



**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 22, 2009

**STATE ELECTION NUMBER:**

E130227

**CLAIMANTS:**

Everett M. and Helen M. Grife  
30001 Le Bleu Road  
Eugene, OR 97405

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 18S, Range 4W, Section 34  
Tax lots 301, 400, 500 and 600<sup>1</sup>  
Lane County

**AGENT CONTACT INFORMATION:**

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**I. ELECTION**

The claimants, Everett and Helen Grife, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 6, 2006, for property located at 30001 and 30014 Le Bleu 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 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 qualified for up to three home site approvals on tax lots 400 and 500 of the Measure 37 claim property. The claimants' property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of four lots or parcels, which are developed with two dwellings. After taking into account the number of lots, parcels and dwellings currently

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<sup>1</sup> In the Lane County Measure 37 report, the county states that tax lot 600 is a 20-foot wide private road known as Le Bleu Road which was created as a legal access.

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 claimants to establish no additional lots or parcels and one additional dwelling on tax lots 400 or 500 of the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that the claimants are not eligible for any relief under Measure 49 on tax lots 301 and 600 of the Measure 37 claim property because the claimants would not have been lawfully permitted to establish any additional home sites when they acquired tax lot 301 and tax lot 600 is a private road.

### **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 five 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, Everett and Helen Grife, filed a Measure 37 claim, M130227, with the state on October 6, 2006. The claimants filed a Measure 37 claim, PA06-6410, with Lane County on August 10, 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, Everett and Helen Grife are the settlors of a revocable trust into which they conveyed tax lots 301, 400 and 500 of the Measure 37 claim property and, therefore, are owners of that property under Measure 49.

In the Lane County Measure 37 report, the county states that tax lot 600 is a 20-foot wide private road created as a legal access. In reliance on that report, this Preliminary Evaluation considers the claimants as not entitled to any relief on tax lot 600 of the Measure 37 property under Measure 49. Therefore, the remaining approval criteria will not be evaluated for tax lot 600 of the Measure 37 claim property. Unless otherwise indicated, all subsequent references to the property refer to tax lots 301, 400, and 500 of the Measure 37 claim property.

**(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 three home site approvals.

The property is currently zoned Impacted Forest Land (F2) 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.

The claimants' property consists of 145.80 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."

Lane County deed records indicate that claimant Everett Grife acquired tax lot 400 (80 acres) on August 1, 1951, and tax lot 500 (64.85 acres) on October 15, 1954, and claimant Helen Grife acquired tax lots 400 and 500 on February 2, 1962. Therefore, for purposes of Measure 49, the claimants' acquisition dates are August 1, 1951, and October 15, 1954, for tax lots 400 and 500.

Lane County deed records indicate that claimant Everett Grife acquired tax lot 301 (0.95 acres) on November 25, 1991, and claimant Helen Grife acquired tax lot 301 on December 14, 1994. Therefore, for purposes of Measure 49, the claimants' acquisition date for tax lot 301 is November 25, 1991.

On August 1, 1951, and October 15, 1954, the Measure 37 claim property consisted of 144.85 acres and was not subject to any local or state laws that would have prohibited the claimants from establishing at least three lots or parcels and at least three dwellings. Therefore, the claimants lawfully could have established the three home sites the claimants may qualify for under Section 6 of Measure 49 on tax lots 400 and 500 of the Measure 37 claim property.

The claimants acquired tax lot 301 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Lane 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 Impacted

Forest Land (F2) by Lane County. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on November 25, 1991. Accordingly, the statewide planning goals, and in particular Goal 4 and ORS chapter 215 applied directly to tax lot 301 of the Measure 37 claim property when the claimants acquired it.

To determine whether a use of property that was not subject to an acknowledged zone at the time the claimant acquired it would have complied with Goal 4, OAR 660-041-0110 provides that DLCDC will apply the first acknowledged local land use regulations, unless the evidence in the record, including but not limited to, county records, county Measure 37 waivers or local land use determinations issued at the time the property was acquired, establishes that a greater number of lots, parcels or dwellings would have been lawfully permitted.

In 1991, Goal 4 was “to conserve forest lands for forest uses.” It required that forest land “be retained for the production of wood fiber and other forest uses,” and that “[l]ands suitable for forest uses be inventoried and designated as forest lands.”<sup>2</sup>

On February 14, 1992, the Commission acknowledged the application of Lane County’s F2 zone to the Measure 37 claim property. The Commission’s acknowledgement of Lane County’s F2 zone confirmed that zone’s compliance with Goal 4 and ORS chapter 215. Lane County’s acknowledged F2 zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants’ property consists of 145.80 acres and is developed with two dwellings.

Therefore, on the claimants’ acquisition date of tax lot 301, 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. There is no evidence in the record that establishes that the creation of a new parcel of less than acknowledged minimum acres for the development of a dwelling would have satisfied ORS 215 or Goal 4 prior to acknowledgement.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, it appears that the claimants, Everett and Helen Grife, qualify for up to three home site approvals under Section 6 of Measure 49 on tax lots 400 and 500 of the Measure 37 claim property.

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<sup>2</sup> As adopted in 1975, Goal 4 defined “Forest Lands” as:

“(1) [L]ands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use.”

Goal 4 defined “Forest Uses” as:

(1) [T]he production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.”

Based on the preliminary analysis, the claimants, Everett and Helen Grife, do not qualify for Measure 49 home site approvals on tax lot 301 of the Measure 37 claim property because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition of tax lot 301.

Based on the preliminary analysis, the claimants, Everett and Helen Grife, do not qualify for Measure 49 home site approvals on tax lot 600 of the Measure 37 claim property because tax lot 600 is a private road.

#### **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 according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. However, if a claimant otherwise qualifies for relief under Section 6 of Measure 49, the claimant will be able to establish at least one additional lot, parcel or dwelling, regardless of the number of lots, parcels or dwellings currently in existence.

Based on the documentation provided by the claimants and information from Lane County, the Measure 37 claim property appears to currently include four lots or parcels and two dwellings. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimants appear to qualify for under Section 6 of Measure 49 will allow the claimants to establish no additional lots or parcels and one additional dwelling on the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within tax lots 400 and 500 of the Measure 37 claim property. The claimants will be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property if they intend to develop one additional dwelling, so that the additional dwelling established on the Measure 37 claim property, pursuant to these home site approvals, is sited on a separate lot or parcel and that the total number of lots or parcels located on the Measure 37 claim property does not exceed the current number of existing lots or parcels.

#### **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 6 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 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, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this preliminary evaluation regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.
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. The claimants may not implement the relief described in a Measure 49 home site authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then any Measure 49 Home Site Authorization for the property will be void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. 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.
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 or remnant 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 or remnant 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.
12. 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.

## 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.**