



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

February 23, 2009

STATE ELECTION NUMBER: E129699

CLAIMANTS: Wesley and Juanita Haffner
1929 SE Grand Prairie Rd C-21
Albany, OR 97322

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 18, Range 4,
Section 8, Tax lot 400
Section 16, Tax lot 1100
Section 17, Tax lot 100
Lane County

AGENT CONTACT INFORMATION: Roy Carver III
Carver Property Management Corp.
PO Box 51505
Eugene, OR 97405

Paul V. Vaughn
Hershner Hunter LLP
180 East 11th Avenue
Eugene, OR 97401

I. ELECTION

The claimants, Wesley and Juanita Haffner, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 18, 2006 for property located 1.6 miles southwest of the intersection of Gimpl Hill Road and Bailey Hill Road, near Eugene, in Lane 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 ten home site approvals on the Measure 37 claim property provided that the claimants submit an appraisal of their tenth home site meeting the qualification standard described in Section 7(5)(g) of Measure 49. The claimants' property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of three lots or parcels, which are developed with one dwelling. 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 that the home site approvals will allow the claimant to establish seven additional lots or parcels and nine additional dwellings on the Measure 37 claim property.

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

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The Measure 37 waiver issued for this claim describes more than ten home sites. The claimants have requested ten home site approvals in the election material. The appraisal and addendum submitted by the claimants appears to indicate that the value of ten home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimants may qualify for a maximum of ten home site approvals under Section 7.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

In order to be eligible for relief under Section 7 of Measure 49, the Measure 37 claim property must not be high-value farmland or high-value forestland, nor in a ground water restricted area.

Based on documentation submitted by the claimants with their election, it appears that the property is not high-value farmland or high-value forestland and is not in a ground water restricted area.

To qualify for a home site approval under Section 7 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, Wesley and Juanita Haffner, filed a Measure 37 claim, M129699, with the state on July 18, 2006. The claimants filed a Measure 37 claim, PA06-6276, with Lane County on July 18, 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 7 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 deeds submitted by the claimants, Wesley and Juanita Haffner are the settlors of revocable trusts into which they conveyed the Measure 37 claim property 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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Eugene.

(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 ten home site approvals.

The property is currently zoned Impacted Forest Lands Zone (F-2) by Lane County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

Based on Lane County Assessor's data, the claimants' property consists of 176.07 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the ten home sites the claimants may qualify for under Section 7 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 ten 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 claimant Wesley Haffner acquired the property on October 18, 1972, and claimant Juanita Haffner acquired the property on May 5, 1986. Therefore, for purposes of Measure 49, the claimants' acquisition date is October 18, 1972.

On October 18, 1972, the Measure 37 claim property was subject to Lane County's Agriculture, Grazing, Timber Raising District (AGT) zone. Lane County's AGT zone required at least five acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 178.03 acres. Therefore, the claimants lawfully could have established the requested ten home sites on their date of acquisition.

(g) The enactment of one or more land use regulations that are the basis for this claim, caused a reduction in the fair market value of the Measure 37 claim property

that is equal to or greater than the fair market value of the home site approvals requested

Sections 7 and 8 of Measure 49 require that the reduction in the fair market value of the property be demonstrated through an appraisal that meets the following requirements:

1) The appraisal must be submitted within 180 days after the Measure 49 election is filed with the department.

The claimants submitted their election on February 13, 2008, and their appraisal on February 13, 2008. The appraisal was submitted within 180 days of the election filing.

2) The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.

Both the appraisers signing the appraisal submitted, Charles P. Thompson and Bradford J. Thompson, are state-certified general appraisers; therefore this requirement appears to have been met.

3) The appraisal must comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

An appraisal review commissioned by DLCD has determined that when combined with the appraisal addendum filed by the claimants' representative on September 10, 2008, the claimants' appraisal filed for the Measure 37 claim property meets the threshold requirements for Uniform Standards of Professional Appraisal Practice compliance; therefore this requirement appears to have been met.

4) The appraisal must expressly determine the highest and best use of the property at the time the land use regulation was enacted and the highest and best use must be determined to be residential use.

The appraisal and appraisal addendum submitted determines that the highest and best use of the Measure 37 claim property at the time the land use regulation was enacted was a 134-lot subdivision; therefore this requirement appears to have been met.

5) The appraisal must show the fair market value of the property one year before and one year after the enactment of the regulation(s) the claimants assert have resulted in a reduction of the fair market value of the Measure 37 claim property.

The claimants assert that the enactment of State Land Use Planning Goal 4 reduced the fair market value of the Measure 37 claim property. The appraisal submitted by the claimants values the property on December 28, 1973, one year before Goal 4 was enacted, and on December 28, 1975, one year after Goal 4 was enacted; therefore this requirement appears to have been met.

6) The reduction in fair market value of the Measure 37 property determined by the appraisal shall be adjusted by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703 as required by Section 7 (6) and (7).

In the appraisal submitted by the claimants the reduction in fair market value based on the difference between the value of the Measure 37 claim property on December 28, 1975 and December 28, 1973 has been adjusted for interest and reduced by tax savings adjusted for interest; therefore this requirement appears to have been met.

7) The appraisal must show the present fair market value of the each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49.

The appraisal submitted by the claimants values the claimants' loss in property value due the enactment of Goal 4 at approximately \$2,818,000. The appraisal values the market value of nine additional home sites at approximately \$1,082,000. However, the claimants have requested a total of ten home site approvals. Therefore it appears that if the claimants submit an appraisal showing that the value of their tenth home site is worth an amount less than approximately \$1,736,000 they will qualify for the maximum of ten home site approvals under Section 7 of Measure 49.

Provided that the claimants submit an appraisal valuing their tenth home site at an amount equal to or less than approximately \$1,736,000.00, based on the analysis above, the appraisal submitted by the claimants meets the requirements of Sections 7 and 8 of Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimants, Wesley and Juanita Haffner, qualify for up to ten home site approvals under Section 7 of Measure 49, provided that they submit and appraisal of their tenth home site that meets the qualification standard described in Section 7(5)(g) 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 a home site authorization 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.

Based on the documentation provided by the claimants, the Measure 37 claim property appears to currently include three lots or parcels and one dwelling. There is no contiguous property under the same ownership. Therefore, provided that the claimants submit a sufficient appraisal of their tenth home site, the ten home site approvals the claimants appear to qualify for under Section 7 of Measure 49 will allow the claimants to establish up to seven additional lots or

parcels and nine additional 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 7 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 the establishment of a land division or dwelling authorized by a home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 home site authorization 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 authorization 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 home site 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 authorization must be reduced according to the methodology stated in Section 7(2)(b) 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 property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant to a 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 a new lot, parcel or dwelling on property on which the claimants are eligible for Measure 49 relief. No additional

development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which a claimant is not eligible for Measure 49 relief. A 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 may be established pursuant to the home site approval.

7. The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of lots parcels or dwellings existing on the property on which the claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.
8. A 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 property on which the claimants are eligible for Measure 49 relief, pursuant to a home site approval, is sited on a separate lot or parcel.
9. Once the department issues a final home site authorization, a home site approval granted under that authorization will run with the property and will transfer with the property. A home site approval will not expire, except that if a claimant who received a home site authorization 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 authorization 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.
10. Because the property is located in a forest zone, the home site authorization will not authorize new lots or parcels that exceed five acres. However, existing lots or parcels may exceed five acres. Before beginning construction in one of these zones, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization 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. However, existing lots or parcels may exceed two acres.
11. Because the property is located in a forest zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site approvals to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would

otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.

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.