



**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 3, 2009

STATE ELECTION NUMBER: E131298¹

CLAIMANT: Maurice E. Brooks
86261 Franklin Blvd
Eugene, OR 97405

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 20S, Range 3W, Section 3
Tax lot 600²
Lane County

I. ELECTION

The claimant, Maurice Brooks, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 27, 2006, for property located at 80996 Highway 99, near Creswell, 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 claimant has elected supplemental review of his 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 claimant is not eligible for any relief under Measure 49 because Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for the more specific relief requested here.

¹ The claimant also has submitted a claim for property not contiguous to the subject property which is identified as E129908.

² The Measure 37 claim property consists of tax lots 600 and 700. The claimant was denied relief on tax lot 700 under Measure 37 because laws enacted or adopted since the claimant acquired tax lot 700 in 2002 do not restrict the claimant's desired use of that tax lot relative to when the claimant acquired it. The claimant did not indicate that he would like the department to review his eligibility for relief under Measure 49 for tax lot 700. Therefore, this Preliminary Evaluation addresses only the claimant's eligibility for relief for tax lot 600 and all references to Measure 37 claim property refer only to tax lot 600.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANT 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 Measure 37 waiver issued for this claim describes industrial uses, subject to the claimant's compliance with the applicable standards in effect on February 20, 1978. The claimant has requested a zoning change for tax lot 600 from residential to industrial zoning in the election material. The claimant did not request any home sites in the election material. Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for the more specific relief requested here. Therefore, the claimant is not eligible for any relief under Section 6 of Measure 49.

Because the claimant has requested relief that is not available under Measure 49, the remaining approval criteria will not be evaluated.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Maurice Brooks, does not qualify for Measure 49 home site approvals because Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for the more specific relief requested here.

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 claimant and the claimant's 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 claimant and the claimant's 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 claimant and the claimant's 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.