Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF SERVICE

For E133848 HARRINGTON, I certify that I served the attached PRELIMINARY EVALUATION on the claimant(s), agent(s), and county as listed on the document, and the attached NOTICE OF PRELIMINARY EVALUATION on;

(See Attached List)

by mailing a full, true and correct copy of the corresponding document to the person(s) listed above, on the date set forth below.

DATED this 17th day of March, 2010.

Name: Worcester
Measure 49 claims Analyst

SCHROCK, PERRY G & SCHROCK, AUDREY J
OR CURRENT OWNER
30180 SODAVILLE MTN HOME RD
LEBANON OR 97355-9373

MCCLOUD, ELBERT W, TR & MCCLOUD, GERALDINE K, TR
OR CURRENT OWNER
30002 SODAVILLE MTN HOME RD
LEBANON OR 97355-0000

TOOKER, DENNIS L & TOOKER, ELEANOR G
OR CURRENT OWNER
30004 SODAVILLE MTN HOME RD
LEBANON OR 97355-0000

VANDIVER, WILLIAM W, TR & VANDIVER, KATHLENE J, TR
OR CURRENT OWNER
30086 SODAVILLE MTN HOME RD
LEBANON OR 97355-9373

GOVRO, KATHY L
OR CURRENT OWNER
30184 SODAVILLE MTN HOME RD
LEBANON OR 97355-0000

WARD, ROBERT M & WARD, CONNIE M
OR CURRENT OWNER
30204 SODAVILLE MTN HOME RD
LEBANON OR 97355-9373

ELTON, JAMES A & ELTON, SHARA L
OR CURRENT OWNER
38391 HARRINGTON DR
LEBANON OR 97355-0000

VALENTINE, BRENT M & VALENTINE, YEN NGOC
OR CURRENT OWNER
4131 SE RIVER DR
MILWAUKIE OR 97267-0000

HARRINGTON, THOMAS L & DEBRA
38325 HARRINGTON DR
LEBANON OR 97355-0000

HALEY, DWIGHT W & HALEY, PHYLLIS J
OR CURRENT OWNER
30030 SODAVILLE MTN HOME RD
LEBANON OR 97355-9344

GLAB, ROBERT & GLAB, VELMA
OR CURRENT OWNER
30006 SODAVILLE MTN HOME RD
LEBANON OR 97355-0000

BARTON, KENNETH R & BARTON, LINDA L
OR CURRENT OWNER
30066 SODAVILLE MTN HOME RD
LEBANON OR 97355-0000

MUELLER, TIMOTHY K & MUELLER, JEANICE J
OR CURRENT OWNER
30098 SODAVILLE MTN HOME RD
LEBANON OR 97355-9373

CURTISS, MARK V & CURTISS, SUSAN G
OR CURRENT OWNER
30196 SODAVILLE MTN HOME RD
LEBANON OR 97355-9373

GOODMAN, CHARLES JEAN & GOODMAN, NATHAN S
OR CURRENT OWNER
PO BOX 754
LEBANON OR 97355-0000

REDMAN, KENNETH E
OR CURRENT OWNER
PO BOX 160
LEBANON OR 97355-0000

CARTER, WILLIAM D & CARTER, DEBRA A
OR CURRENT OWNER
30021 SODAVILLE MTN HOME RD
LEBANON OR 97355-9344

LINN COUNTY PLANNING
PO BOX 100
ALBANY OR 97321

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

March 17, 2010

To: Claimants

From: Richard Whitman, Director

Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E133848

Claimants: Thomas and Debra Harrington

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

This Preliminary Evaluation sets forth the department's preliminary analysis of the department's Supplemental Review of the claim under Measure 49 and is not a final decision. Oregon Administrative Rule 660-041-0090(3) requires the department to mail notice of the Preliminary Evaluation to the claimant, the claimant's authorized agent, the county with land use jurisdiction over the Measure 37 claim property, and to any owner who is an owner of record of real property located either within 250 feet of the Measure 37 claim property, if the Measure 37 claim property is not within a farm or forest zone, or within 750 feet of the Measure 37 claim property if it is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include any portion of the Measure 37 claim property or that has made a written request for a copy of the Preliminary Evaluation.

