment plan. [See ZDO Section 1106.02(G)]

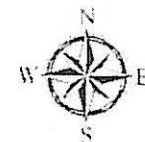
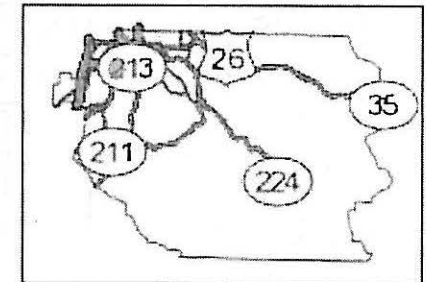
N/A

- C. If the property is not within a sewer district, a favorable soils feasibility study report is required and must accompany this application. (Attach soils report as appropriate)

in submitted materials



# Clackamas County



*Clackamas  
County*

Geographic Information Systems  
168 Warner Milne Road  
Oregon City, OR 97045

This map and all other information have been compiled for preliminary and/or general purposes only. This information is not intended to be complete for purposes of determining land use restrictions, zoning, title, parcel size, or suitability of any property for a specific use. Users are cautioned to field verify all information before

Fri, 21 Mar 2014 09:30:33





SWMACC



PRELIMINARY STATEMENT OF FEASIBILITY

To be completed by the applicant:

Applicant's Name: Ryan & Julie Holmes

Property Legal Description: T 2 S, R 1E, Section 22, Tax Lot(s) 2000

Site Address: 7100 S. Wilda Rd Project Engineer: \_\_\_\_\_

Project Title/Description of Proposed Development: \_\_\_\_\_

partition / measure 49

To be completed by the service provider or surface water management authority:

Check all that apply:

☐ Sanitary sewer capacity in the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner.

☒ Adequate surface water treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

☐ Water service is available in levels appropriate for the development, and adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution or such levels and capacity can be made available through improvements completed by the developer or the system owner. This statement ☐ applies ☐ does not apply to fire flows.\*

\*If water service is adequate with the exception of fire flows, the applicant shall submit a statement from the fire district serving the subject property that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.

☐ This statement is issued subject to conditions of approval set forth in the attached.

☐ Adequate ☐ sanitary sewer service, ☐ surface water management, ☐ water service cannot be provided.

Tim Fendley  
Signature of Authorized Representative

4/9/2014  
Date

T.S.C.  
Title

SWMACC  
Name of Service Provider or Surface Water Management Authority

Completion of this statement does not reserve capacity for the development and does not alter an applicant's obligation to comply with the service provider's or surface water management authority's regulations. Completion of this statement does not obligate the service provider or surface water management authority to finance or construct improvements necessary to provide adequate service for the proposed development. Completion of this statement does not guarantee that land use approval for the proposed development will be granted.



## PRELIMINARY STATEMENT OF FEASIBILITY

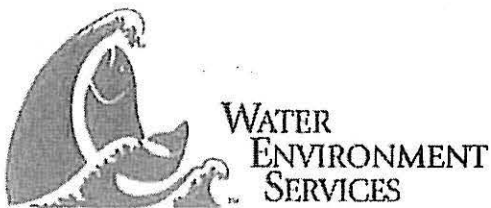
(March - 2009)

### Instructions to Applicant

- This form is to be completed by the applicable sanitary sewer service provider, surface water management authority and water service provider.
- It is the applicant's responsibility to provide a copy of this form to each service provider. Attach the completed forms as part of the land use application submittal for a development. Where there is no surface water management service district, this form is to be provided to the Clackamas County Department of Transportation and Development, Engineering Division.
- A service provider may require the submission of detailed plans and/or engineering data prior to determining whether a Preliminary Statement of Feasibility will be issued. Contact the service providers for details.
- Completed forms are required for design review, subdivisions, partitions and conditional uses, and these applications will not be deemed complete until the completed forms are received by the Planning Division.
- The forms must be dated no more than one year prior to submittal of a complete land use application.
- Forms are not required for on-site sewage disposal systems or water service by private well.

### Instructions to Service Provider

- A development is proposed within your service area. Please complete the attached Preliminary Statement of Feasibility to indicate whether adequate service can be provided to this development.
- If adequate service can be provided only with the implementation of certain conditions of approval, you may attach such conditions to this statement. Completion of this preliminary statement of feasibility does not imply that additional requirements (e.g. plan submittals) may not be imposed by your agency once a land use application is filed.
- The Planning Division will continue to provide notice to you of land use applications for property within your service area. This will allow you to determine whether the submitted development proposal differs from the plans reviewed by your agency in conjunction with the completion of this statement. This will also allow you to provide additional comments as necessary.



*Beyond* clean water.

