



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

June 11, 2009

STATE ELECTION NUMBER: E120517

CLAIMANTS: Betsy I. Wilson, Mary P. Basche,
Nancy H. Basche and Suzanne B. McCrone
425 Hwy 7 South
Baker City, OR 97814

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 9S, Range 39E, Section 8
Tax lot 600
Baker County

PRIMARY CONTACT INFORMATION: Betsy Wilson
425 Hwy 7 South
Baker City, OR 97814

I. ELECTION

The claimants, Betsy Wilson, Nancy Basche and Suzanne McCrone, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on April 8, 2005, for property located near Baker City, in Baker 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 claimants Betsy Wilson, Nancy Basche and Suzanne McCrone are not eligible for any relief under Measure 49 because the claimants would not have been lawfully permitted to establish any additional home sites when they acquired the property.

Based on the department's preliminary analysis, it appears that claimant Mary Basche is not eligible for any relief under Measure 49 because the claimant is no longer an owner of 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 one home site approval in the election material. The Measure 37 waiver issued for this claim describes one home site. Therefore, the claimants may qualify for a maximum of one home site approval 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 filed a Measure 37 claim, M120517, with the state on April 8, 2005. The claimants filed a Measure 37 claim, M37-05-18, with Baker County on April 5, 2005. 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 Baker 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, Betsy Wilson, Nancy Basche and Suzanne McCrone, are the owners of fee title to the property as shown in the Baker County deed records and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Mary Basche has not established her ownership of the property for the purposes of Measure 49. The claimant acquired the claim property on February 8, 1973; however, she later conveyed fee title to the property, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Mary Basche is no longer an owner of tax lot 600.

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

It appears that claimants Betsy Wilson, Nancy Basche and Suzanne McCrone 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 Baker County, outside the urban growth boundary and outside the city limits of the nearest city, Baker City.

(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 one home site approval.

The property is currently zoned Mineral Extraction (ME) by Baker County, in accordance with ORS chapter 215 and OAR 660, divisions 16 and 23, because the property contains "mineral and aggregate resources" as defined by Goal 5 and is mapped for big game habitat. For properties mapped for big game habitat, Baker County's ME zone allows dwellings which are "necessary and accessory" to mining as a conditional use and requires lots or parcels to be equal to the size of the original mining patent or 40 acres, whichever is smaller.

The claimants' property consists of 5.09 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the one home site 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 one home site 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."

Baker County deed records indicate that claimants Betsy Wilson, Nancy Basche and Suzanne McCrone acquired the property on February 12, 2004.

On February 12, 2004, the Measure 37 claim property was subject to Baker County's acknowledged Mineral Extraction (ME) zone. Baker County's ME zone did not allow the establishment of a dwelling except under a conditional use review, as described above, in which an applicant was required to establish that the dwelling was "necessary and accessory" to mining. Additionally, in areas mapped for big game habitat, the zone required a lot or parcel to be the size of the original mining patent or 40 acres, whichever was smaller. The claimants' property consists of 5.09 acres that were part of a patented mining claim, and is located in an area mapped for big game habitat. Therefore, the claimants lawfully could not have established any home sites on their date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants do not qualify for a Measure 49 home site approval because the claimants were not lawfully permitted to establish the requested dwelling on the claimants' 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.