A claimant or the claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the Preliminary Evaluation no more than twenty-eight (28) days after the date of this Preliminary Evaluation. All materials and written responses must identify the claim number and be mailed or delivered to: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, OR 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. **Comments submitted electronically or by facsimile will not be accepted.**

The department will then mail a copy of all comments timely filed, if any are received, to you and your authorized agent. You or your authorized agent may then submit written comments in response to any comments submitted by a third party or county. Your response must be filed as provided in OAR 660-041-0100 within twenty-one (21) days after the date the department mailed any comments to you and your authorized agent. The department will review all responses submitted, and a final decision on the claim will be issued after such review. **Please note that if no third party or county comments are filed in response to the Preliminary Evaluation, the department will directly proceed to prepare and issue a final decision.**

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

Measure 49
Notice of Preliminary Evaluation

March 17, 2010

STATE ELECTION NUMBER: E133848

CLAIMANTS: Thomas L. and Debra A. Harrington

MEASURE 37 PROPERTY: Township 13S, Range 1W, Section 6
Tax lots 400 and 402
Linn County

As required under OAR 660-041-0090(3), you are receiving this notice to inform you of the Department of Land Conservation and Development's (Department) Preliminary Evaluation of the supplemental review of the above-referenced claim under Measure 49.

The claimant(s) identified above filed a Measure 37 claim pursuant to ORS 197.352 (2005 edition). On November 6, 2007, the Oregon voters approved Ballot Measure 49. Under Measure 49, Measure 37 claimants may elect to have their Measure 37 claim reviewed under Measure 49. Claimants who elect review of their Measure 37 claims under Measure 49, and who meet the requirements of either Section 6 or 7 of Measure 49, are eligible for relief in the form of a specific number of home site approvals, as provided for under Section 6 (up to three home sites) or 7 (up to ten home sites) of Measure 49.

The claimant(s) in the above-referenced claim elected supplemental review of the Measure 37 claim under Section 6 of Measure 49. To determine eligibility for relief, the department must determine whether the claim meets the following requirements:

- The claimant(s) must be owners of the property, as defined in Measure 49.
- All owners of the property must have consented in writing to the claim.
- The property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.
- One or more land use regulations must prohibit establishing the lot, parcel or dwelling.
- Establishing the lot, parcel or dwelling must not be prohibited by a regulation that was enacted before the claimant's acquisition date, or by a regulation that restricts or prohibits activities commonly and historically recognized as public nuisances, for the protection of public health or safety, or that are required to comply with federal law as described in ORS 197.352(3).
- On the claimant's acquisition date, the claimant lawfully was permitted to establish the number of lots, parcels or dwellings on the property that are authorized by either Section 6 or Section 7 of Measure 49 based on the claimant's Election.

