



**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 6, 2010

STATE ELECTION NUMBER: E130721¹

CLAIMANTS: William T. and Mary Lou Dunham
64496 E Brightwood Loop Road
Brightwood, Oregon 97011

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 20S, Range 11E, Section 30A
Tax lot 1400
Deschutes County

I. ELECTION

The claimants, William and Mary Lou Dunham, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 14, 2006, for property located at 55540 Lazy River Drive, near Bend, in Deschutes 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 state law prohibits the claimants from establishing the dwelling. Measure 49 exempts from claims land use regulations for the protection of public health and safety.

**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

¹ The claimants also have a claim for property not contiguous to the subject property which is identified as E131638.

issued, the number of home sites described in the Measure 37 claim filed with the state. The claimants have requested one home site approval in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes one home site and an “alternative septic system.” Therefore, the claimants may qualify for a maximum of one home site approval 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, William and Mary Lou Dunham, filed a Measure 37 claim, M130721, with the state on November 14, 2006. The claimants filed a Measure 37 claim, 2008-036, with Deschutes County on April 27, 2007. 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 Deschutes 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, William and Mary Lou Dunham are the owners of fee title to the property as shown in the Deschutes 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

The deeds by which the claimants acquired the property indicate that there are non-claimant owners who have not consented to the claim: Thomas M. Grandy, Jamie P. Grandy, William L. Stoffal and Nancy B. Stoffal.

(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 Deschutes County, outside the urban growth boundary and outside the city limits of the nearest city, Bend.

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

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

The property is currently zoned Rural Residential (RR-10) by Deschutes 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, allow the establishment of a dwelling on a pre-existing vacant lot of record. The claimants' property consists of a single lawfully established 3.98-acre vacant lot or parcel. Therefore, no state law prohibits the claimants from establishing a dwelling on the Measure 37 claim property.

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.

The claimants' Measure 37 claim requested a waiver of current septic requirements as part of the claim. Under Measure 49 such specific relief is not available as Measure 49 allows the department to authorize an otherwise prohibited number of home sites. Additionally, ORS 195.305(3) exempts from claims under Measure 49 land use regulations "[r]estricting or prohibiting activities for the protection of public health and safety * * * ." Therefore, any septic requirements that act to prohibit the claimant from establishing a home site cannot be waived under Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, William and Mary Lou Dunham, do not qualify for Measure 49 home site approvals because no state law prohibits the claimants from establishing the dwelling. Measure 49 exempts from claims land use regulations for the protection of public health and safety.

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.