



**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 2, 2010

STATE ELECTION NUMBERS: E133282B and E133749^{1, 2}

CLAIMANT: James D. Wynne
1978 Fieldcrest Court South
Salem, OR 97306

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 13S, Range 1W, Section 23
Tax lots 1204 and 1206
Linn County

I. ELECTION

The claimant, James Wynne, filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, and December 4, 2006, for property located 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 claims 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 is not an owner of the Measure 37 claim property.

¹ The claimant filed Measure 37 claim M133282 which requested relief on tax lots 1201, 1204, 1205, 1206, and 1207. Under Measure 49, claim E133282 has been split into three claims, E133282A E133282B and E133282C, because the Measure 37 claim sought relief for non-contiguous parcels and contiguous parcels that have different ownership. E133282A has been combined with E133742A and addresses the claimant's relief for tax lots 1201 and 1205. E133282B has been combined with E133749 and addresses the claimant's relief for tax lots 1204 and 1206. E133282C has been combined with E133742B and addresses the claimant's entitlement to Measure 49 relief for tax lot 1207.

² Claimant filed two claims for tax lots 1204 and 1206. Claim E133749 requested relief on tax lots 1204 and 1206 and claim E133282B requested relief on tax lots 1204 and 1206. This preliminary evaluation addresses both E133282B and E133749 because both claims included requests for relief for tax lots 1204 and 1206.

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 15 home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes up to 15 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

I. 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, James Wynne, filed Measure 37 claims, M133282 and M133749 with the state on December 1, 2006 and December 4, 2006 respectively. The claimant filed Measure 37 claims, M37-261-06 and M37-264-06, with Linn County on December 1, 2006. The state claims were filed prior to and on December 4, 2006.

It appears that the claimant timely filed Measure 37 claims 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 Linn County deed records, James Wynne, has not established his ownership of the property for the purposes of Measure 49 because he is not an owner of the Measure 37 claim property. To establish his ownership of tax lots 1204 and 1206, the claimant submitted two

different unrecorded deeds. However, unrecorded documents do not establish ownership for purposes of Measure 49.

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

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, James Wynne, does not qualify for Measure 49 home site approvals 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.