# OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

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

March 8, 2010

**STATE ELECTION NUMBER:** E129310

**CLAIMANTS:** William and Elizabeth Rauch[1]
29394 Speasl Road
Lebanon, OR 97355

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 13S, Range 1E, Section 8
Tax lot 202
Linn County

## I. ELECTION

The claimants, William and Elizabeth Rauch, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 9, 2006, for property located at 29491 Speasl Road, near Lebanon, in Linn 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 the claimants would not have been lawfully permitted to establish any additional home sites when they acquired 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

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[1] Fawn Robinson is listed as a claimant on the election form, but she was not a claimant under Measure 37 and, therefore, is not eligible for relief under Measure 49.

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 two home site approvals in the election material. The Measure 37 waiver issued for this claim describes two home sites. Therefore, the claimants may qualify for a maximum of two 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, William and Elizabeth Rauch, filed a Measure 37 claim, M129310, with the state on May 9, 2006. The claimants filed a Measure 37 claim, M37-023-06, with Linn County on May 5, 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 Linn 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, William and Elizabeth Rauch are the owners of fee title to the property as shown in the Linn County deed records and, therefore, are owners of the property under Measure 49.

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

The deeds by which the claimants acquired the property indicate that there is one non-claimant owner. The claimants have submitted a consent form signed by each of the non-claimant owners.

### (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 Linn County, outside the urban growth boundary and outside the city limits of the nearest city, Lebanon.

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

As stated in Section III above, the claimants may qualify for up to two home site approvals.

The property is currently zoned Farm/Forest (FF) by Linn County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimants' property consists of 13.27 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the two home sites the claimants 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 two home sites for which the claimants 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."

Linn County deed records indicate that the claimants acquired the property on January 10, 1977.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Linn County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. On January 10, 1977, the Measure 37 claim property was zoned Agriculture Residential and Timber (ART) by Linn County. Linn County's ART zone included a fixed minimum acreage standard of 5 acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on January 10, 1977. Accordingly, the statewide planning goals, and in particular Goals 3, 4 and ORS chapter 215 applied directly to the Measure 37 claim property.

On July 18, 1985, the Commission acknowledged the application of Linn County's Farm/Forest, (FF) zone to the Measure 37 claim property. The Commission's acknowledgement of Linn County's FF zone confirmed that zone's compliance with Goals 3, 4 and ORS chapter 215. Linn County's FF zone required 40 acres for the creation of a new lot or parcel on which a farm dwelling could be established.[2] The claimant's property consists of 13.27 acres and is developed with one dwelling. Therefore, on the claimants' acquisition date, they could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

However, because of uncertainty during the time period between adoption of the statewide planning goals in 1975 and each county's acknowledgment of its plan and land use regulations regarding the factual and legal requirements for establishing compliance with the statewide planning goals, the 2010 Legislative Assembly amended Measure 49. Senate Bill (SB0 1049 (2010) specifies the number of home sites considered lawfully permitted, for purposes of Measure 49, for property acquired during this period unless the record for the claim otherwise demonstrates the number of home sites that a claimant would have been lawfully permitted to establish, including existing development. Those amendments provide, in relevant part, that subject to consistency with local land use regulations in effect when they acquired the Measure 37 claim property, claimants whose property consists of less than 20 acres were lawfully permitted to establish one home site.

The Measure 37 claim property consists of 13.27 acres and is developed with one lot or parcel and one dwelling. Therefore, based on the analysis under SB 1049 (2010), it appears that the claimants do not qualify for any additional home sites under Measure 49, as amended.

## 2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, William and Elizabeth Rauch, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition.

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[2] While the FF zone did not generally have a specific minimum lot size, the zone did specify a minimum acreage requirement of 40 acres for the development of a farm dwelling on a lot or parcel.

## 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.**