



**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 3, 2009

STATE ELECTION NUMBER: E129621

CLAIMANTS: Michael D. and Christine R. Alexander
57566 Parkersburg Road
Bandon, Oregon 97411

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 31S, Range 15W, Section 34
Tax lot 204
Curry County

I. ELECTION

The claimants, Michael and Christine Alexander, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 5, 2006, for property located at 93636 and 93640 County Shop Road, near Sixes, in Curry 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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.¹

¹ Even if the claimants had been lawfully permitted to establish any additional home sites in 1990, the claimant's property appears to be high-value forest land, which would preclude Measure 49, Section 7 relief. In addition, the appraisal submitted by the claimants does not comply with the Uniform Standards of Professional Appraisal Practices as authorized by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, which also would preclude Section 7 relief.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; the number stated by the claimants in the election materials; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The Measure 37 waiver issued for this claim describes eight home sites. The claimants have requested eight home site approvals in the election material. The appraisal submitted by the claimants attempts to support the assertion that the value of eight home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimants may qualify for a maximum of eight home site approvals under Section 7.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 7 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 December 4, 2006, 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, Michael and Christine Alexander, filed a Measure 37 claim, M129621, with the state on July 5, 2006. The claimants filed a Measure 37 claim, Order No. 12488, with Curry County on July 6, 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 Curry 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 7 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, Michael and Christine Alexander are the owners of fee title to the property as shown in the Curry 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

It appears that the claimants are the sole owners 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 Curry County, outside the urban growth boundary and outside any city limits near the community of Sixes.

(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 eight home site approvals.

The property is currently zoned Forest Grazing (FG) by Curry County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is "forest land" under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

Based on Curry County Assessor's data, the claimants' property consists of 40 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the eight home sites the claimants are requesting under Section 7 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 eight home sites that the claimants are requesting 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 7 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."

Curry County deed records indicate that the claimants acquired the property on June 25, 1990.

On June 25, 1990, the Measure 37 claim property was subject to Curry County's acknowledged Forest Grazing (FG) zone. Curry County's FG zone allowed one dwelling on a single parcel with conditional use approval and did not allow land divisions for the establishment of dwellings. The claimants' property consists of a single parcel. It appears that there are currently two dwellings located on the property. Therefore, the claimants lawfully could not have established any home sites on their date of acquisition. Because the claimants were not lawfully permitted to establish the requested home sites on their date of acquisition, the remaining criteria that must be met to qualify for relief under Section 7 of Measure 49 will not be evaluated.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Michael and Christine Alexander, 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.

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.