



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

November 17, 2009

STATE ELECTION NUMBER: E131406

CLAIMANT: Kay Donn Rasch
10477 SE Waverly Court #2007
Milwaukie, OR 97222

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 38S Range 14W, Section 31
Tax lot 300
Curry County

AGENT CONTACT INFORMATION: Donn C. Rasch
15626 SE 202nd Avenue
Damascus, OR 97089

I. ELECTION

The claimant, Kay Rasch, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 28, 2006, for property located at 94458 Byrdies Road, near Brookings, in Curry 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 her 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 claimant is not qualified for any relief under Measure 49 because the lawfully permitted use of the claimant's property has not changed since she acquired the property.

**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 claimant has requested supplemental review under Section 6 of Measure 49. No waiver was issued for this claim. The Measure 37 claim filed with the state describes six home sites. Therefore, the claimant 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 claimant, Kay Rasch, filed a Measure 37 claim, M131406, with the state on November 28, 2006. The claimant filed a Measure 37 claim, M37-0633, with Curry County on November 27, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Curry 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 claimant 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 claimant, Kay Rasch is the owner of fee title to the property as shown in the Curry County deed records and, therefore, is an owner of the property under Measure 49.

(b) All Owners of the Property Have Consented in Writing to the Claim

It appears that the claimant is the sole owner 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 Curry County, outside the urban growth boundary and outside the city limits of the nearest city, Gold Beach.

(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 Beaches and Dunes Conservation (CON) by Curry County, in compliance with the Statewide Planning Goals.

The county's CON zone allows a single family dwelling in dwelling as a conditional use in specified locations. The minimum lot size for conditionally permitted dwellings is "as large as necessary as appropriate conduct of the proposed use including property installation and operation of a water supply and a sewage disposal system."

The claimant's property consists of 6.5 acres and is developed with a dwelling. The claimant has not established that any additional lots or parcels and dwellings would comply today with the applicable conditional use criteria. Therefore, the department cannot conclude that any land use regulations currently prohibit the claimant's desired home sites.

(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 claimant, it does not appear that the establishment of the three home sites for which the claimant 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."

Curry County deed records indicate that the claimant acquired the property on June 20, 1988.

As it is today, on June 20, 1988, the Measure 37 claim property was also subject to Curry County's acknowledged Beach and Dunes Conservation (CON) zone.

In 1988, as it does today, Curry County's CON zone required the minimum lot size for new lots or parcels to be "as determined by the appropriate sanitary authority as necessary for proper installation and operation of water supply and sewage disposal." In addition, in 1988 Curry County's CON zone only permitted a dwelling as a conditional use "when authorized in accordance with Article VI," which contained the applicable procedures, criteria and standards required to be met for approval. The claimant has not submitted any evidence that her property would have qualified for additional lots, parcels or dwellings under Article VI or that the current requirements under Curry County's zoning regulations are more restrictive than the county's 1988 regulations for establishing dwellings in the CON zone.

It appears that the property zoning and the lawfully permitted uses of the Measure 37 claim property have not changed since the claimant acquired the property. Accordingly, because the claimant's lawful use of the property has not changed since she acquired it, she is not entitled to any relief under Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Kay Rasch, does not qualify for Measure 49 home site approvals because the lawfully permitted use of the claimant's property has not changed since she acquired the 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 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.