



**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 30, 2009

STATE ELECTION NUMBER: E131684B¹

CLAIMANTS: Robert G. and Elaine M. Durrer
20295 E Beaver Creek Road
Cloverdale, OR 97112

Kevin G. Durrer
2890 McCormick Loop
Tillamook, OR 97141

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 1S, Range 9W, Section 32
Tax lots 1600
Tillamook County

AGENT CONTACT INFORMATION: Lois A. Albright
Albright & Kittell
PO Box 939
Tillamook, OR 97141

I. ELECTION

The claimants, Robert and Elaine Durrer, and Kevin Durrer, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 2635 McCormick Loop Road, near Tillamook, in Tillamook 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.

¹ Claim E131684 has been split into two claims, E131684A and E131684B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E131684A addresses the claimants' eligibility for Measure 49 relief on tax lots 1200, 1300, and 1500, and E131684B addresses their relief on tax lot 1600.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimants Robert and Elaine Durrer are not eligible for any relief under Measure 49 because the claimants no longer own the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that claimant Kevin Durrer is not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the claimant's property have not changed since he acquired it. The claimant would not have been lawfully permitted to establish the requested three home sites when he acquired the property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

The claimants, Robert and Elaine Durrer, and Kevin Durrer, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 2635 McCormick Loop Road, near Tillamook, in Tillamook 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.

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, Robert and Elaine Durrer, and Kevin Durrer, filed a Measure 37 claim, M131684, with the state on November 29, 2006. The claimants filed a Measure 37 claim, M06-27, with Tillamook County on November 28, 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 Tillamook 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 information submitted by the claimants, Robert and Elaine Durrer have not established their ownership of the property for the purposes of Measure 49. Robert and Elaine Durrer conveyed their ownership interest in the Measure 37 claim property to claimant Kevin Durrer on November 21, 2006.

Because this requirement has not been met, the claimants Robert and Elaine Durrer are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for those claimants.

According to the deeds submitted by the claimants, Kevin Durrer is of fee title to the property as shown in the Tillamook 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 claimant Kevin Durrer 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 Tillamook County, outside the urban growth boundary and outside the city limits of the nearest city, Tillamook.

(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 exclusive farm use by Tillamook County. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, division 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an exclusive farm use zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 39.10 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant may 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 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."

Tillamook County deed records indicate that the claimant acquired the property on November 21, 2006.

On November 21, 2006, the Measure 37 claim property was subject state statutes. State law in effect when the claimant acquired the property, specifically ORS 215.780 (1993 edition), required a minimum lot size of 80 acres for land zoned for exclusive farm use and not designated rangeland. The state law in effect on November 21, 2006, would have prohibited the claimant from lawfully partitioning the Measure 37 claim property into lots smaller than 80 acres. The claimant's property consists of 39.1 acres. Therefore, the claimant lawfully could not have established any additional home sites on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Robert and Elaine Durrer, do not qualify for Measure 49 home site approvals because the claimants no longer own the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that claimant Kevin Durrer is not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the

claimant's property have not changed since he acquired it. The claimant would not have been lawfully permitted to establish the requested three home sites when he 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.