



**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 20, 2009

**STATE ELECTION NUMBER:** E133298

**CLAIMANTS:** Patrick D. and Barbara M. Mooney  
35379 Brabham Road  
Pleasant Hill, OR 97455

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 19S, Range 3W  
Section 21, Tax lot 801  
Section 29, Tax lots 100 and 200  
Lane County

**AGENT CONTACT INFORMATION:** Norman Waterbury LLC  
28788 Gimpl Hill Road  
Eugene, OR 97402

**I. ELECTION**

The claimants, Patrick and Barbara Mooney, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located near Creswell, in Lane 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.<sup>1</sup>

**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 no longer own the Measure 37 claim property.

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<sup>1</sup> The claimants initially elected to have their claim reviewed under Section 7 of Measure 49, but amended their election to request review under Section 6.

### **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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes thirty-eight home sites. Therefore, the claimants may qualify for a maximum of three 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, Patrick and Barbara Mooney, filed a Measure 37 claim, M133298, with the state on December 1, 2006. The claimants filed a Measure 37 claim, PA06-7132, with Lane County on November 29, 2009. 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 Lane 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, Patrick and Barbara Mooney have not established their ownership of the property for the purposes of Measure 49. The claimants sold their interest of the claim property in 2009.

Because this requirement has not been met, the claimant is 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, Patrick and Barbara Mooney, do not qualify for Measure 49 home site approvals because the claimants no longer own the claim 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 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.**