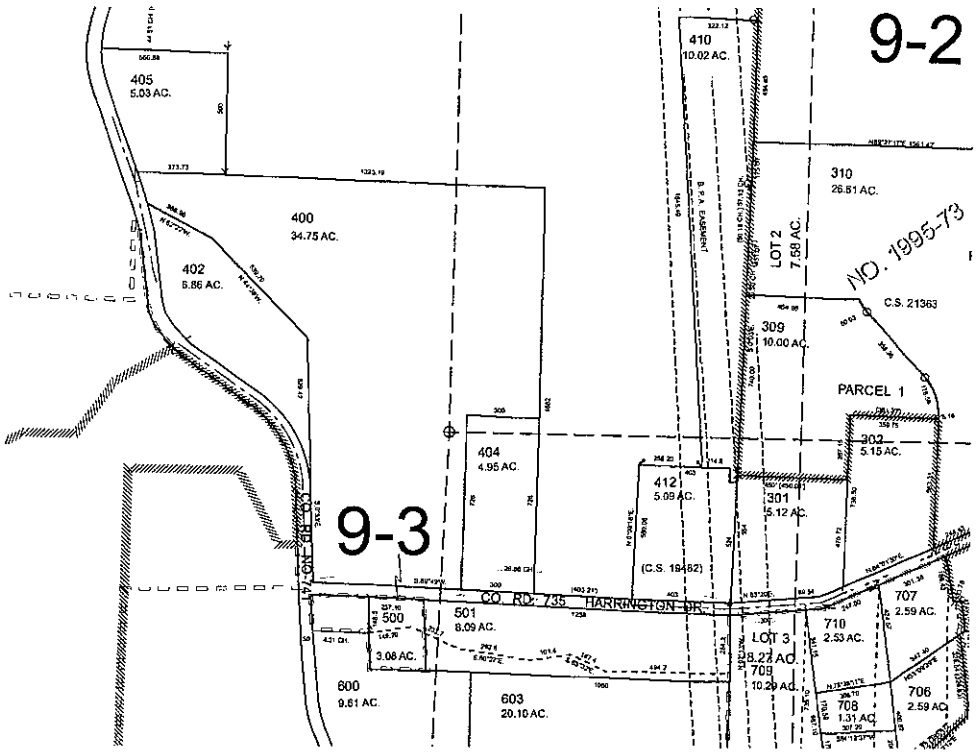
Based on the department's preliminary analysis, it appears that the claimants are qualified for up to three home site approvals on the Measure 37 claim property. The claimants' property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of six lots or parcels, which are developed with one dwelling. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property and the contiguous property under the same ownership, it appears that the home site approvals will allow the claimants to establish no additional lots or parcels and two dwellings on the Measure 37 claim property.

A copy of the Preliminary Evaluation of the claim is posted on the department's website at http://www.oregon.gov/LCD/MEASURE49/index.shtml. You may also request a copy of the Preliminary Evaluation by calling 503-373-0050 ext. 324.

This Preliminary Evaluation is not a final decision on this claim. Any person receiving this Notice may submit written comments, evidence or information addressing the above requirements upon which the department must base its decision. All materials and written responses must be mailed or delivered to: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, OR 97301-2540 and will be deemed timely filed if mailed or actually delivered to the department within 28 days from the date of this notice. The Department will provide a copy of all materials received to the claimant(s) and the agent for the claimant(s), who are entitled to an additional 21 days to file written responses. Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." **Comments submitted electronically or by facsimile will not be accepted.**

Following receipt and evaluation of all materials and responses submitted in response to this notice, the department will issue a final decision on this claim. If the final decision determines that the claim is entitled to relief in the form of one or more home sites, the exact location of authorized parcels and/or dwellings would be determined through a local county review process.

Subject Property (Tax Lots 400 and 402) and Area Map



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 17, 2010

STATE ELECTION NUMBER: E133848

CLAIMANTS: Thomas L. and Debra A. Harrington
38325 Harrington Drive
Lebanon, OR 97355

MEASURE 37 PROPERTY IDENTIFICATION: Township 13S, Range 1W, Section 6
Tax lots 400 and 402
Linn County

I. ELECTION

The claimants, Thomas and Debra Harrington, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located north of Harrington Drive and east of Sodaville-Mountain Home Road, near Lebanon, in Linn 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 qualified for up to three home site approvals on the Measure 37 claim property. The claimants' property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of six lots or parcels, which are developed with one dwelling. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property and the contiguous property under the same ownership, it appears that the home site approvals will allow the claimants to establish no additional lots or parcels and two dwellings on the Measure 37 claim 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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 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, Thomas and Debra Harrington, filed a Measure 37 claim, M133848, with the state on December 4, 2006. The claimants filed Measure 37 claims, M37-311-06 and M37-312-06, with Linn County on December 4, 2006. The state claim was filed on December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Linn 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 deed submitted by the claimants, Thomas and Debra Harrington are the owners of fee title to the property as shown in the Linn 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 Linn County, outside the urban growth boundary and outside the city limits of the nearest city, Lebanon.

