



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

July 28, 2010

STATE ELECTION NUMBER: H121808¹

CLAIMANT: Myrna Crone
20263 South Molalla Avenue
Oregon City, OR 97045

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 3S, Range 2E, Section 16B
Tax lots 2511, 2512, 2516, 2591 and 2596^{2,3}
Clackamas County

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I. ELECTION

The claimant, Myrna Crone, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 10, 2005, for property located at 20263 and 20265 South Molalla Avenue, near Oregon City, 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 claimant elected supplemental review of her 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. However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant made a claim for property that lies partially within an urban growth boundary. Myrna Crone was not entitled to Measure 49 relief on that basis.

¹ On January 14, 2009, the department issued a preliminary evaluation based on Measure 49 election E121808 in which the department indicated that the claimant would not be eligible for Measure 49 relief. This preliminary evaluation supersedes the preliminary evaluation for E121808.

² The Measure 37 claim property consisted of tax lots 2511, 2512, 2516, 2591 and 2596. The Measure 37 claim property has since been reconfigured into tax lots 2511, 2512, 2516, 2523, 2572, 2591 and 2596. According to Clackamas County, tax lots 2511, 2512, 2516, 2523, 2572, 2591 and 2596 comprise three legal parcels. In reliance on that information, this Preliminary Evaluation considers the Measure 37 claim property as three legal parcels.

³ The Measure 37 claim property consisted of tax 2511, 2512, 2516, 2591 and 2596. The claimant did not elect supplemental review for tax lots 2591 and 2596. A claim cannot be amended to remove claim property.

However, the Oregon State Legislative Assembly subsequently amended this Measure 49 requirement through the passage of House Bill 3225 (Chapter 855 (2009 Laws)) (HB 3225). As a result, this requirement no longer prevents the claimant, Myrna Crone, from obtaining Measure 49 relief. The claimant elected to seek relief under Measure 49, as amended by HB 3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is qualified for up to three home site approvals on tax lots 2511, 2591, and an approximately 3.42 acre portion of tax lot 2512 of the Measure 37 claim property. The claimant's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of three lots or parcels, which are developed with two dwellings. 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 claimant to authorize the three existing lots or parcels and authorize or replace the two existing dwellings and establish one additional dwelling on tax lots 2511, 2591, and an approximately 3.42 acre portion of tax lot 2512 of the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 on tax lot 2516 and an approximately 0.20 acre portion of tax lot 2512 of the Measure 37 claim property because the claimant would not have been lawfully permitted to establish any additional home sites when she acquired this portion of the Measure 37 claim property.

Based on the preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 on tax lot 2596 because this portion of the claim property is located inside an urban growth boundary.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANT 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 claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes land division and development that could have resulted in more than three home sites. Therefore, the claimant 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, as amended by HB 3225, a claimant must have filed a Measure 37 claim for the property with the state before Measure 49 became effective on December 6, 2007. If the claimant filed their state Measure 37 claim after December 4, 2006, the claimant must also have either (a) filed the claim in compliance with the provisions of OAR 660-041-0020 then in effect; (b) submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or (c) filed a Measure 37 claim with the county on or before December 4, 2006.

The claimant, Myrna Crone, filed a Measure 37 claim, M121808, with the state on August 10, 2005. The claimant filed a Measure 37 claim, ZC238-05 with Clackamas County on August 9, 2005. The state claim was filed prior to December 4, 2006.

It appears the claimant filed a timely Measure 37 claim with the state along with any additional claims or applications that the claimant had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

In addition to timely filing a state claim, to qualify for a home site approval under Section 6 of Measure 49 the claimant must also 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 claimant, Myrna Crone is the owner of fee title to the property as shown in the Clackamas County deed records and, therefore, is an owner of the property under Measure 49.

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

It appears that the claimant is the sole owner of the property. Therefore, no additional consent is required.

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

The Measure 37 claim property is located in Clackamas County and the majority of the property is located outside any urban growth boundary and outside the city boundary of the nearest city, Oregon City.

