



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

January 12, 2009

STATE ELECTION NUMBER:

E124625

CLAIMANTS:

Mayme Neely
50 Ruby Avenue #205
Eugene, OR 97404

Daniel and Sandra Teall
CMR 454 Box 2852
APO AE 09250

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 16S, Range 4W, Section 35
Tax lot 403
Lane County

**AGENT/
PRIMARY CONTACT INFORMATION:**

Sandra Teall
CMR 454 Box 2852
APO AE 09250

I. ELECTION

The claimants, Mayme Neely, and Daniel and Sandra Teall, filed a claim under ORS 197.352 (2005) (Measure 37) on March 27, 2006 for property located at 91177 and 91179 River Road, near Junction City, in Lane 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. 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 claimant Mayme Neely no longer owns the Measure 37 claim property, and because claimants Daniel and Sandra Teall would not have been lawfully permitted to establish any additional home sites when they acquired the 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 three home site approvals in the election material. The Measure 37 waiver issued for this claim describes 12 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6.

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, Mayme Neely, and Daniel and Sandra Teall, filed a Measure 37 claim, M124625, with the state on March 27, 2006. The claimants filed a Measure 37 claim, PA 06-5132, with Lane County on January 25, 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 Lane 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, Daniel and Sandra Teall are the owners of fee title to the property as shown in the Lane County deed records and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Mayme Neely is not an owner of the property. Mayme Neely is the holder of a life estate. Life estate holders are not owners of property for purposes of Measure 49.¹

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

It appears that the claimants Daniel and Sandra Teall 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 Lane County, at 91177 and 91179 River Road, outside the urban growth boundary and outside the city limits of the nearest city, Junction City.

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

As stated in Section III above, claimants Daniel and Sandra Teall may qualify for up to three home site approvals.

The property is currently zoned Exclusive Farm Use (E30) by Lane County in accordance with ORS chapter 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3. 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. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Lane County’s E30 zone, which requires a minimum lot size of 30 acres.

Daniel and Sandra Teall’s property consists of 12.22 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;

¹ Claimant Mayme Neely acquired tax lot 403 on October 8, 1970, as reflected by a recorded warranty deed included with the claim. However, Mayme Neely, transferred fee title in the property to Daniel and Sandra Teall on March 5, 1990, retaining only a life estate. Mayme Neely is therefore no longer an owner for the purposes of her Measure 49 claim.

- (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 three home sites 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."

Lane County deed records indicate that claimants, Daniel and Sandra Teall, acquired the property on March 5, 1990.

On March 5, 1990 the Measure 37 claim property was subject to state statutes, the statewide planning goals and implementing regulations. On Daniel and Sandra Teall's date of acquisition the property was zoned E30 by Lane County. However, because the Commission had not acknowledged the county's comprehensive plan and land use regulations as being in compliance with the statewide planning goals, the statewide planning goals and Goal 3 in particular, and ORS ch. 215 applied directly to claimants Daniel and Sandra Teall's property.

On January 29, 1991 the Commission acknowledged the application of Lane County's E30 zone to the Measure 37 claim property. The Commission's acknowledgement of Lane County's E30 zone confirmed that zone's compliance with Goal 3 and ORS ch. 215. Lane County's acknowledged E30 zone required 30 acres for the creation of a new lot or parcel on which a dwelling could be established. Claimants Daniel and Sandra Teall's property consists of 12.22 acres. Therefore, on Daniel and Sandra Teall's acquisition date, they could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. It appears that claimants Daniel and Sandra Teall do not qualify for any home sites unless they can show that a direct application of the Goals and ORS ch. 215 would have allowed them to establish additional home sites.

2. Preliminary Conclusion

Based on the preliminary analysis, claimant Mayme Neely does not qualify for any Measure 49 home site approvals because she is not an owner of the Measure 37 claim property.

Based on the preliminary analysis, claimants Daniel and Sandra Teall do not qualify for Measure 49 home site approvals because they were not lawfully permitted to establish the lots, parcels or dwellings on their 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.