**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 10, 2010

| | |
|---|---|
| **STATE ELECTION NUMBER:** | E134028A[1] |
| **CLAIMANTS:** | Rod R. and Marie M. Lyon<br>20302 Paygr Road<br>Malin, OR 97632 |
| **MEASURE 37 PROPERTY IDENTIFICATION:** | Township 41S, Range 11E<br>Section 4, Tax lots 500 and 1600<br>Section 5, Tax lots 900 and 1000<br>Klamath County |
| **AGENT CONTACT INFORMATION:** | Justin Throne, Attorney at Law<br>280 Main Street<br>Klamath Falls, OR 97601 |

## I. ELECTION

The claimants, Rod and Marie Lyon, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located near Malin, in Klamath 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 the claimants are not eligible for any relief under Measure 49 because the claimants are no longer owners of the Measure 37 claim property.

[1] Claim E134028 has been split into three claims, E134028A, E134028B and E134028C, because the Measure 37 claim sought relief for non-contiguous parcels. Claim E134028A addresses the claimants' eligibility for Measure 49 relief on tax lots 500, 1600, 900 and 1000. E134028B addresses their relief on tax lots 600 (sections 1 and 2), 7100 and 600 (section 34). E134028C addresses their relief on tax lot 300.

## 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 supplemental review under Section 6 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three 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, Rod and Marie Lyon, filed a Measure 37 claim, M134028, with the state on December 4, 2006. The claimants filed Measure 37 claims, M37 28-05 and M37 2-06, with Klamath County on April 19, 2005 and March 13, 2006. The state claim was filed on December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Klamath 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 deeds obtained by the department, Rod and Marie Lyon have not established their ownership of the property for the purposes of Measure 49. The claimants sold the Measure 37

claim property on March 2, 2007. Therefore, the claimants are no longer owners of the Measure 37 claim property.

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, Rod and Marie Lyon, do not qualify for Measure 49 home site approvals because the claimants are no longer owners 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 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.**