Tax lot 2596 is located inside an urban growth boundary. Section 14 of HB 3225 prohibits establishment of lots parcels or dwellings pursuant to a Measure 49 authorization on property within an urban growth boundary. The remaining criteria will therefore not be evaluated for tax lot 2596.

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

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

Former tax lots 2511 (11.69 acres) and 2591 (4.95 acres) and an approximately 3.42 acre portion of former tax lot 2512 (3.62 acres) of the Measure 37 claim property are currently zoned Timber (TBR) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

Former tax lots 2511, 2591 and the TBR zoned portion of former tax lot 2512 of the Measure 37 claim property consist of approximately 20.06 acres. Therefore, state land use regulations prohibit the claimant from establishing on this portion of the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

Former tax lots 2516 and an approximately 0.20 acre portion of former tax lot 2512 of the Measure 37 claim property are 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.

Former tax lots 2516 and the RRFF-5 zoned portion of former tax lot 2512 consist of approximately 0.48 acres. Therefore, state land use regulations prohibit the claimant from establishing on this portion of 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 claimant, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property located outside the urban growth boundary 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."

Clackamas County deed records indicate that the claimant acquired former tax lots 2511 (11.69 acres), 2512 (3.62 acres), and 2591 (4.95 acres) of the Measure 37 claim property on February 1, 1993, and former tax lot 2516 (0.28 acres) of the Measure 37 claim property on July 10, 2004.

However, the claimant is the surviving spouse of Donn C. Crone. According to the Clackamas County deed records, Donn C. Crone acquired former tax lots 2511, 2512, and 2591 of the Measure 37 claim property on May 1, 1975, acquired former tax lot 2516 of the Measure 37 claim property on October 8, 1980, and married the claimant on August 22, 1958. Under Section 21(2) of Measure 49, if the claimant is the surviving spouse of a person who was an owner of the Measure 37 claim property, the claimant's acquisition date is the later of the date the claimant was married to the deceased spouse or the date the spouse acquired the property. Therefore, the claimant's acquisition date of former tax lots 2511, 2512, and 2591 of the Measure 37 claim property is May 1, 1975 and acquisition date of former tax lot 2516 of the Measure 37 claim property is October 8, 1980.

The claimant acquired former tax lots 2511, 2512 and 2591 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (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. On May 1, 1975, former tax lots 2511, 2512 and 2591 of the Measure 37 claim property were zoned Urban Low Density Residential-20 (R-20) by Clackamas County. Clackamas County's R-20 zone included a fixed minimum acreage standard of 20,000 square feet. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired former tax lots 2511, 2591, and 2512 of the Measure 37 claim property on May 1, 1975. Accordingly, the statewide planning goals, and in particular Goal 4, and ORS chapter 215 applied directly to former tax lots 2511, 2591, and an approximately 3.42 acre of former tax lot 2512 the Measure 37 claim property when the claimant acquired it.

On December 31, 1981, the Commission acknowledged the application of Clackamas County's Transitional Timber District (TT-20) zone to former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot of 2512 the Measure 37 claim property. The Commission's acknowledgement of Clackamas County's TT-20 zone confirmed that zone's compliance with Goal 4 and ORS chapter 215. Clackamas County's acknowledged TT-20 zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. Former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property consist of approximately 20.06 acres. Therefore, on the claimant's acquisition date, she could have established on former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property 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. The claimant has submitted a Clackamas County Notice of Decision, No. Z0792-06-NF-FLD, in which the county determined that the claimant satisfied the standards and criteria in effect for establishing three home sites on former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property when the claimants acquired the property.

In this case the record for the claim indicates that the requested three home sites would have been lawfully permitted. Therefore, the claimant was lawfully permitted to establish three home sites on former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property on her date of acquisition.

The claimant also acquired former tax lot 2516 and an approximately 0.20 acre portion of former tax lot 2512 of 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.

