



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

March 30, 2010

STATE ELECTION NUMBER: E131014H^{1,2}

CLAIMANTS: William V. Crook,
Mary J. Crook
Ronnie J. Crook
94727 S Bank Pistol River Road
Brookings, OR 97415

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 38S, Range 14W, Section 33
Tax lot 200
Curry County

PRIMARY CONTACT INFORMATION: James A. Crook
94727 S Bank Pistol River Road
Brookings, OR 97415

¹ Claims E131014 and E131015 have been combined, and evaluated under E131014, because of contiguity and ownership. Per OAR 660-041-0150 the Department of Land Conservation and Development will combine multiple claims into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

² Claim E131014 has been split into twelve claims, E131014A-L, because the Measure 37 claim sought relief for multiple non-contiguous parcels in the same ownership and multiple contiguous parcels not in the same ownership. Claim E131014A addresses claimants William V. Crook, Mary J. Crook (aka M. Jacqueline Crook), Ronnie J. Crook, James A. Crook, David W. Crook and Kathleen L. D. Crook (aka Kathleen L. D. Crook-O'Donnell) and their entitlement to Measure 49 relief for tax lots 6400, 1600 and 8200. Claim E131014B addresses claimants William V. Crook and Mary J. Crook and their entitlement to relief on tax lots 1450, 300 (Section 33) and 300 (Section 9). Claim E131014C addresses claimants William V. Crook, Mary J. Crook, Ronnie J. Crook, James A. Crook and their entitlement to relief on tax lot 6300. Claim E131014D addresses claimants William V. Crook, Mary J. Crook, Ronnie J. Crook, James A. Crook, and Kathleen L. D. Crook and their entitlement to relief on tax lot 6600. Claim E131014E addresses claimants William V. Crook, Mary J. Crook, Ronnie J. Crook, and Kathleen L. D. Crook and their entitlement to relief on tax lot 8701. Claim E131014F address claimants James A. Crook, David W. Crook and Kathleen L. D. Crook and their entitlement to relief on tax lot 600. Claim E131014G addresses claimants William V. Crook and Ronnie J. Crook and their entitlement to relief on tax lot 100 (Section 31). Claim E131014H addresses claimants William V. Crook, Mary J. Crook, and Ronnie J. Crook and their entitlement to relief on tax lot 200. Claim E131014I addresses claimants William V. Crook, Mary J. Crook, Ronnie J. Crook, David Crook, James A. Crook and Kathleen L.D. Crook and their entitlement to relief on tax lot 1601. Claim E131014J addresses claimants William V. Crook, Mary J. Crook, and Ronnie J. Crook and their entitlement to relief on tax lot 6200. Claim E131014K addresses claimants William V. Crook, Mary J. Crook, and Ronnie J. Crook and their entitlement to relief on tax lot 7800. Claim E131014L addresses claimants William V. Crook and Mary J. Crook and their entitlement to relief on tax lot 100 (Section 33).

I. ELECTION

The claimants, William Crook, Mary Crook and Ronnie Crook, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 21, 2006, for property located near Brookings, in Curry 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.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimants are not eligible for any relief under Measure 49 because the claimants would not have been lawfully permitted to establish any home sites when they acquired the property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS 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 supplemental review under Section 6 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimants, William Crook, Mary Crook and Ronnie Crook, filed Measure 37 claim, M131014, with the state on November 21, 2006. The claimants filed Measure 37 claim, M37-0636, with Curry County on November 27, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimants timely filed Measure 37 claims with both the state and Curry County.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimants must establish each of the following:

(a) 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."

According to the deeds submitted by the claimants, William Crook, Mary Crook and Ronnie Crook are the owners of fee title to the property as shown in the Curry County deed records and, therefore, are owners of the property under Measure 49.

(b) All Owners of the Property Have Consented in Writing to the Claim

It appears that the claimants are the sole owners of the property. Therefore, no additional consent is required.

(c) The Measure 37 Claim Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property is located in Curry County, outside the urban growth boundary and outside the city limits of the nearest city, Brookings.

(d) One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

As stated in Section III above, the claimants may qualify for up to three home site approvals.

The property is currently zoned Forestry-Grazing (FG) by Curry County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimants' property consists of 19.67 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.

(e) 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.

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).

(f) On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under 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."

Curry County deed records indicate that claimants William Crook, Mary Crook and Ronnie Crook acquired the property on December 31, 1979.

The claimants acquired the 19.67-acre Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Crook County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. On December 31, 1979, the Measure 37 claim property was zoned Forestry-Grazing (FG) by Curry County. Curry County's FG zone included a fixed minimum acreage standard of 40 acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on December 31, 1979. Accordingly, the statewide planning goals, and in particular Goal 3 and 4, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On November 22, 1989, the Commission acknowledged the application of Curry County's Forestry-Grazing (FG) zone to the Measure 37 claim property. Although the Commission acknowledged Curry County's FG zone for compliance with the statewide planning goals, that zone did not establish a fixed minimum acreage standard for the creation of a lot or parcel on which a dwelling could be established. Rather, applications for division and development were evaluated on a case-by-case basis to ensure compliance with the county's farm and forest use

policies, the statewide planning goals and the applicable requirements of ORS chapter 215. The claimants' property consists of 19.67 acres. Therefore, on the claimants' acquisition date, they could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations, absent compliance with the applicable review criteria and standards.

However, because of uncertainty during the time period between adoption of the statewide planning goals in 1975 and each county's acknowledgment of its plan and land use regulations regarding the factual and legal requirements for establishing compliance with the statewide planning goals, the 2010 Legislative Assembly amended Measure 49. Senate Bill (SB) 1049 (2010) specifies the number of home sites considered lawfully permitted, for purposes of Measure 49, for property acquired during this period unless the record for the claim otherwise demonstrates the number of home sites that a claimant would have been lawfully permitted to establish. Those amendments provide, in relevant part, that eligibility for home site approval is subject to consistency with local land use regulations in effect when the claimant acquired the subject property.

The Measure 37 claim property was subject to Curry County's FG zone on the claimants' date of acquisition. Curry County's FG zone included a fixed minimum acreage standard of 40 acres.

The Measure 37 claim property consists of 19.67 acres. Therefore, based on the analysis under SB 1049, the claimants would not have been lawfully permitted to establish any home sites on their date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, William Crook, Mary Crook and Ronnie Crook, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on their date of acquisition.

V. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimants and the claimants' agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimants and the claimants' agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimants and the claimants' authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.