



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

Preliminary Evaluation

October 29, 2009

STATE ELECTION NUMBER:

E133024

CLAIMANTS:

Michael M. Watkins
230 NE 2nd St., Suite D
Hillsboro, Oregon, 97124

David S. Watkins
362 NE 9th Place
Hillsboro, Oregon, 97124

Cheryl L. Dowling
Thomas W. Dowling
1246 NE Parksedge Circle
Hillsboro, Oregon, 97124

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 1S, Range 10W, Section 7AD
Tax lots 1100, 1200, 2000 and 2702¹
Tillamook County

I. ELECTION

The claimants, Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at the coordinates listed above, near Cape Meares, 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten home site approvals to qualified claimants.

¹ The Measure 37 claim property consisted of tax lots 1100, 1200, 2000 and 2702. The claimants elected supplemental review for the entire Measure 37 property; however, the appraisal submitted by the claimants attempts to limit the review to tax lot 2702. A claim cannot be amended to remove claim property, therefore this preliminary evaluation addresses the entire Measure 37 claim property.

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 no land use regulation prohibits the claimants from establishing the requested lots parcels or dwellings.

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

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; the number stated by the claimants in the election materials; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimants have requested ten home site approvals in the election material. The appraisal submitted by the claimants attempts to support the assertion that the value of ten home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 22 home sites. Therefore, the claimants may qualify for a maximum of ten home site approvals under Section 7.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 7 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 December 4, 2006, 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, Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling filed a Measure 37 claim, M133024, with the state on December 1, 2006. The claimants filed a Measure 37 claim, M-05-12, with Tillamook County on September 30, 2005. 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 7 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, Michael Watkins and David Watkins are the owners of fee title to the property as shown in the Tillamook County deed records and, therefore, are owners of the property under Measure 49. According to the deeds submitted by the claimants, Cheryl Dowling is the settlor of a revocable trust into which she conveyed her interest in the Measure 37 claim property and, therefore, is an owner of the property under Measure 49. According to the information submitted by the claimants, Thomas Dowling has not established his ownership of the property for the purposes of Measure 49. Thomas Dowling is a co-trustee of the revocable trust into which Cheryl Dowling conveyed her interest in the property, but he is not a settlor of the revocable trust and, therefore, is not an owner of the claim property for purposes of Measure 49.

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

It appears that the claimants are the sole owners 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 any city limits near the community of Cape Meares.

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

As stated in Section III above, the claimants may qualify for up to ten home site approvals.

The property is currently zoned Rural Residential-2 acre (RR-2) by Tillamook 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 two acres in a rural residential zone established before October 4, 2000, in which the County specified a minimum lot or parcel size of less than two acres.

Based on Tillamook County Assessor's data, the claimants' property consists of 22.08 acres. Therefore, no state law prohibits the claimants from establishing on the Measure 37 claim property the ten home sites the claimants may qualify for under Section 7 of Measure 49.

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

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling do not qualify for Measure 49 home site approvals, because no land use regulation prohibits the claimants from establishing the requested lots, parcels or dwellings.

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.