Oregon
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TO: The Honorable Senator Chris Edwards, Chair
Senate Committee on Environment and Natural Resources

FROM: Michael Morrissey, Policy Analyst
Department of Land Conservation and Development

RE: HB 2831

Please accept this letter which was submitted to the House Rural Communities, Land Use and Water Committee. This letter clarifies our understanding of how property line adjustment provisions work relative to M49 authorizations, and to ORS 92.192. We also list the number of M49 claim properties, by property size, to help determine how HB 2831 might apply. Based on the information we are providing, and the possible misapplication of lot line provisions to M49 authorized development, the department supports HB 2831. Our understanding of Measure 49 legislation and policy is that the legislature intended to retain as much productive farmland as possible when allowing new Measure 49 authorized parcels to be created.

Measure 49 explicitly protects continued farm and forest use of M49 properties through the requirements of section 11(4)(a) in ORS 195:

> A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11, chapter 424, Oregon Laws 2007. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:
>
> (A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or on land within a ground water restricted area; or
>
> (B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.
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> (b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.

ORS 92.192 was adopted in 2008 in response to *Phillips v. Polk County*, 53 Or LUBA 194 (2007 – affirmed by the Court of Appeals), a case in which a series of PLAs was used to gain approval for a dwelling that would otherwise not be allowed. This from LUBA Headnotes:

> **33.3 Land Divisions - Lot Line Adjustments.** The ORS 92.010(7) definition of "partition land" excludes property line adjustments "where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance." A property line adjustment where the parcel or lot that is reduced in size by the property line adjustment fails to comply

> with the minimum lot or parcel size established by the zoning ordinance is therefore a partition rather than a property line adjustment. *Phillips v. Polk County*, 53 Or LUBA 194 (2007).

ORS 92.192 is primarily intended to prevent the creation of substandard-sized parcels under the guise of PLAs. Your committee received testimony opposing HB 2831, that the 2- and 5-acre parcels created pursuant to M49, within substandard-sized M49 tracts, are subject to ORS 92.192 and are allowed to be reconfigured with the remnant M49 parcel or adjacent parcels, because the tracts are already substandard-sized, and because there is no limitation applicable to M49 properties in ORS 92.192.

The Legislature created maximum parcel sizes of 2 and 5 acres for new M49 parcels limiting the impact on farmland for new dwellings that would otherwise not be permissible. Because ORS 92.192 was developed in response to the *Phillips* case, it does not appear that the Legislature intended to connect the two pieces of Legislation. Attorney General advice received by the department (attached), and subsequently provided to the counties, verifies that M49 law preempts ORS 92.192 allowances. The department believes that adoption of HB 2831 will strengthen county compliance with M49 law in relation to property line adjustment applications.

Using the EFU and forest minimum parcel size in most common use across the state to define "substandard-sized" – 80 acres, we estimate that there are approximately 1,100 distinct M49 substandard-sized tracts, each eligible for up to two new parcels that could be subject to lot line adjustment using the interpretation in the opposing testimony to the committee. In addition, just as significantly, these numbers do not account for the possibility of 2- and 5-acre M49 authorized parcels being reconfigured with adjacent substandard-sized parcels outside M49 tracts, whether or not the original M49 tract is substandard-sized.

Thank you for this opportunity to provide you with information about HB2831. If committee members have questions about this testimony, I may be reached at 503-975-4004 or through email at Michael.Morrissey@state.or.us.

Measure 49 Claims Summary Table

This table portrays an estimate of the number of distinct M49 authorized properties eligible for up to 2 new, 2- or 5- acre parcels, displayed in 10-acre increments. Generally, properties of less than 80 acres in farm and forest zones, are considered substandard parcels for purposes of committee discussion of HB 2831, and are believed by some to be eligible for property line adjustments based on 2008 legislation.

Estimated number of claim properties zoned farm or forest that qualify for new parcels under Measure 49

Claim Property Size Class (acres)	Number of Claims*
0-9.99	170
10-19.99	240
20-29.99	160
30-39.99	170
40-49.99	130
50-59.99	90
60-69.99	60
70-79.99	90
80-89.99	60
90-179.99	270
180++	1150

*Estimated error varies from +/- 2-20% within an individual size class.