Water Quality Protection  
Surface Water Management  
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.  
Director

May 15, 2014

SE012514

JOHN AND CAROL HOLT  
760 S WILDA ROAD  
WEST LINN, OR 97068

**IMPORTANT DOCUMENT – PLEASE READ CAREFULLY**  
This is not a septic construction permit.

SITE: Township 2S Range 1E Section 22A Tax Lot 02000  
760 S WILDA ROAD

RESULTS: Approved

SYSTEM: Standard drainfield

Dear Mrs. Holt:

Water Environment Services staff has completed the evaluation of the site where you proposed the construction of a new sewage treatment system at the property referenced above to serve a four bedroom single family residence.

Based on the results of this study, sewage treatment appears feasible. Site conditions will require the use of a standard drainfield for the original system, as described in the attached construction detail and site drawing reports. For the replacement area a standard drainfield will be required.

If you have any questions, feel free to contact me at 503-742-4643.

Sincerely,

Edgar Diaz, REHS  
Soil Scientist

Enclosures:  
General Permit Conditions  
Field Sheet  
Construction Detail Sheet  
Minimum Setback Requirements

CC: COFFMAN EXCAVATION

# FIELD SHEET

Owner HOLT

SEO 12514

Township 2S

Range 1E

Section 22A

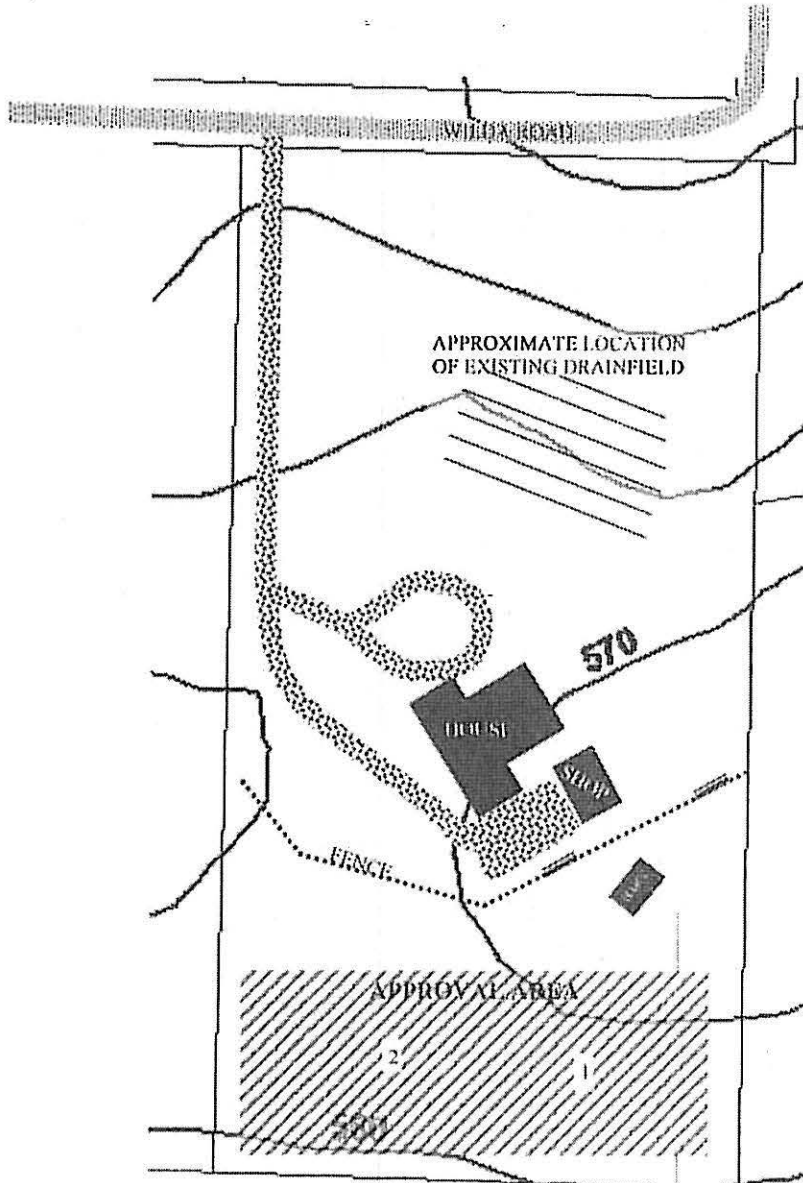
Tax Lot 02000

Acreage 4.83

Soil Scientist EDGAR DIAZ

Weather OVERCAST 61° F

Date 05/06/2014



Approved for STANDARD Denied due to \_\_\_\_\_  
 Proposed Facility FOUR BEDROOM HOUSE Septic/Dosing/ Holding Tank Capacity 1000 gallons  
 Leach lines per 150gpd 150 lineal feet Total required 450 Drain field Distribution SERIAL  
 Burial Depth 30 Max 24 Min Groundwater Interceptor \_\_\_\_\_ Depth \_\_\_\_\_ Gravel \_\_\_\_\_ Water Supply COMMUNITY WELL  
 Comments SEE S20878 & ST065191 FOR EXISTING SYSTEM DETAIL.

