



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

February 4, 2010

STATE ELECTION NUMBER: E133378B¹

CLAIMANTS: Ray Streeter and Jacquelyn S. Streeter
21495 Sandlake Drive
Cloverdale, OR 97112

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 3S, Range 10W, Section 29
Tax lot 700
Tillamook County

PRIMARY CONTACT INFORMATION: Mike Streeter
21495 Sandlake Drive
Cloverdale, OR 97112

I. ELECTION

The claimants, Ray and Jacquelyn Streeter, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 2, 2006, for property located at 24104, 24105 and 24115 Sandlake Road, near Cloverdale, in Tillamook 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. The appraisal submitted by the claimants cannot be used for the purpose of appraising the value of ten home sites, a ten-lot subdivision, under Section 7 of Measure 49, because the appraiser's Certified Residential Appraiser License does not allow the appraisal of subdivisions.

¹ Claim E133378 has been split into two claims, E133378A and E133378B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E133378A addresses the claimants' eligibility for Measure 49 relief on tax lot 400 and E133378B addresses their relief on tax lot 700.

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 claimant 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 claimants have requested ten home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes twenty home sites.² The appraisal submitted by the claimants attempts to support the assertion that the value of ten 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 ten home site approvals under Section 7 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

In order to be eligible for relief under Section 7 of Measure 49, the Measure 37 claim property must not be high-value farmland or high-value forestland, nor in a ground water restricted area.

It appears that the property is not high-value farmland or high-value forestland, and is not in a ground water restricted area.

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 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, Ray and Jacquelyn Streeter, filed a Measure 37 claim, M133378, with the state on December 2, 2006. The claimants filed a Measure 37 claim, M-06-40, with Tillamook County on December 1, 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 Tillamook 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:

² The Measure 37 waiver described the property and provided relief for both tax lot 700, the property addressed in this report, and tax lot 400, which is addressed in the companion report, E133378A.

(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 deed submitted by the claimants, Ray and Jacquelyn Streeter are the owners of fee title to the property as shown in the Tillamook 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 Tillamook County, outside any urban growth boundary and outside any city limits, near the community of Cloverdale.

(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 ten home site approvals.

The property is currently zoned exclusive farm use (F-1) by Tillamook 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 claimants' property consists of 64.7 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the ten home sites the claimants may qualify for 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 ten home sites for which the claimants 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 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."

Tillamook County deed records indicate that the claimants acquired the property on May 18, 1965.

On May 21, 1965, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimants from establishing at least ten lots or parcels and at least ten dwellings. Therefore, the claimants lawfully could have established the ten home sites the claimants may qualify for under Section 7 of Measure 49.

(g) The Enactment of One or More Land Use Regulations that are the Basis for this Claim, Caused a Reduction in the Fair Market Value of the Measure 37 Claim Property that is Equal to or Greater than the Fair Market Value of the Home Site Approvals Requested

Sections 7 and 8 of Measure 49 require that the reduction in the fair market value of the property be demonstrated through an appraisal that meets the following requirements:

1) The appraisal must be submitted within 180 days after the Measure 49 election is filed with the department.

The claimants submitted their election on May 12, 2008, and their appraisal on November 6, 2008. Therefore, the appraisal was submitted within 180 days of the election filing.

2) The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.

The appraisal submitted by the claimants was prepared by Laura M. Adkins, a Certified Residential Appraiser. ORS Chapter 674 is governed by Chapter 161 of the Appraiser

Certification and Licensure Board Administrative Rules. Per Section 161-025-0005, "a State-Certified Residential Appraiser (SCRA) is authorized to appraise: all types of one- to four-family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one- to four-family residential purposes, and where the Highest and Best Use is for one- to four-family residential purposes." The State-Certified Residential Appraiser is also authorized to appraise all types of real property having a transaction value of less than \$250,000. Specifically, however, the Certified Residential Appraiser classification does not allow the appraisal of subdivisions which would involve any segregation of four or more parcels. In the submitted appraisal, the Highest and Best Use involved a ten-lot subdivision and a transaction value in excess of \$250,000. The submitted appraisal is beyond the scope of the state-certified residential appraisal license. The appraisal cannot be used for the purpose of appraising the value of ten home sites under Section 7 of Measure 49, and, therefore, this requirement has not been met.

Because this requirement has not been met, the claimants are 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 claimants, Ray and Jacquelyn Streeter, do not qualify for Measure 49 home site approvals. The appraisal submitted by the claimants cannot be used for the purpose of appraising the value of ten home sites, a ten-lot subdivision, under Section 7 of Measure 49 because the appraiser's Certified Residential Appraiser License does not allow the appraisal of subdivisions.

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.