



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

October 20, 2009

STATE ELECTION NUMBER:

E129746

CLAIMANTS:

Burnadine Bratton
2075 Knowles Road
Medford, OR 97501

Joshua C. Bratton
350 NE 15th Avenue
Milton-Freewater, OR 97862

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 38S, Range 2W, Section 4
Tax lots 700 and 701
Jackson County

I. ELECTION

The claimants, Burnadine Bratton and Joshua Bratton, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 26, 2006, for property located at 2075 Knowles Road, near Medford, in Jackson 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 claimant Burnadine Bratton is not eligible for any relief under Measure 49 because she no longer owns the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that claimant Joshua Bratton is not eligible for any relief under Measure 49 because he would not have been lawfully permitted to establish any additional home sites when he 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 11 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals 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, Burnadine Bratton and Joshua Bratton, filed a Measure 37 claim, M129746, with the state on July 26, 2006. The claimants filed a Measure 37 claim, M37 2006-00076, with Jackson County on July 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 Jackson 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 information submitted by the claimants, Burnadine Bratton has not established ownership of the property for the purposes of Measure 49. Claimant Burnadine Bratton acquired tax lot 700 on November 10, 1955, and tax lot 701 on January 7, 1972, as reflected by recorded warranty deeds included with the claim. However, Burnadine Bratton conveyed fee title to Joshua Bratton on July 12, 2001, retaining for herself a life estate. Under Measure 49, a life

estate holder is not an owner of property; thus, for purposes of Measure 49 Burnadine Bratton was no longer an owner of tax lots 700 and 701 after July 13, 2001.

According to the deed submitted by the claimants, Joshua Bratton is the owner of fee title to the property as shown in the Jackson County deed records and, therefore, is an owner of the property under Measure 49.

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

It appears that claimant Joshua Bratton is the sole owner 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 Jackson County, outside the urban growth boundary and outside the city limits of the nearest city, Medford.

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

As indicated in Sections III and IV above, claimant Joshua Bratton may qualify for up to three home site approvals.

The property is currently zoned Rural Residential-5 (RR-5) by Jackson 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 than 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. Jackson County's RR-5 zone requires a minimum lot size of five acres.

The claimant's property consists of 11.36 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property one of the three home sites claimant Joshua Bratton 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 three home sites for which claimant Joshua Bratton 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."

Jackson County deed records indicate that claimant Joshua Bratton acquired tax lots 700 (3.89 acres) and 701 (7.47 acres) on July 13, 2001.

On July 13, 2001, the Measure 37 claim property was subject to Jackson County's acknowledged Rural Residential-5 (RR-5) zone. Jackson County's RR-5 zone required 5 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 11.36 acres, and is developed with two dwellings. Therefore, the claimant lawfully could not have established any additional home sites on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, claimant Burnadine Bratton does not qualify for any Measure 49 home site approvals because she no longer owns the Measure 37 claim property.

Based on the preliminary analysis, claimant Joshua Bratton does not qualify for Measure 49 home site approvals because he was not lawfully permitted to establish the lots, parcels or dwellings on his 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.