



**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:** E132703

**CLAIMANTS:** Ella Mae Larson  
Kenneth L. Larson  
14426 NW Larson Road #6  
Portland, OR 97231

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 2N, Range 1W  
Section 28CA, Tax lot 100  
Section 28C, Tax lots 100 and 101  
Section 28D, Tax lot 500  
Multnomah County

**I. ELECTION**

The claimants, Ella and Kenneth Larson, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located near Portland, in Multnomah 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 claimant Kenneth Larson is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites when he acquired the property.

Based on the department's preliminary analysis, it appears that the claimant Ella Larson is not eligible for any relief under Measure 49 because she no longer owns the Measure 37 claim property.

The memorandum of land sale contract by which the claimant, Kenneth Larson, acquired the property indicates that there is a non-claimant owner who has not consented to the claim: Janet

Jo Hirsch. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

### **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 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 non-residential development. 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, Ella and Kenneth Larson, filed a Measure 37 claim, M132703, with the state on December 1, 2006. The claimants filed a Measure 37 claim, T1-06-111, with Multnomah County on November 29, 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 Multnomah 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 memorandum of land sale contract submitted by the claimants, Kenneth Larson is the purchaser under a recorded land sale contract in force for the property and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Ella Larson has not established her ownership of the property for the purposes of Measure 49 because she no longer owns the Measure 37 claim property.

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

The memorandum of land sale contract by which the claimant, Kenneth Larson, acquired the property indicates that there is a non-claimant owner who has not consented to the claim: Janet Jo Hirsch. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

**(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 Multnomah County, outside the urban growth boundary and outside the city limits of the nearest city, Portland.

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

As stated in Section III above, the claimant, Kenneth Larson, may qualify for up to two home site approvals.

The property is currently zoned Multiple Use Agriculture (MUA-20) by Multnomah County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Multnomah County's MUA-20 zone requires a minimum lot size of 20 acres.

The claimant's property consists of 4.82 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the two 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 two 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."

Multnomah County deed records indicate that the claimant, Kenneth Larson acquired the property on August 12, 1997.

On August 12, 1997, the Measure 37 claim property was subject to Multnomah County's acknowledged Multiple Use Agriculture (MUA-20) zone. Multnomah County's MFU-20 zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 4.82 acres. Therefore, the claimant, Kenneth Larson, lawfully could not have established any home sites on his date of acquisition.

**2. Preliminary Conclusion**

Based on the preliminary analysis, the claimant, Kenneth Larson, does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on his date of acquisition.

Based on the preliminary analysis, the claimant, Ella Larson, does not qualify for Measure 49 home site approvals because she no longer owns the Measure 37 claim property.

The memorandum of land sale contract by which the claimant, Kenneth Larson, acquired the property indicates that there is a non-claimant owner who has not consented to the claim: Janet

Jo Hirsch. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

## 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.**