



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

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

June 21, 2010

**STATE ELECTION NUMBER:** H121661

**CLAIMANTS:** Lloyd L. and Agnes M. Miller<sup>1</sup>  
36124 Cold Springs Road  
Lebanon, OR 97355

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 11S, Range 2W, Section 11BB  
Tax lot 1800  
Linn County

**PRIMARY CONTACT INFORMATION:** Duane D. Miller  
36124B Cold Springs Road  
Lebanon, OR 97355

**I. ELECTION**

The claimants, Lloyd and Agnes Miller, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 1, 2005, for property located at 36124 Cold Springs Road, near Lebanon, 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 claimants 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. However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant did not file a Measure 49 election within 90 days of the department mailing the election packet. Lloyd and Agnes Miller were not entitled to Measure 49 relief on that basis.

However, the Oregon State Legislative Assembly subsequently amended this Measure 49 requirement through the passage of House Bill 3225 (Chapter 855 (2009 Laws)) (HB 3225). As a result, this requirement no longer prevents the claimants, Lloyd and Agnes Miller, from obtaining Measure 49 relief. The claimants elected to seek relief under Measure 49, as amended

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<sup>1</sup> Duane D. Miller is listed as a claimant on the election form, but he was not a claimant under Measure 37 and, therefore, is not eligible for relief under Measure 49.

by HB 3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

## **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 no longer own 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 two home site approvals in the election material. The Measure 37 waiver issued for this claim describes two home sites. Therefore, the claimants may qualify for a maximum of two 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, as amended by HB 3225, a claimant must have filed a Measure 37 claim for the property with the state before Measure 49 became effective on December 6, 2007. If the claimant filed their state Measure 37 claim after December 4, 2006, the claimant must also have either (a) filed the claim in compliance with the provisions of OAR 660-041-0020 then in effect; (b) submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or (c) filed a Measure 37 claim with the county on or before December 4, 2006.

The claimants, Lloyd and Agnes Miller, filed a Measure 37 claim, M121661, with the state on August 1, 2005. The claimants filed a Measure 37 claim, M37-112-05, with Linn County on July 29, 2005. The state claim was filed prior to December 4, 2006.

It appears the claimants filed a timely Measure 37 claim with the state along with any additional claims or applications that the claimants had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

In addition to timely filing a state claim, to qualify for a home site approval under Section 6 of Measure 49 the claimants must also establish 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 claimants, Lloyd and Agnes Miller have not established ownership of the property for the purposes of Measure 49. Claimants Lloyd and Agnes Miller acquired tax lot 1800 on May 29, 1975, as reflected by a recorded warranty deed included with the claim. However, Lloyd and Agnes Miller conveyed fee title to Duane D. Miller on December 9, 1998, retaining for themselves a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Lloyd and Agnes Miller were no longer owners of tax lot 1800 after December 9, 1998.

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, it appears that the claimants, Lloyd and Agnes Miller, do not qualify for any Measure 49 home site approvals because the claimants no longer own 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.**