



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

November 24, 2009

STATE ELECTION NUMBER: E119726¹

CLAIMANTS: Lowell Patton
Pacific Western Company
PO Box 85
Carver, OR 97015

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 13S, Range 12, Section 12
Tax lots 100 and 200²
Township 13S, Range 11, Section 7
Tax lot 3600
Lincoln County

AGENT CONTACT INFORMATION: William C. Cox, Attorney
0244 SW California Street
Portland, OR 97219

I. ELECTION

The claimants, Lowell Patton and Pacific Western Company, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 11, 2005, for property located near Waldport, 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 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.

¹The claimant, Lowell Patton, also has submitted claims for property not contiguous to the subject property which are identified as M118611, E119727, E119728 and E131735. The claimant did not elect relief under Measure 49 for claim M118611.

²According to information in the claim, tax lot 200 is not a legal lot. In recent legal proceedings in Lincoln County, a court ruled that Lowell Patton's creation of tax lot 200 and transfer of that lot to Pacific Western Company was illegal and without force.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant, Lowell Patton, is not eligible for any relief under Measure 49 because no land use regulation prohibits the claimant from establishing the requested lots parcels or dwellings.

Based on the department's preliminary analysis, it appears that the claimant, Pacific Western Company, is not eligible for any relief under Measure 49 because the claimant has not established its ownership of tax lot 200 of the property.

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 residential development. 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, Lowell Patton and Pacific Western Company, filed a Measure 37 claim, M119726, with the state on February 11, 2005. The claimants filed a Measure 37 claim, 10-LURCC-05, with Lincoln County on January 3, 2005. 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 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 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 deeds submitted by the claimants and information obtained from the county, Lowell Patton 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.

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

It appears that Lowell Patton 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 the urban growth boundary and outside the city limits of the nearest city, Waldport.

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

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

The property is currently zoned Rural Residential (RR-2) 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.

The claimant's property consists of 24.50 acres. Therefore, no state law prohibits the claimant from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Lowell Patton, does not qualify for Measure 49 home site approvals because no land use regulation prohibits the claimant from establishing the lots, parcels or dwellings.

Based on the preliminary analysis, the claimant, Pacific Western Company, does not qualify for Measure 49 home site approvals because the claimant has not established its ownership of tax lot 200 of 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 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.