



OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT

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

September 16, 2009

**STATE ELECTION NUMBER:** E134206<sup>1,2</sup>

**CLAIMANT:** Davidson Industries, Inc.  
PO Box 7  
Mapleton, OR 97453

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 18S, Range 10W  
Section 8, tax lots 700 and 800  
Section 8, Quarter 30, Tax lots 202, 203,  
302, 500, 501 and 600  
Lane County

**AGENT CONTACT INFORMATION:** David Crowell, Vice President  
Davidson Industries, Inc.  
PO Box 609  
Elmira, OR 97437

### I. ELECTION

The claimant, Davidson Industries Inc., filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 9780 Highway 126, near Mapleton, 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 its Measure 37 claim under Section 6 of Measure 49, which allows the

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<sup>1</sup> The claimant also has submitted claims for properties not contiguous to the subject property which are identified as E121408, E129640, E131633, E131635, E131771, E131772, E131773, E132940, E132941, E132942, E132943, E132944, E132945, E132947, E134090, E134091, E134092, E134093, E134094, E134197, E134198, E134199, E134200, E134201, E134202, E134203, E134204, and E134205.

<sup>2</sup> Claimant also filed claim M134207, M134208, M134209, M134210, M134216 and M134217 for the same property. Measure 49 section 6(5) provides:

“If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.”

This Preliminary Evaluation addresses M134206 because that claim is the most recent claim filed with the state.

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 is qualified for one home site approval on the Measure 37 claim property. The claimant's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of eight lots or parcels, which are developed with three dwellings. The number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and the contiguous property under the same ownership is equal to or exceeds the maximum number of home sites the claimant could qualify for under Section 6 of Measure 49. However, because the claimant otherwise qualifies for relief under Section 6, the claimant appears to qualify for one home site approval on the Measure 37 claim property. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property and the contiguous property under the same ownership, it appears that the one home site approval will allow the claimant to establish one additional dwelling on one of tax lots 800, 202, 203, 302, 600, 501 or 500 of the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 on tax lot 700 because the claimant would not have been lawfully permitted to establish any additional home sites when it acquired that tax lot.

## **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. However, if the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and the contiguous property under the same ownership is equal to or greater than the maximum number of home sites a claimant could otherwise qualify for under Section 6 of Measure 49, a claimant may qualify for only one home site approval.

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 residential and non-residential use. However, because it appears that the Measure 37 claim property and contiguous property in the same ownership contain three or more lots or parcels that are each developed with dwellings the claimants may qualify for a maximum of one home site approval.

## 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, Davidson Industries Inc., filed Measure 37 claims, M134206, M134207, M134208, M134209, M134216 and M134217, with the state on December 1, 2006. The claimant filed a Measure 37 claim, PA06-7301, with Lane County on December 1, 2006. The state claim was filed prior to 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, 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 claimant, Davidson Industries Inc. 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 any urban growth boundary and outside of any the city limits, near the community of Mapleton.

**(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 one home site.

The property is currently zoned Rural Industrial (RI) by Lane County. ORS 197.713 allows counties to designate and zone land outside of urban growth boundaries for rural industrial development, and ORS 197.713(4) specifically prohibits residential use of such industrially-zoned rural, non-resource land.

The claimant's property consists of 41.21 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the one home site 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 one home site 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."

Lane County deed records indicate that the claimant acquired tax lot 800 (29.65 acres) on September 13, 1954, tax lot 202 (3.95 acres) on May 27, 1966, tax lot 203 (1.86 acres) on November 19, 1968, tax lot 302 (2.81 acres) on December 1, 1970, tax lot 600 (.34 acres) on September 20, 1974, tax lots 500 and 501 (1.56 acres) on November 14, 1974, and tax lot 700 (1.04 acres) on May 5, 1982.

The claimant acquired tax lot 800 on September 13, 1954, tax lot 202 on May 27, 1966, tax lot 203 on November 19, 1968, and tax lot 302 on December 1, 1970. When the claimant acquired these tax lots the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing the one home site for which the claimant may be eligible. Therefore, on those tax lots the claimant lawfully could have established the one home site the claimant may qualify for under Section 6 of Measure 49.

