



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

April 3, 2009

STATE ELECTION NUMBER: E122452

CLAIMANTS: Ronald and Viola Rasmusan
18445 S Cadle Road
Oregon City, OR 97045

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 3S, Range 2E
Section 1, Tax lot 4500
Section 1AD, Tax lots 1400, 1401 and 1402
Clackamas County

I. ELECTION

The claimants, Ronald and Viola Rasmusan, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on September 23, 2006 for property located at 18445 S Cadle Road, 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 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 not eligible for any relief under Measure 49 because the claimants are not prohibited from establishing on the Measure 37 claim property the one home site the claimants may otherwise qualify for under Section 6 of Measure 49.

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.

However, if the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and the contiguous property under the same ownership is equal to or greater than the maximum number of home sites a claimant could otherwise qualify for under Section 6 of Measure 49, a claimant may qualify for only one home site approval.

The claimants have requested one home site approval in the election material. The Measure 37 waiver issued for this claim describes one acre home sites. Because it appears that the Measure 37 claim property and contiguous property in the same ownership contain three or more lots or parcels that are developed with dwellings the claimants may qualify for a maximum of one home site approval.

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, Ronald and Viola Rasmusan, filed a Measure 37 claim, M122452, with the state on September 23, 2006. The claimants filed a Measure 37 claim, ZC279-05, with Clackamas County on September 23, 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 Clackamas 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, Ronald and Viola Rasmusan are the owners of fee title to tax lot 1402 as shown in the Clackamas County deed records and, therefore, are owners of the property under Measure 49.

According to the deed submitted by the claimants, Ronald and Viola Rasmusan are the settlors of a revocable trust into which they conveyed tax lots 1400, 1401 and 4500, 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Oregon 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 one home site.

Tax lot 4500 of the Measure 37 claim property is currently zoned Ag/Forest (AG/F) by Clackamas 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.

Tax lot 4500 consists of 40 acres.

Tax lots 1400, 1401 and 1402 of the Measure 37 claim property are currently zoned Rural Area Single Family Residential District (RA-2) 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 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 RA-2 zone requires a minimum lot size of two acres.

Tax lots 1400, 1401 and 1402 consist of 9.74 acres, and are comprised of two 1.8-acre parcels with dwellings (tax lots 1400 and 1401) and one 6.14-acre parcel (tax lot 1402) with a dwelling. Under the current zoning, tax lot 1402 is capable of being divided into at least one additional home site.

Therefore, no state law prohibits the claimants from establishing on the Measure 37 claim property the one home site the claimants may otherwise qualify for under Section 6 of Measure 49.

Because this requirement has not been met, the remaining approval criteria will not be evaluated.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimants, Ronald and Viola Rasmusan, do not qualify for any home site approvals under Section 6 of Measure 49 because the claimants are not prohibited from establishing on the Measure 37 claim property the one home site the claimants may otherwise qualify for under Section 6 of Measure 49.

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.