



**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 7, 2009

STATE ELECTION NUMBER: E130836

CLAIMANT: Gary Sullivan
28680 Liberty Road
Sweet Home, OR 97386

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 13S, Range 1W, Section 22
Tax lot 2701
Linn County

I. ELECTION

The claimant, Gary Sullivan, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 17, 2006 for property located at 28680 Liberty Road, near Sweet Home, 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 claimant has elected supplemental review of his 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 claimant is not eligible for any relief on the Measure 37 claim property under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites when he acquired the property.

**III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE
CLAIMANT 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 claimant has requested three home site approvals in the election material. The Measure 37

waiver issued for this claim describes four home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6.

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 claimant, Gary Sullivan, filed a Measure 37 claim, M130836, with the state on November 17, 2006. The claimant filed a Measure 37 claim, M37-099-06, with Linn County on October 25, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant 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 claimant 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 land sale contract submitted by the claimant and deed acquired by the department, Gary Sullivan is the owner of fee title to the property as shown in the Linn County deed records and, therefore, is an owner of the property under Measure 49.

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

It appears that the claimant 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 Linn County, outside the urban growth boundary and outside the city limits of the nearest city, Sweet Home.

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

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

The property is currently zoned Farm/Forest (F/F) 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 claimant's property consists of 23.20 acres. Therefore, state land use regulations prohibit 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.

(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 claimant, it does not appear that the establishment of the three home sites for which the claimant 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."

The Linn County deed records indicate that the claimant acquired the eastern portion of tax lot 2701 (20.35 acres) on February 17, 1981¹ and the western portion of tax lot 2701 (2.85 acres) on January 6, 1998.

¹ The deed records indicate claimant reacquired this portion of tax lot 2701 on February 17, 1981, after conveying the tax lot to another person. Regarding reacquisition of claim property, Measure 49 section 21(3) provides: "If a

The claimant acquired the eastern portion of tax lot 2701 after adoption of the statewide planning goals, but before 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. At that time, the eastern portion of tax lot 2701 was zoned F/F by Linn County. However, because the Commission had not acknowledged that zone for compliance with the goals, when the claimant acquired the property on February 17, 1981, the statewide planning goals, and in particular Goals 3, 4, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimant acquired it.

On July 18, 1985, the Commission acknowledged the application of Linn County's F/F zone to the Measure 37 claim property. The Commission's acknowledgement of Linn County's F/F zone confirmed that zone's compliance with Goal 3, 4, and ORS chapter 215. Linn County's acknowledged F/F zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established.² On July 18, 1985, the claimant's property consisted of 20.35 acres. Therefore, under the zone that was ultimately acknowledged to comply with the Goals, it does not appear that the claimant would have been lawfully permitted to establish any additional parcels or dwellings at the time he acquired the property unless the claimant can show that a direct application of the Goals would have allowed such development.

On January 6, 1998, the western portion of tax lot 2701 was subject to Linn County's acknowledged F/F zone. Linn County's F/F zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 24.2 acres and is developed with a dwelling. Therefore, the claimant lawfully could not have established any home sites on tax lot 2701 on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Gary Sullivan, does not qualify for Measure 49 home site approvals on the Measure 37 claim property because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimant's dates of acquisition.

claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property."

² While the F/F 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 or forest 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 claimant and the claimant's 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 claimant and the claimant's 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 claimant and the claimant's 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.