Pit 1  
ESD \_\_\_\_\_  
H<sub>2</sub>O \_\_\_\_\_  
Slope \_\_\_\_\_

| Depth | Texture | Roots                   | Color (Moist) | Consistency (Moist) | Structure | Roots   | Debris, Coarse fragments, Etc |
|-------|---------|-------------------------|---------------|---------------------|-----------|---------|-------------------------------|
| 0-13  | SIL     |                         | 7 5YR3/2      | FRIABLE             | 3MSBK     | >5VF, F |                               |
| 13-30 | SICL    |                         | 7 5YR3/3      | FRIABLE             | 3MSBK     | 4VF, F  |                               |
| 30-47 | SICL    | 20% 2 5Y5/2<br>2 5YR4/4 | 7 5YR4/3      | FRIABLE             | 2MSBK     | 2VF, F  |                               |
|       |         |                         |               |                     |           |         |                               |
|       |         |                         |               |                     |           |         |                               |

Pit 2  
ESD \_\_\_\_\_  
H<sub>2</sub>O \_\_\_\_\_  
Slope \_\_\_\_\_

|       |      |                         |          |         |       |         |  |
|-------|------|-------------------------|----------|---------|-------|---------|--|
| 0-11  | SIL  |                         | 7 5YR3/2 | FRIABLE | 3MSBK | >5VF, F |  |
| 11-32 | SIL  |                         | 7 5YR3/2 | FRIABLE | 3MSBK | >5VF, F |  |
| 32-44 | SICL | 10% 2 5Y5/2<br>2 5YR4/4 | 7 5YR4/3 | FRIABLE | 2MSBK | 2VF, F  |  |
| 44-59 | SICL | 20% 2 5Y5/2<br>2 5YR4/4 | 7 5YR4/3 | FRIABLE | 2MSBK | 2VF, F  |  |
|       |      |                         |          |         |       |         |  |

Pit 3  
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H<sub>2</sub>O \_\_\_\_\_  
Slope \_\_\_\_\_

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Pit 5  
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Pit 6  
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Slope \_\_\_\_\_

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# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5318

<http://www.oregon.gov/LCD/MEASURE49>

DEC 7 2009

December 2, 2009



To: Claimants

From: Richard Whitman, Director

*Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E124319*

*Claimants: John and Carol Holt*

---

Enclosed is the Department of Land Conservation and Development's (department) Final Order and Home Site Authorization for the above-referenced Measure 49 election, based on the Supplemental Review of the claimants' Measure 37 claim.

This Final Order and Home Site Authorization sets forth the department's decision on the claim under Measure 49 and is final. No further action will be taken on this matter.





**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW  
OF MEASURE 37 CLAIM**

**Final Order and Home Site Authorization**

**STATE ELECTION NUMBER:**

E124319

**CLAIMANTS:**

John and Carol Holt  
5 N Shore Road  
Lake Oswego, OR 97034

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 2S, Range 1E, Section 22A  
Tax lot 2000  
Clackamas County

The claimants, John and Carol Holt, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on March 13, 2006, for property located at 760 S Wilda Road, near Stafford, in Clackamas County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed Measure 37 claims to elect supplemental review of their claims. The claimants have elected supplemental review of their Measure 37 claim under Section 6 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.

This Final Order and Home Site Authorization is the conclusion of the supplemental review of this claim.

**I. ANALYSIS OF CLAIM**

**A. Maximum Number of Home Sites for Which the Claimants May Qualify**

Under Section 6 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: three; the number stated by the claimant in the election materials; or the number described in a Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimants have requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes 20 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

## **B. Qualification Requirements**

To qualify for a home site approval under Section 6 of Measure 49, the claimants must meet each of the following requirements:

### **1. Timeliness of Claim**

A claimant must have filed a Measure 37 claim for the property with either the state or the county in which the property is located on or before June 28, 2007, and must have filed a Measure 37 claim with both the state and the county before Measure 49 became effective on December 6, 2007. If the state Measure 37 claim was filed after December 4, 2006, the claim must also have been filed in compliance with the provisions of OAR 660-041-0020 then in effect.

### **Findings of Fact and Conclusions**

The claimants, John and Carol Holt, filed a Measure 37 claim, M124319, with the state on March 13, 2006. The claimants filed a Measure 37 claim, ZC003-06, with Clackamas County on March 13, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Clackamas County.

### **2. The Claimant Is an Owner of the Property**

Measure 49 defines "Owner" as: "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner."

### **Findings of Fact and Conclusions:**

According to the deed submitted by the claimants, John and Carol Holt are the owners of fee title to the property as shown in the Clackamas County deed records and, therefore, are owners of the property under Measure 49.