On May 1, 1975, an approximately 0.20 acre portion of former tax lot 2512 of the Measure 37 claim property was zoned Urban Low Density Residential-20 (R-20) by Clackamas County, which had a fixed minimum acreage standard of 20,000 square feet. On October 8, 1980, former tax lot 2596 of the Measure 37 claim property was zoned Rural Residential Farm Forest (RRFF-5) by Clackamas County, which had a fixed minimum acreage standard of five acres. Because the Commission had not acknowledged Clackamas County's comprehensive plan and land use regulations for compliance with the goals, when the claimant acquired the property on May 1, 1975 and on October 8, 1980, the statewide planning goals, and in particular Goal 14, applied directly to former tax lot 2516, and an approximately 0.20 acre portion of former tax lot 2512 of 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 former tax lot 2516 and an approximately 0.20 acre portion of former tax lot 2512 of the Measure 37 claim property. The Commission's acknowledgement of Clackamas County's RRFF-5 zone confirmed that zone's compliance with Goal 14. Clackamas County's acknowledged RRFF-5 zone required five acres for the creation of a new lot or parcel on which a dwelling could be established. Former tax lots 2516 and an approximately 0.20 acre portion of former tax lot 2512 of property consist of approximately 0.48 acres. Therefore, on the claimant's acquisition dates, she could not have established on former tax lot 2516 and an approximately 0.20 acre portion of former tax lot 2512 of any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

However, SB 1049 (2010) provides in relevant part, that claimants whose property was ultimately acknowledged as non-resource land pursuant to Goal 14 and whose property was, at acquisition, either not zoned by the county or subject to a county zone that included a fixed minimum acreage standard of two or fewer acres, are eligible for up to three home site approvals with a minimum acreage standard of two acres per home site. A portion of former tax lot 2512 of the Measure 37 claim property consists of approximately 0.20 acres. Therefore, based on the analysis under SB 1049 (2010), the claimant was not lawfully permitted to establish any home sites on an approximately 0.20 acre portion of tax lot 2512 of the Measure 37 claim property on her date of acquisition.

SB 1049 (2010) also provides that claimants whose property was ultimately acknowledged as non-resource land pursuant to Goal 14 and whose property was, at acquisition, subject to a county zone that included a fixed minimum acreage standard of more than two acres, are eligible for the number of home site approvals that would have been lawfully permitted under the minimum acreage standard in that zone.

Former tax lot 2516 of the Measure 37 claim property consists of 0.28 acres. Former tax lot 2516 of Measure 37 claim property was subject to Clackamas County's RRFF-5 zone on the claimant's date of acquisition. That zone had a fixed minimum acreage standard of five acres. Therefore, based on the analysis under SB 1049 (2010), the claimant was not lawfully permitted to establish any home sites on former tax lot 2516 of the Measure 37 claim property on her date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Myrna Crone, qualifies for up to three home site approvals under Section 6 of Measure 49 on former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property.

Based on the preliminary analysis, the claimant does not qualify for Measure 49 home site approvals on former tax lots 2516 and an approximately 0.20 acre portion of former tax lot 2512 of the Measure 37 claim property because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimant's dates of acquisition.

Based on the preliminary analysis, the claimant does not qualify for Measure 49 home site approvals on tax 2596 because this portion of the claim property is located inside the Oregon City Urban Growth Boundary.

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 claimant and information from Clackamas County, the Measure 37 claim property appears to currently include three lots or parcels and two dwellings. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant appear to qualify for under Section 6 of Measure 49 on former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512 of the Measure 37 claim property will allow the claimant to authorize the three existing lots or parcels and authorize or replace the two existing dwellings and establish one additional dwelling on the portion of the property consisting of former tax lots 2511, 2591, and an approximately 3.42 acre portion of former tax lot 2512. Each authorized, replacement or additional dwelling must be on a separate lot or parcel and must be contained within the qualifying 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 claimant 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 claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is 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 claimant is 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 claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is 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 claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant 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 claimant 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 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 a home site approval, is sited on a separate lot or parcel.
10. If the property described in a claim is divided by an urban growth boundary, any new dwelling, lot or parcel established on the property pursuant to a home site approval must be located on the portion of the property outside the urban growth boundary.
11. Because the property is located in a 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.

12. Because the property is located in a 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.

13. 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 claimant and the claimant's 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 claimant and the claimant's 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 claimant and the claimant's 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.