(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 Farm/Forest (FF) by Linn 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 41.61 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."

Linn County deed records indicate that the claimants acquired the property on April 20, 1977.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Linn 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 Agriculture, Residential and Timber (ART) by Linn County. Linn County's ART zone included a fixed minimum acreage standard of 5 acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on April 20, 1977. Accordingly, the statewide planning goals, and in particular Goals 3, 4 and ORS chapter 215, applied directly to the Measure 37 claim property when the claimants acquired it.

On July 18, 1985, the Commission acknowledged the application of Linn County's Farm/Forest (FF) zone to the Measure 37 claim property. The Commission's acknowledgement of Linn County's FF zone confirmed that zone's compliance with Goals 3, 4 and ORS chapter 215. Linn County's acknowledged FF zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established.[1] On July 18, 1977, the claimants' property consists of 41.61 acres. Therefore, on the claimant's acquisition date, they could have established one home site in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

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 subject to consistency with local land use regulations in effect when they acquired the Measure 37 claim property, claimants whose property consists of at least 40 acres were lawfully permitted to establish three home sites.

[1] While the F/F zone did not generally have a specific minimum lot size, the zone did specify a minimum acreage requirement of 40 acres for the development of a farm or forest dwelling on a lot or parcel.

The Measure 37 claim property consists of 41.61 acres. Therefore, based on the analysis under SB 1049 (2010), the claimants were lawfully permitted to establish three home sites on the Measure 37 claim property on their date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimants, Thomas and Debra Harrington, qualify for up to three home site approvals under Section 6 of Measure 49.

V. NUMBER OF LOTS, PARCELS OR DWELLINGS ON OR CONTAINED WITHIN THE PROPERTY

The number of lots, parcels or dwellings that a claimant is authorized to 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. However, if a claimant otherwise qualifies for relief under Section 6 of Measure 49, the claimant will be able to establish at least one additional lot, parcel or dwelling, regardless of the number of lots, parcels or dwellings currently in existence.

Based on the documentation provided by the claimants and information from Linn County, the Measure 37 claim property appears to currently include two lots or parcels and no dwellings. As demonstrated by the information obtained from Linn County, the claimants also own tax lots 401, 404, 405 and 410 (T13S R1W S6) which are contiguous to the Measure 37 claim property. The contiguous property under the same ownership appears to include four lots or parcels and one dwelling. Together, it appears that the Measure 37 claim property and the contiguous property in the same ownership include six lots or parcels and one dwelling. Therefore, the three home site approvals the claimants appear to qualify for under Section 6 of Measure 49 will allow the claimants to establish no additional lots or parcels and two dwellings 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.

VI. PRELIMINARY STATEMENT OF PROPOSED LIMITATIONS AND CONDITIONS ON THE NUMBER AND SCOPE OF HOME SITE APPROVALS

The department has identified the following limitations and conditions that may affect the number or scope of the home site approvals that the claimants would otherwise be entitled to under Section 6 of Measure 49. This list may not be comprehensive and does not preclude the possibility that other considerations, not yet identified by the department, may affect the establishment of a land division or dwelling authorized by a home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 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. A 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.

4. The number of lots, parcels or dwellings a claimant may establish under a Measure 49 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 preliminary evaluation 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 Measure 49 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 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 a claimant is 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 future 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 a 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 any Measure 49 Home Site Authorization for the property will be 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 a home site approval, 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 will not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction in one of these zones, 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, on high-value forestland or on land within a ground water restricted area. However, existing or remnant 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 approvals 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.

12. Once the department issues a final home site authorization, a home site approval granted under that authorization will run with the property and will transfer with the property. A home site approval will not expire, except that if a claimant who received a 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 the 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.

VII. 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.