



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

December 7, 2010

STATE ELECTION NUMBER: D135028

CLAIMANT: Emily Eymann
91947 Marcola Road
Springfield, OR 97478

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 16S, Range 2W
Section 23, Tax lot 1301
Section 24, Tax lot 1209¹
Lane County

PRIMARY CONTACT INFORMATION: Penelope (Penny) Jordan
91947 Marcola Road
Springfield, OR 97478

I. ELECTION

The claimant, Emily Eymann, filed a claim with Lane County under ORS 197.352 (2005) (Measure 37) on December 14, 2005, for property located at 91947 Marcola Road, near Springfield, in Lane County. The claimant did not file a state Measure 37 claim. ORS 195.300 to ORS 195.336 (Measure 49), as amended by Senate Bill 1049 (SB 1049) entitles claimants who filed Measure 37 claims only with the county in which the claim property is located to elect supplemental state review of their claims; and allows the Department of Land Conservation and Development (the department) to authorize one dwelling approval to qualified claimants.

The claimant has elected supplemental review of her Lane County Measure 37 claim under SB 1049, and has submitted the \$2500 fee required by Section 7(2) of SB 1049 for that review.

¹ This Preliminary Evaluation considers tax lots 1209 and 1301 as one claim because the two Measure 37 claim tax lots and tax lot 2500 (an old railroad right-of-way), which separates the two claim tax lots, are in the same ownership. These three tax lots together are contiguous. Per OAR 660-041-0150 the Department of Land Conservation and Development must combine lots or parcels into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is qualified for one dwelling approval on the Measure 37 claim property.

III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR DWELLING APPROVAL

1. Preliminary Analysis

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must have provided a certified copy of the claim to the department no later than June 30, 2010.

The claimant, Emily Eymann, filed a Measure 37 claim, PA05-6785, with Lane County on December 14, 2005. Lane County provided a certified copy of that claim to the department on May 18, 2010. It appears the claimant filed a timely Measure 37 claim with Lane County in order to be eligible for supplemental review under SB 1049.

In addition to timely filing a county claim, to qualify for a dwelling approval under SB 1049, the claimant must also 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 to the county by the claimant and provided by the claimant, Emily Eymann is the owner of fee title to the property as shown in the Lane County deed records and, therefore, is an owner of the property under Measure 49.

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

It appears that the claimant is the sole owner of the property. Therefore, no additional consent is required.

(c) The Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City; or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary

The Measure 37 claim property is located in Lane County, outside any urban growth boundary and outside the city boundary of the nearest city, Springfield.

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

The property is currently zoned Exclusive Farm Use (E40) by Lane 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, regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Lane County’s E40 zone, which requires a minimum lot size of 40 acres.

The claimant’s claim property consists of 256.90 acres in two parcels and is developed with one dwelling.² Therefore, state land use regulations prohibit the claimant from establishing one dwelling on the Measure 37 claim property.

(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 dwelling 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 One Additional Dwelling on the Property

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.”

Lane County deed records indicate that the claimant acquired tax lot 1301(29.67 acres) on August 22, 1958, and tax lot 1209 (227.03 acres) on August 15, 1973.

² The documentation for this claim indicates that there may be one temporary dwelling currently located on the subject property. Temporary dwellings are not considered in determining the number of dwellings currently existing on the property.

On August 22, 1958, and August 14, 1973, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least one additional dwelling. Therefore, the claimant lawfully could have established one dwelling on the Measure 37 claim property under Section 6 of Measure 49, as amended by SB 1049.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Emily Eymann, qualifies for one dwelling under Section 6 of Measure 49, as amended by SB 1049. Because the property appears to include a vacant parcel (tax lot 1301), the dwelling must be sited on the existing vacant parcel within the Measure 37 claim property, and the claimant does not qualify to create an additional parcel on which to site the dwelling.

IV. PRELIMINARY STATEMENT OF PROPOSED LIMITATIONS AND CONDITIONS ON THE NUMBER AND SCOPE OF HOME SITE APPROVALS

The department has identified the following limitations and conditions that may affect the dwelling approval that the claimant would otherwise be entitled to under Measure 49, as amended by SB 1049. This list may not be comprehensive and does not preclude the possibility that other considerations, not yet identified by the department, may affect the establishment of a dwelling pursuant to this approval.

1. The establishment of a dwelling based on a Measure 49 authorization must comply with all applicable standards governing siting or development. However, those standards must not be applied in a manner that prohibits the establishment of the dwelling unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.
2. An authorization under Measure 49 does not allow the establishment of a dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed.
4. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert a temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a Measure 49 dwelling approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.
5. An authorization under Measure 49 only allows the establishment of a new dwelling on the property for which the claimant is eligible for Measure 49 relief. No additional development

is authorized on contiguous property for which no Measure 37 claim was filed, or on Measure 37 claim property on which a claimant is not eligible for Measure 49 relief.

6. The claimant may use an authorization to convert an unauthorized or nonconforming dwelling currently located on the claim property into an allowed use.
7. The claimant may not implement the relief described in a Measure 49 authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then any Measure 49 authorization for the property will be void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be authorized using this approval.
8. An authorization under Measure 49 does not allow the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to partition a lot or parcel currently in existence on the Measure 37 claim property so that the authorized dwelling established on the property is sited on a separate lot or parcel.
9. If the property described in a claim is divided by an urban growth boundary, any new dwelling that is established on the property pursuant to an authorization must be located on the portion of the property outside the urban growth boundary.
10. Because the property is located in an exclusive farm use zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.
11. If an owner of the property is authorized by other home site approvals to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.
12. Once the department issues a final authorization, a dwelling established pursuant to that authorization will run with the property and will transfer with the property. An authorization will not expire, except that if a claimant who received an authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized dwelling and lot or parcel, within 10 years of the conveyance. A dwelling lawfully created based on this authorization is a permitted use.

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.