On September 20, 1974, the claimant acquired tax lot 500; and on November 14, 1974, the claimant acquired tax lots 500 and 501. As of November 14, 1974, the combined Measure 37 claim property, consisting of tax lots 800, 202, 203, 302, 600, 500 and 501, was subject to applicable provisions of ORS chapters 197 and 215.

State law in effect when the claimant on November 14, 1974, specifically ORS 197.175(1) and 197.280 (1973 edition), required that counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition.) Those interim land use planning goals included: "To preserve the quality of the air, water and land resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development" ORS 215.515 (1973 edition).

The interim planning goals would not have prohibited the claimant from lawfully establishing the one home site for which the claimant may be eligible on that portion of the Measure 37 claim property when it had acquired that portion of the property in 1974. Rather, the applicable provisions of the interim goals are furthered by provisions of Section 6 of Measure 49, which limits the number of home sites authorized, and by Section 11(3), which regulates the size and location of lots or parcels on high value farm or forest land. Measure 49 Section 11(3) requires new parcels on high-value farm or forest land to be no larger than two acres and "clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use."

The claimant acquired tax lot 700 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Lane County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property consisted of tax lots 202, 203, 302, 500, 501, 600, 700 and 800 and was zoned Heavy Industrial (M3) by Lane County. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired tax lot 700 on May 5, 1982. Accordingly, the statewide planning goals applied directly to the Measure 37 claim property when the claimant acquired tax lot 700.

On October 3, 1984, the Commission acknowledged the application of Lane County's Heavy Industrial (M3) zone to the Measure 37 claim property. The Commission's acknowledgement of Lane County's M3 zone confirmed that zone's compliance with the statewide planning goals and ORS chapter 215. Lane County's acknowledged M3 zone prohibited residential use. Therefore, on the claimant's acquisition date, it could not have established a home site on tax lot 700.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, it appears that the claimant, Davidson Industries Inc., qualifies for one home site approval on tax lots 800, 202, 203, 302, 600, 501 and 500 of the Measure 37 claim property under Section 6 of Measure 49.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 on tax lot 700 because the claimant would not have been lawfully permitted to establish any additional home sites when it acquired that tax lot.

### **V. NUMBER OF LOTS, PARCELS OR DWELLINGS ON OR CONTAINED WITHIN THE PROPERTY**

The number of lots, parcels or dwellings that a claimant is authorized to establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. If a claimant otherwise qualifies for relief under Section 6 of Measure 49, the claimant will be able to establish at least one additional lot, parcel or dwelling, regardless of the number of dwellings currently in existence.

Based on the documentation provided by the claimant and information from Lane County, the Measure 37 claim property appears to currently include eight lots or parcels and three dwellings. There is no contiguous property under the same ownership. Therefore the one home site approval the claimant appears to qualify for will allow the claimant to establish one additional dwelling on one of tax lots 800, 202, 203, 302, 600, 501 or 500 of the Measure 37 claim property. The dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property.

### **VI. PRELIMINARY STATEMENT OF PROPOSED LIMITATIONS AND CONDITIONS ON THE NUMBER AND SCOPE OF HOME SITE APPROVALS**

The department has identified the following limitations and conditions that may affect the scope of the home site approval that the claimant would otherwise be entitled to under Section 6 of Measure 49. This list may not be comprehensive and does not preclude the possibility that other considerations, not yet identified by the department, may affect the establishment of a land division or dwelling authorized by the home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.

2. A home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals statewide under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many Measure 37 claims a claimant filed.
4. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a Measure 49 home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.
5. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which a claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the future site of a dwelling that may be established pursuant to the home site approval.
6. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site.
7. The claimant may not implement the relief described in a Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in section 5(3) of Measure 49 to any use on the Measure 37 claim property, then any Measure 49 Home Site Authorization for the property will be void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
8. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings.
9. If an owner of the property is authorized by other home site approvals to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an

exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.

10. Once the department issues a final home site authorization, a home site approval granted under that authorization will run with the property and will transfer with the property. A home site approval will not expire, except that if a claimant who received a home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on the home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.

## VII. 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.**