



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

July 28, 2009

STATE ELECTION NUMBER:

E132249

CLAIMANTS:

Joseph C. Schmidlkofer Jr.
Juanita M. Schmidlkofer
4840 NW Marsh Road
Forest Grove, OR 97116

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 1N, Range 3W, Section 21
Tax lots 800 and 900
Washington County

I. ELECTION

The claimants, Joseph and Juanita Schmidlkofer, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 4840 NW Marsh Road, near Forest Grove, in Washington 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 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.

**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 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 a property line adjustment between the two lots or parcels subject to the claim. 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 claimants are not eligible for any relief under Section 6 of Measure 49.

Because the claimants have 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 claimants, Joseph and Juanita Schmidlkofer, do not qualify 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.

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.