



**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 27, 2009

**STATE ELECTION NUMBER:**

E130390

**CLAIMANTS:**

Elden and Margie Ferris  
8309 NE 69<sup>th</sup> Street  
Vancouver, Washington 98662

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 14S, Range 8W, Section 33  
Tax lot 204  
Benton County

**I. ELECTION**

The claimants, Elden and Margie Ferris, filed a claim under ORS 197.352 (2005) (Measure 37) on October 24, 2006 for property located on Little Lobster Road, near Alsea, in Benton 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 the lawfully permitted use of the claimants' property has not changed since they acquired it.

**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 two home site approvals in the election material. The Measure 37

waiver issued for this claim describes two home sites. Therefore, the claimants may qualify for a maximum of two 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, Elden and Margie Ferris, filed a Measure 37 claim, M130390, with the state on October 24, 2006. The claimants filed a Measure 37 claim with Benton County on October 24, 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 Benton 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, Elden and Margie Ferris are the owners of fee title to the property as shown in the Benton 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 Benton County, outside the urban growth boundary and outside of any city near the community of Alsea.

**(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 two home site approvals.

The property is currently zoned Multi-Purpose Agriculture (MPA) by Benton 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 (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a dwelling on a lot or parcel less than 80 acres in size in an EFU zone. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Benton County’s MPA zone, which requires a minimum lot size of 20 acres.

The claimants’ property consists of 37.69 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property one of the two home sites the claimants appear to 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 home sites 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.”

Benton County deed records indicate that the claimants acquired the property on September 19, 1974.<sup>1</sup>

On September 19, 1974 the Measure 37 claim property was subject to state statutes and Benton County’s Agriculture and Forestry (AF) zone.

Benton County’s AF zone required at least 20 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants’ property consists of 37.69 acres. Therefore, under the local zoning then in effect, the claimants lawfully could have established only one of the requested home sites on their date of acquisition.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, the claimants, Elden and Margie Ferris, do not qualify for any Measure 49 home site approvals because the lawfully permitted use of the claimants’ property has not changed since they acquired it.

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<sup>1</sup> The claimants included an unrecorded land sale contract with an earlier date with their claim. However, unrecorded documents do not establish ownership for purposes of Measure 49.

## 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.**