Clackamas County has confirmed that the claimants are the current owners of the property.

### **3. All Owners of the Property Have Consented in Writing to the Claim**

All owners of the property must consent to the claim in writing.

### **Findings of Fact and Conclusions:**

All owners of the property have consented to the claim in writing.

**4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City**

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

**Findings of Fact and Conclusions:**

The Measure 37 claim property is located in Clackamas County, outside any urban growth boundary and outside any city limits, near the community of Stafford.

**5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling**

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

**Findings of Fact and Conclusions:**

The property is currently zoned Rural Residential Farm/Forest (RRFF-5) by Clackamas County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Clackamas County's RRFF-5 zone requires a minimum lot size of five acres.

The claimants' property consists of 4.51 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants may qualify for under Section 6 of Measure 49.

**6. The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)**

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

### **Findings of Fact and Conclusions**

Based on the documentation submitted by the claimants, it does not appear that the establishment of the three home sites for which the claimants may qualify on the property would be prohibited by land use regulations described in ORS 195.305(3).

### **7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49**

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

### **Findings of Fact and Conclusions**

Clackamas County deed records indicate that the claimants acquired the property on August 1, 1977.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Clackamas County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned Rural Agricultural Residential (RA-2) by Clackamas County. However, while the property was ultimately acknowledged as non-resource land pursuant to Goal 14 (Urbanization), the Commission had not acknowledged Clackamas County's RA-2 zone for compliance with the goals. Therefore, when the claimants acquired the property on August 1, 1977, the statewide planning goals, and in particular Goal 14, applied directly to the Measure 37 claim property.

On December 21, 1982, the Commission acknowledged the application of Clackamas County's Rural Residential/Farm Forest (RRFF-5) zone to the Measure 37 claim property. Clackamas County's acknowledged RRFF-5 zone required five acres for the creation of a new lot or parcel. The Commission's acknowledgement of Clackamas County's RRFF-5 zone confirmed that zone's compliance with Goal 14.

On August 1, 1977, Goal 14 required counties "[t]o provide for an orderly and efficient transition from rural to urban land use \* \* \*." The Goal required the creation of urban growth boundaries to "identify and separate urbanizable land from rural land," and prohibited the location of "urban uses" outside urban growth boundaries without the approval of a Goal 2 exception to Goal 14. In general, and consistent with subsequent judicial interpretation and LCDC rules implementing Goal 14, urban uses included residential lots or parcels less than two acres in size. Therefore, while the Commission ultimately acknowledged Clackamas County's zoning of the subject property to require a minimum of five acres for the creation of a new lot or parcel, a lot or parcel of two acres or more would have complied with the requirements of Goal 14 when the claimants acquired the property on August 1, 1977. The claimants' property consists of 4.51 acres.

Therefore, the claimants' request to create three home sites would result in parcels smaller than two acres. Without additional evidence to establish that, as applied to the subject property, the requested smaller parcels would have satisfied the requirements of Goal 14, the claimants lawfully could have created no more than two residential lots or parcels when they acquired the property. The claimants, therefore, appear to be qualified for up to two home sites under Section 6 of Measure 49.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on October 12, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, the claimants qualify for up to two home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

Based on the documentation provided by the claimants and information from Clackamas County, the Measure 37 claim property includes one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the two home site approvals the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish up to one additional lot or parcel and one additional dwelling on the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property.

## **IV. HOME SITE AUTHORIZATION**

Based on the analysis set forth above, this claim is approved, and the claimants qualify for two home site approvals. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimants are authorized for one additional lot or parcel and one additional dwelling on the property on which the claimants are eligible for Measure 49 relief, subject to the following terms:

1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimants are eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.



2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are the subject of this order.
4. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.
5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.
6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimants are eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimants are not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.
7. The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing lots, parcels or dwellings to convert to authorized home sites; or may



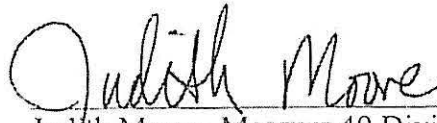
reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.

8. The claimants may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
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 claimants 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 claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
10. 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/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/forest zone, but is less suitable for farm or forest use than the other Measure 37 claim properties.
11. If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain 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. A dwelling lawfully created based on a home site approval is a permitted use.
12. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a

building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

IT IS HEREBY ORDERED that this Final Order and Home Site Authorization is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

A handwritten signature in dark ink, appearing to read "Judith Moore". The signature is written in a cursive, flowing style. The first name "Judith" is written with a large, looped "J" and a long "i". The last name "Moore" is written with a large "M" and a long "o". The signature is positioned above a horizontal line.

Judith Moore, Measure 49 Division Manager  
Dept. of Land Conservation and Development  
Dated this 31<sup>st</sup> day of December 2009.

#### NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that it the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.