



**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 8, 2010

STATE ELECTION NUMBER: E133788D¹

CLAIMANT: Loretta I. Downs
86667 Bailey Hill Road
Eugene, OR 97405

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 18S, Range 4W, Section 10
Tax lot 704
Lane County

AGENT CONTACT INFORMATION: Boyd Iverson
Iverson & Company
1872 Willamette Street
Eugene, OR 97401

I. ELECTION

The claimant, Loretta Downs, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at east of Bailey Hill Road, near Eugene, 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 claimant has 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.

¹ Claim E133788 has been divided into five claims because the claim includes multiple tax lots or parcels that are not in the same ownership, and the Measure 37 claim sought relief on tax lot 700 that comprises two non-contiguous parcels (divided by a road). E133788A refers to the northeast 27-acre portion of tax lot 700 (T18S R4W S10) and claimants Robert L. Dunlap, John Dunlap, and Loretta I. Downs. E133788B refers to the southwest 85.55-acre portion of tax lot 700 (T18S R4W S10) and claimants Robert L. Dunlap, John Dunlap, and Loretta I. Downs. E133788C refers to tax lots 703 (T18S R4W S10) and 5300 (T18S R4W S10) and claimants Robert L. and Ruth E. Dunlap. E133788D refers to tax lot 704 (T18S 4W S10) and claimant Loretta I. Downs. E133788E refers to tax lot 5400 (T18S R4W S10) and claimants Loretta I. and George A. Downs, Jr.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the claimant's property have not changed since she acquired it. The claimant would not have been lawfully permitted to establish the requested three home sites when she acquired the property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANT 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 claimant has 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 approximately 45 home sites.² Therefore, the claimant 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 claimant, Loretta Downs, filed a Measure 37 claim, M133788, with the state on December 4, 2006. The claimant filed a Measure 37 claim, PA06-6743, with Lane County on October 6, 2006. The state claim was filed on December 4, 2006.

It appears that the claimant 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 claimant 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,

² The Measure 37 claim described the property and requested relief for the property before the claim was split (approximately 138 acres).

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 recorded probate court document submitted by the claimant, Loretta Downs is the owner of fee title to the property as shown in the Lane County deed records and, therefore, is an owner of the property under Measure 49.

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

It appears that the claimant is the sole owner 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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Eugene.

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

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

The property is currently zoned Impacted Forest Lands (F-2) by Lane County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 8.24 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 three 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

Lane County deed records indicate that the claimant acquired the property on July 14, 2002.

The zoning of the Measure 37 claim property has not changed since the claimant acquired the property. As it is today, on July 14, 2002, the Measure 37 claim property was subject to Lane County's acknowledged Impacted Forest Lands (F-2). Lane County's F-2 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 8.24 acres.

The claimant is not eligible for Measure 49 relief because the lawfully permitted uses of the claimant's property have not changed since the claimant acquired the property.

2. Preliminary Conclusion

Based on the department's preliminary analysis, it appears that the claimant, Loretta Downs, is not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the claimant's property have not changed since she acquired the 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 claimant and the claimant's 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 claimant and the claimant's 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 claimant and the claimant's 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.