



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

January 5, 2010

STATE ELECTION NUMBER: E132773

CLAIMANT: DM Stevenson Ranch, LP¹
1108 E Marina Way
Hood River, OR 97031

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 18S, Range 12E, Section 22
Tax lot 301
Deschutes County

AGENT CONTACT INFORMATION: Michael H. McGean
1148 NW Hill Street
Bend, OR 97701

I. ELECTION

The claimant, DM Stevenson Ranch, LP, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 20909 Knott Road, near Bend, in Deschutes 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 its 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 under Measure 49 because the claimant has no authority to pursue or implement the requested relief under Measure 49.

¹ The Oregon Secretary of State administratively dissolved D.M. Stevenson Ranch LP on March 18, 2002.

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. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 20 home sites. Therefore, the claimant 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 claimant, DM Stevenson Ranch, LP, filed a Measure 37 claim, M132773, with the state on December 1, 2006. The claimant filed a Measure 37 claim, M372007-086, with Deschutes County on November 30, 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 Deschutes 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 information submitted by the claimant, DM Stevenson Ranch, LP is the owner of fee title to the property and therefore, is an owner of the property for the purposes of Measure 49.

However, the claimant was administratively dissolved by the Oregon Secretary of State, Corporation Division (ORS 60.647 – 60.657) on March 18, 2002. ORS 60.654 allows for the reinstatement of administratively dissolved corporations within five years after the date of dissolution. The Corporation Division has no record that any effort was made within that five-year period to reinstate the claimant corporation.

ORS 60.637(2) provides, “Dissolution of a corporation does not: (a) Transfer title to the corporation’s property.” While the claimant’s 2002 dissolution does not affect the claimant’s title to the property, the fact that the claimant corporation was dissolved limits its authority to act as an owner with regard to its property. ORS 60.651(3) provides:

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644.

ORS 60.651(3) provides that an administratively dissolved corporation may only carry on those activities listed in ORS 60.637 that are “necessary” to wind up and liquidate its business and affairs. The department finds that the pursuit of this claim for relief under Measure 49 is not within the scope of activities in which the claimant, as an administratively dissolved corporation, is permitted to engage because the claimant’s claim for relief under Measure 49 is not “necessary” to wind up the corporation’s business and affairs as the claimant could not implement the relief.

Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

Because these requirements have not been met, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated.

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.