



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

February 9, 2009

STATE ELECTION NUMBER: E131501

CLAIMANT: Charity Curtis Bowers
31731 Bowers Drive
Harrisburg, OR 97446

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 15S, Range 3W, Section 30
Tax lot 400
Linn County

AGENT CONTACT INFORMATION: Nick Bowers
21929 Powerline Road
Harrisburg, OR 97446

I. ELECTION

The claimant, Charity Bowers, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006 for property located at 31731 Bowers Drive, near Harrisburg, in Linn 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 the claimant is not eligible for any relief under Section 6 of Measure 49 because no land use regulation prohibits establishing the requested lot, parcel, or dwelling.

**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 specific relief requested under both Measure 37 and Measure 49 appears to be the division of a one acre home site from the 197.67-acre Measure 37 property. However, 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 has requested one home site in the election material and Measure 37 waiver issued for this claim describes one home site. The claimant may thus qualify for a maximum of one home site approval 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 claimant, Charity Bowers, filed a Measure 37 claim, M131501, with the state on November 29, 2006. The claimant filed a Measure 37 claim, M37-191-06, with Linn 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 Linn 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, Charity Bowers is the owner of fee title to the property as shown in the Linn 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 Linn County, outside the urban growth boundary and outside the city limits of the nearest city, Harrisburg.

(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 one home site approval.

The property is currently zoned Exclusive Farm Use (EFU) by Linn 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. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 197.67 acres that make up a single tract. Therefore, state land use regulations do not prohibit the claimant from establishing on the Measure 37 claim property the one home site the claimant may qualify for under Section 6 of Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Charity Bowers, does not qualify for any relief under Section 6 of Measure 49 because no land use regulation prohibits establishing the requested lot, parcel, or dwelling.

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 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.