



**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 28, 2009

STATE ELECTION NUMBER: E130367A¹

CLAIMANTS: George A. and Patricia R. Calvert
425 Calvert Dr.
Grants Pass, Oregon 97526

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 36S, Range 6W, Section 4
Tax lots 100, 101, 103 and 104
Josephine County

I. ELECTION

The claimants, George and Patricia Calvert, filed a claim under ORS 197.352 (2005) (Measure 37) on October 20, 2006, for property located along Rusty Spur Road, northwest of the intersection of Rusty Spur Road and Hulburt Road, near Grants Pass, in Josephine 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 not eligible for any relief under Measure 49 because no land use regulation prohibits the claimants from establishing three home sites on the Measure 37 claim property.

¹ Claim E130367 has been split into two claims, E130367A and E130367B, because the Measure 37 claim sought relief for non-contiguous property. Claim E130367A addresses the claimants' eligibility for Measure 49 relief on tax lots 100, 101, 103 and 104; and E130367B addresses their relief on tax lots 1200 and 1201.

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 material; 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 thirteen home site approvals in the election material. The Measure 37 waiver issued for this claim describes seventeen home sites.² 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, George and Patricia Calvert, filed a Measure 37 claim, M130367, with the state on October 20, 2006. The claimants filed Measure 37 claims, 2006-006 and 2007-007, with Josephine County on July 14, 2005. 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 Josephine 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.”

² The Measure 37 waiver described the property and provided relief for tax lots 100, 101, 103 and 104, the property addressed in this report, and tax lots 1200 and 1201, which are addressed in the companion report, E130367B.

According to the deed submitted by the claimants, George and Patricia Calvert, are the owners of fee title to the property as shown in the Josephine County deed records 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 Josephine County, outside the urban growth boundary and outside the city limits of the nearest city, Grants Pass.

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

As stated in Section III above, the claimant may qualify for up to three home site approvals.

The property is currently zoned Rural Residential (RR-5), by Josephine 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 greater than two acres. Josephine County's RR-5 requires a minimum lot size of 5 acres.

The claimants' property consists of 21.7 acres. Therefore, no state law prohibits the claimant from establishing on the Measure 37 claim property the three home sites the claimants may qualify for under Section 6 of Measure 49.

Because this requirement has not been met, the claimants are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, George and Patricia Calvert, do not qualify for Measure 49 home site approvals because no land use regulation prohibits the claimants from establishing three home sites on the Measure 37 claim property.

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.