OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

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

October 6, 2009

STATE ELECTION NUMBER:	E134387[1]
CLAIMANTS:	Richard L. and Shirley V. Gingerich Gingerich Family Limited Partnership PO Box 910 Canby, OR 97013
MEASURE 37 PROPERTY IDENTIFICATION:	Township 4S, Range 1E, Section 36 Tax lots 700 and 1600 Clackamas County
AGENT CONTACT INFORMATION:	Kristen S. David Bowerman & David, PC PO Box 100 Oregon City, OR 97045

I. ELECTION

The claimants, Richard and Shirley Gingerich and Gingerich Family Limited Partnership, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 28, 2006, for property located near Canby, in Clackamas 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 claimants Richard and Shirley Gingerich are not eligible for any relief under Measure 49 because they no longer own the Measure 37 claim property.

[1] The claimants, Richard and Shirley Gingerich also have claim, E134386, for property that is not contiguous to tax lots 700 and 1600 and Claimants Richard and Shirley Gingerich and Gingerich Limited Family Partnership also have claims, E134388 and E134389, for property that is not contiguous to tax lots 700 and 1600.

Based on the department's preliminary analysis, it appears that claimant Gingerich Family Limited Partnership 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 the claimant acquired it.

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 an unspecified number of 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, Richard and Shirley Gingerich and Gingerich Family Limited Partnership, filed a Measure 37 claim, M134387, with the state on November 28, 2006. The claimants filed a Measure 37 claim, ZC455-06, with Clackamas County on November 29, 2006. 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 Clackamas 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 deed submitted by the claimants, Gingerich Family Limited Partnership is the owner of fee title to the property as shown in the Clackamas County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Richard and Shirley Gingerich have not established their ownership of the property for the purposes of Measure 49. Richard and Shirley Gingerich acquired an ownership interest in tax lot 700 on March 2, 1988, and tax lot 1600 on November 26, 1965, as reflected by a recorded warranty deeds included with the claim. On August 28, 1998, they transferred all their ownership interest in both tax lots to claimant Gingerich Family Limited Partnership.

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

It appears that Gingerich Family Limited Partnership 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Canby.

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

As stated in Sections III and IV(a) above, claimant Gingerich Limited Family Partnership may qualify for up to three home site approvals.

The property is currently zoned Exclusive Farm Use (EFU) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 82.39 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites claimant Gingerich Limited Family Partnership 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 claimants, it does not appear that the establishment of the three home sites for which claimant Gingerich Limited Family Partnership 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."

Clackamas County deed records indicate that claimant Gingerich Family Limited Partnership acquired the property on August 28, 1998.

On August 28, 1998, the Measure 37 claim property was subject to Clackamas County's acknowledged Exclusive Farm Use (EFU) zone. Clackamas County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 82.39 acres. Therefore, the claimant lawfully could have established no more than one home site on its date of acquisition.

2. Preliminary Conclusion

Based on the department's preliminary analysis, it appears that claimants Richard and Shirley Gingerich are not eligible for any relief under Measure 49 because they are no longer owners of the Measure 37 claim property, and claimant Gingerich Family Limited Partnership 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 the claimant acquired it.

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.