



**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 16, 2010

STATE ELECTION NUMBER: E133244

CLAIMANTS: Carole B. and Darrell G. Lyons
19427 S Redland Road
Oregon City, OR 97045

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 3S, Range 3E
Section 8, Tax lot 1700¹
Section 8A, Tax lot 2100
Section 8B, Tax lots 800 and 2700
Clackamas County

I. ELECTION

The claimants, Carole and Darrell Lyons, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 19400 and 19427 S Redland Road, near Oregon City, in Clackamas 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 claimant Carole Lyons is not eligible for any relief under Measure 49 on tax lots 800 and 2700 because she would not have been lawfully permitted to establish any additional home sites on those portions of the property when she acquired them.

¹ The Measure 37 claim property consisted of tax lots 1700, 2100, 800 and 2700. The claimant did not elect supplemental review for tax lot 1700, which has been transferred to a different owner. However, a claim cannot be amended to remove claim property.

Based on the department's preliminary analysis, it appears that claimant Carole Lyons is not eligible for any relief under Measure 49 on tax lot 1700 because she no longer owns tax lot 1700 of the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that claimant Carole Lyons is not eligible for any relief under Measure 49 on tax lot 2100 because the Measure 37 claim property includes one lot or parcel that has been transferred to a different owner, which reduces the number of home sites for which she otherwise qualifies on tax lot 2100.

Based on the department's preliminary analysis, it appears that claimant Darrell Lyons is not eligible for any relief under Measure 49 because he is not an owner of the Measure 37 claim 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 approximately 40 home sites. 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, Carole and Darrell Lyons, filed a Measure 37 claim, M133244, with the state on December 1, 2006. The claimants filed a Measure 37 claim, ZC741-06, with Clackamas County on December 13, 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 Clackamas 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, Carole Lyons is the owner of fee title to tax lots 800, 2700 and 2100 as shown in the Clackamas County deed records and, therefore, is an owner of tax lots 800, 2700 and 2100 under Measure 49.

According to the information submitted by the claimant, Carole Lyons has not established her ownership of tax lot 1700 of the Measure 37 property for the purposes of Measure 49 because she is no longer an owner of the property.

According to the information submitted by the claimants, Darrell Lyons has not established his ownership of the property for the purposes of Measure 49. He conveyed his ownership interest in the Measure 37 claim property to Carole Lyons on June 11, 2007.

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

It appears that the claimant Carole Lyons is the sole owner of tax lots 800, 2700 and 2100 of the Measure 37 claim 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Oregon City.

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

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

The property is currently zoned Exclusive Farm Use (EFU) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone and regulate the establishment of dwellings on new or existing lots or parcels.

The Measure 37 claim property consists of 120.15 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."

Clackamas County deed records indicate that the claimant Carole Lyons acquired tax lot 2100 (51.20 acres) on March 29, 1991 and tax lots 800 (11.24 acres), 2700 (7.83 acres) and 1700 (49.88 acres) on June 10, 2004.

On March 29, 1991, the Measure 37 claim property consisted of tax lot 2100 and was subject to Clackamas County's acknowledged Exclusive Farm Use (EFU-20) zone. Clackamas County's EFU-20 zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lot 2100 of the Measure 37 claim property consists of 51.20 acres and is developed with a dwelling. Therefore, the claimant lawfully could have established one additional home site on tax lot 2100 on her date of acquisition.

On June 10, 2004, the Measure 37 claim property consisted of tax lots 2100, 800, 2700 and 1700 and was subject to Clackamas County's acknowledged Exclusive Farm Use (EFU) zone. Clackamas County's EFU 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 120.15 acres and is

developed with two dwellings. Therefore, the claimant lawfully could not have established any additional home sites on her date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that claimant Carole Lyons qualifies for one home site approval under Section 6 of Measure 49 on tax lot 2100 of the Measure 37 claim property. However, because the Measure 37 claim property includes one lot or parcel that has been transferred to a different owner, the number of home site approvals that the claimant qualifies for on the portion of the property that she currently owns is reduced by one. Therefore, the claimant does not qualify for any home site approvals on tax lot 2100 of the Measure 37 claim property.

Based on the preliminary analysis, it appears that claimant Carole Lyons does not qualify for any relief under Measure 49 on tax lots 800 and 2700 because she was not lawfully permitted to establish the lots, parcels or dwellings on her date of acquisition of this portion of the Measure 37 claim property.

Based on the preliminary analysis, it appears that claimant Carole Lyons does not qualify for any relief under Measure 49 on tax lot 1700 because she is no longer an owner of that portion of the Measure 37 claim property.

Based on the preliminary analysis, claimant Darrell Lyons does not qualify for any relief under Measure 49 because he is not an owner of the Measure 37 claim 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 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.