



**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 11, 2010

STATE ELECTION NUMBER: E131764

CLAIMANTS: James F. and Alison Y. Elliott
1650 Butler Creek Road
Ashland, OR 97520

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 38S, Range 1E, Section 21
Tax lots 109 and 110¹
Jackson County

I. ELECTION

The claimants, James and Alison Elliott, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 1650 Butler Creek Road, near Ashland, in Jackson 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 the claimants would not have been lawfully permitted to establish any additional home sites when they acquired the property.

**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

¹ The Measure 37 claim and the Measure 49 election form submitted by the claimants identify the claim property as tax lots 109 and 110. Based on Jackson County assessor records obtained by the department, tax lots 109 and 110 have been renumbered as tax lots 200 and 300.

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 claimants have requested two home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes two home sites. Therefore, the claimants may qualify for a maximum of two 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 claimants, James and Alison Elliott, filed a Measure 37 claim, M131764, with the state on November 29, 2006. The claimants filed a Measure 37 claim, M37 2006-00273, with Jackson County on December 1, 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 Jackson 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 deeds submitted by the claimants, James Elliott is the owner of fee title to tax lot 109 as shown in the Jackson County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Alison Elliott has not established her ownership of tax lot 109 for the purposes of Measure 49.

According to the deeds submitted by the claimants, James and Alison Elliott are the owners of fee title to tax lot 110 as shown in the Jackson 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

It appears that claimant James Elliott is the sole owner of tax lot 109 of the Measure 37 property. Therefore, no additional consent is required.

It appears that claimants James and Alison Elliott are the sole owners of tax lot 110 of the Measure 37 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 Jackson County, outside the urban growth boundary and outside the city limits of the nearest city, Ashland.

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

As stated in Sections III and IV(a) above, claimant James Elliott may qualify for up to two home sites on tax lots 109 and 110, and claimant Alison Elliott may qualify for the two home site approvals on tax lot 110.

Tax lots 109 and 110 are currently zoned Exclusive Farm Use (EFU) by Jackson 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 and regulate the establishment of dwellings on new or existing lots or parcels.

Tax lot 109 consists of 20 acres and tax lot 110 consists of 20 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the two home sites the claimants 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 claimants, it does not appear that the establishment of the two home sites for which the claimants 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."

Jackson County deed records indicate that claimant James Elliott acquired tax lot 109 on February 22, 2002.²

Jackson County deed records indicate that claimant James Elliott acquired tax lot 110 on June 3, 1988, and claimant Alison Elliott acquired tax lot 110 on January 2, 2004. Therefore, for purposes of Measure 49, the claimants' acquisition date is June 3, 1988.

On June 3, 1988, tax lot 110 was subject to Jackson County's acknowledged Exclusive Farm Use (EFU) zone. Jackson County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 20 acres and is developed with a dwelling. Therefore, the claimants lawfully could not have established any home sites on tax lot 110 on their date of acquisition.

On February 22, 2002, tax lot 109 was subject to Jackson County's acknowledged Exclusive Farm Use (EFU) zone. Jackson County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 20 acres. Therefore, claimant James Elliott lawfully could not have established any home sites on tax lot 109 on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, James and Alison Elliott, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' dates of acquisition.

² The deed records indicate claimant reacquired tax lot 109 on February 22, 2002, after conveying the tax lot to another person. Regarding reacquisition of claim property, Measure 49 section 21(3) provides: "If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property. A general judgment dated May 21, 2008 purporting to alter claimant's acquisition date is without effect pursuant to ORS 195.328(4).

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.