



**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 7, 2010

STATE ELECTION NUMBER: E134109B¹

CLAIMANT: William C. Brown
10928 SW Collina Avenue
Portland, OR 97219

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 12S, Range 12W, Section 25DD
Tax lot 2800
Lincoln County

I. ELECTION

The claimant, William Brown, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 9353 NW Egret Street, near Seal Rock, in Lincoln 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 his 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 preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 because no land use regulation prohibits the claimant from establishing the one dwelling the claimant otherwise qualifies for under Measure 49.

**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

¹Claim E134109 has been split into three claims, E134109A, E134109B and E134109C because the Measure 37 claim sought relief for non-contiguous parcels. Claim E134109A addresses the claimant's eligibility for Measure 49 relief on tax lots 3100, 3200 and 3500. E134109B addresses the claimant's relief on tax lot 2800. E134109C addresses the claimant's relief on tax lot 1600.

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 land division and development that could have resulted in more than three home sites and commercial development. 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, William Brown, filed a Measure 37 claim, M134109, with the state on December 4, 2006. The claimant filed a Measure 37 claim, 151-LURCC-06, with Lincoln County on December 4, 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 Lincoln 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, 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 deed submitted by the claimant, William Brown is the owner of fee title to the property as shown in the Lincoln 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 Lincoln County, outside any urban growth boundary and outside any city limits, near the community of Seal Rock.

(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 Rural Residential (R-1) by Lincoln 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. Lincoln County's R-1 zone requires a minimum lot size of 15,000 square feet per dwelling unit when a lot is served by either a public or community water source or public or community sewage disposal system and is within a Rural Community Boundary.

The claimant's property is within the Seal Rock Suburban Residential-Rural Community and consists of 0.57 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property two of the three 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

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."

Lincoln County deed records indicate that the claimant acquired the property on July 26, 1974.

On July 26, 1974, the Measure 37 claim property was subject to Lincoln County's Rural Residential (R-3) zone. Lincoln County's R-3 zone required at least 20,000 square feet when a lot is not served by a public or community water supply system or other approved off site water source; unless otherwise required by the County Sanitarian for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 0.57 acres (24,829 square feet). Therefore, the claimant lawfully could have established no more than one home site depending on whether public water service was available to the property on his date of acquisition. However, because it appears that no laws currently prohibit the claimant from establishing one home site on the Measure 37 claim property, an authorization under Measure 49 would not appear to provide the claimant with any benefit.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, William Brown, does not qualify for Measure 49 home site approvals because no land use regulations prohibit the claimant from establishing the one dwelling the claimant otherwise qualifies for under Measure 49.

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.