



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

December 16, 2009

STATE ELECTION NUMBER: E129859 and E129829¹

CLAIMANTS: Richard L. and Sandra M Twigg
31500 SW Firdale Road
Cornelius, OR 97113

Leland R. and Shirley A. Twigg²
32000 SW Firdale Road
Cornelius, OR 97113

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 1S, Range 3W, Section 36
Tax lots 901, 1600, 1700 and 1701³
Washington County

I. ELECTION

The claimants, Richard and Sandra Twigg and Leland and Shirley Twigg, filed two claims with the state under ORS 197.352 (2005) (Measure 37) on August 9, 2006, for property located at 31500 SW Firdale Road, near Cornelius, in Washington 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

¹Claims E129859 and E129829 have been combined into one claim because the properties are contiguous. Per OAR 660-041-0150 the Department of Land Conservation and Development will combine multiple claims into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

²The claimants, Leland and Shirley Twigg, filed a Measure 37 claim for tax lots 1700 and 1701, and they have elected review under Measure 49 for relief together with the claimants Richard and Sandra Twigg, for claim E129859. However, Leland and Shirley Twigg are not claimants for claim E129829, which includes tax lots 901 and 1600.

³The Measure 37 claim property consists of tax lots 901, 1600, 1903, 1700 and 1701. The claimants did not elect supplemental review for tax lot 1903. While a claim cannot be amended to remove claim property, analysis of a claimants' eligibility for relief on a portion of claim property may, in some cases, be immaterial. In this case whether the claimants are eligible for relief on tax lot 1903 is not relevant to the analysis of whether the claimants are eligible for relief on tax lots 901, 1600, 1700 and 1702. Therefore, although tax lot 1903 is part of the Measure 37 claim property, review of the claimants' eligibility for relief on tax lot 1903 is omitted and all references to Measure 37 claim property refer only to tax lot 901, 1600, 1700 and 1702.

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, Richard and Sandra Twigg, 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 the claimants, Leland and Shirley Twigg, are not eligible for any relief under Measure 49 because the claimants have not established their ownership of the property for the purposes 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. The claimants have requested four home site approvals in the, E129859, election material and two home site approvals in the, E129829, election material. The Measure 37 waiver issued for this claim describes an unspecified number of 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 filed Measure 37 claims, M129859 and M129829, with the state on August 9, 2006. The claimants filed Measure 37 claims, 37CL0488 and 37CL0489, for tax lots 901 and 1600 on July 10, 2006, and 37CL0513, for tax lots 1700 and 1701 on August 3, 2006, with Washington County. 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 Washington 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 deeds and land sale contract submitted by the claimants, Richard and Sandra Twigg are the owners of fee title to tax lots 1600, 1700 and 1701 as shown in the Washington County deed records and the purchasers under a recorded land sale contract in force for tax lot 901. Therefore, they are owners of the property under Measure 49.

According to the information submitted by the claimants, Leland and Shirley Twigg have not established their ownership of the property for the purposes of Measure 49.

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

It appears that the claimants, Richard and Sandra Twigg, 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 Washington County, outside the urban growth boundary and outside the city limits of the nearest city, Cornelius.

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

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

The property is currently zoned Exclusive Farm Use (EFU) by Washington 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. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimants' property consists of 113.58 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;
- (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."

Washington County deed records indicate that the claimants, Richard and Sandra Twigg, acquired tax lot 901 (9.85 acres) on June 11, 1978, tax lots 1700 (38.11 acres) and 1701 (41.17 acres) on December 31, 1984, and tax lot 1600 (24.45 acres) on November 1, 1985.

The claimants acquired tax lot 901 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Washington County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned General Farm Use (GFU-38) by Washington County, which required 38 acres for the establishment of a dwelling on an existing lot or parcel. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on June 11, 1978. Accordingly, the statewide planning goals, and in particular Goal 3 and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On July 31, 1984, the Commission acknowledged the application of Washington County's Exclusive Farm Use (EFU) zone to the Measure 37 claim property. The Commission's

acknowledgement of Washington County's EFU zone confirmed that zone's compliance with Goal 3 and ORS chapter 215. Washington County's acknowledged EFU zone required 76 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lot 901 of the Measure 37 claim property consists of 9.85 acres. Therefore, on the claimants' acquisition date, they could not have established any home sites in the unacknowledged county zone or in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. It appears that the claimants do not qualify for any home sites on tax lot 901, unless the claimants can show that a direct application of the Goal 3 and ORS chapter 215 would have allowed the claimants to establish additional home sites.

On December 31, 1984 and November 1, 1985, tax lots 901, 1600, 1700 and 1701 of the Measure 37 claim property was subject to Washington County's acknowledged Exclusive Farm Use (EFU) zone. Washington County's EFU zone required 76 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lots 901, 1600, 1700 and 1701 consist of 113.58 acres and are developed with three dwellings. Therefore, the claimants lawfully could not have established any additional home sites on their date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Richard and Sandra Twigg, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition.

Based on the department's preliminary analysis, it appears that the claimants, Leland and Shirley Twigg, are not eligible for any relief under Measure 49 because the claimants have not established their ownership of the property for the purposes 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.