OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

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

October 22, 2008

STATE ELECTION NUMBER: E129337

CLAIMANTS:
Willis M. Cline
Jeannette Cline
163 Cline Ranch Road
Glendale, Oregon 97442

MEASURE 37 PROPERTY IDENTIFICATION:
Township 32S, Range 5W, Section 19D
Tax lot 1500, 1501, 1502 and 1503[1]
Douglas County

I. ELECTION

The claimants, W.M. and Jeannette Cline, filed a claim under ORS 197.352 (2005) (Measure 37) on May 16, 2006, for property located at 4930, 5016, 5058 and 5120 Azalelea-Glen Road, near Glendale, in Douglas County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed a Measure 37 claim to elect supplemental review of their claim under either Section 6 (Express option) or 7 (Conditional option) of Measure 49. The claimants have elected supplemental review of their Measure 37 claim under the Express option. The Express option authorizes the Department of Land Conservation and Development (the department) to issue 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 four lots, which are not developed with any 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

[1] Information obtained from Douglas County indicates that the configuration of the Measure 37 subject property, which includes four tax lots, has been altered by the Assessment and Planning Department's lot line adjustments. Tax lot 1502 consisted of 9.99 acres and currently consists of 2.00 acres; tax lot 1503 consisted of 9.95 acres and currently consists of 17.87 acres.

that the home site approvals will allow the claimants to establish three dwellings on the Measure 37 claim property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

Under the Section 6 Express option, the number of home site approvals issued 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 four home site approvals in the election material. The Measure 37 waiver issued for this claim describes four home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under the Section 6 Express option.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under the Section 6 Express option, 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, W.M. and Jeannette Cline, filed a Measure 37 claim, M129337, with the state on May 16, 2006. The claimants filed Measure 37 claims, M37-31(a-d), with Douglas County on May 22, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Douglas 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 the Express option 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 deeds submitted by the claimants, W.M. and Jeannette Cline, are the owners of fee title to the property as shown in the Douglas County deed records.

(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 consents are 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, which includes tax lots 1500, 1501, 1502 and 1503, is located in Douglas County, at 4930, 5016, 5058 and 5120 Azalea-Glen Road, outside the urban growth boundary and outside the city limits of the nearest city, Glendale.

(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 Exclusive Farm Use-Grazing (FG) by Douglas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.[2] Goal 3 requires agricultural land to be zoned exclusive farm use (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a dwelling on a lot or parcel less than 80 acres in size in an EFU zone.

The claimants' property consists of 42.85 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.

[2] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils and is located in western Oregon.

Based on the documentation submitted by the claimants, it does not appear that the establishment of three home sites 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."

Douglas County deed records indicate that the claimants acquired the property on November 26, 1973.

On November 26, 1973, the Measure 37 claim property was subject to state statutes and Douglas County's General Agriculture (AG) zone.

Douglas County's AG zone required at least ten acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 42.85 acres. Therefore, under the local zoning then in effect, the claimants lawfully could have established the maximum limit of three home sites on their date of acquisition.

State law in effect on November 26, 1973, namely ORS 197.175(1) and 197.280 (1973) required, in addition to any local plan or zoning provisions, that counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973). Under ORS 215.515, one of the interim planning goals was to "conserve prime farm land for the production of crops." This goal is furthered under Section 11(3)(b) of Measure 49, which limits the size and location of development on prime farmland. Section 11(3) of Measure 49 requires new parcels on high-value land to be no larger than two acres and "clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use."

However, tax lots 1500, 1501, 1502 and 1503 were already in existence when the claimants acquired them in 1973, and the claimants seek through this process only to develop dwellings on three of those previously existing lots. The relevant provisions of ORS 197 and ORS 215.515 would not have prohibited the county from approving development of dwellings on three of the tax lots that make up the Measure 37 claim property, when the claimants acquired the lots in 1973.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimants, W.M. and Jeannette Cline, qualify for up to three home site approvals under the Section 6 Express option 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 the home site approvals 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. However, if a claimant otherwise qualifies for relief under the Section 6 Express option, 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 Douglas County, the Measure 37 claim property appears to currently include four undeveloped lots or parcels. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimants appear to qualify for under Section 6 of Measure 49 will allow the claimants to establish up to three 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 land divisions or the establishment of dwellings authorized by the home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 home site approval 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 approval 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 be eligible to establish under a Measure 49 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 lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to the home site approval must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

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 Measure 37 claim property to an authorized home site pursuant to the 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 one or more new lots, parcels or dwellings on the Measure 37 claim property. No additional development is authorized on contiguous property for which no Measure 37 claim was filed. Each 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 will be established pursuant to the home site approval. The 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 Measure 37 claim property, pursuant to the home site approval, is sited on a separate lot or parcel.

7. Once the department issues a final home site approval, the home site approval will run with the property and will transfer with the property. The home site approval will not expire, except that if a claimant who received a home site approval 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 approval 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.

8. Because the property is located in an exclusive farm use zone, the home site approval will not authorize new lots or parcels that exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site approval 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.

9. Because the property is located on high-value farmland and was acquired during the period when the interim land use planning goals set forth in ORS 215.515 (1973) applied to the property, Measure 49 requires new home sites to be no more than two acres and clustered on the portion of the property least suitable for farm 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.