



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

December 29, 2008

STATE ELECTION NUMBER:

E134307

CLAIMANTS:

Tomasz Fijak
22740 Rocky Point Road
Scappoose, OR 97056

Katarzyna Fijak-Leong
22740 Rocky Point Road
Scappoose, OR 97056

Marcin Fijak
1607 NE 213th Street
Fairview, OR 97024

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 3N, Range 2W, Section 34D
Tax lot 700
Multnomah County

I. ELECTION

The claimants, Tomasz Fijak, Katarzyna Fijak-Leong and Marcin Fijak, filed a claim under ORS 197.352 (2005) (Measure 37) on March 20, 2007 for property located at 22740 Rocky Point Road, near Scappoose, in Multnomah 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.

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 at the time of filing, the claimants' Measure 37 claim did not comply with the requirements of OAR 660-041-0020 then in effect.

III. 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, Tomasz Fijak, Katarzyna Fijak-Leong and Marcin Fijak, filed a Measure 37 claim, M134307, with the state on March 20, 2007.

OAR 660-041-0020 required, in relevant part that Measure 37 claims based on existing DLCDC regulations and filed after December 4, 2006:

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCDC Regulations or city, county or Metro Land Use Regulations that implement Existing DLCDC Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCDC Regulations were approval criteria for the application.

It appears that at the time of filing their Measure 37 claim, the claimants did not include a final written decision indicating that an existing regulation of either, DLCDC, another agency or a county was an approval criterion for a completed application that the claimants had submitted to a city, county, Metro or an agency.

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, Tomasz Fijak, Katarzyna Fijak-Leong and Marcin Fijak, do not qualify for any Measure 49 home site approvals. At the time of filing, the claimants' Measure 37 claim did not comply with the requirements of OAR 660-041-0020 then in effect.

IV. 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.