



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

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

November 4, 2009

**STATE ELECTION NUMBER:**

E131177<sup>1</sup>

**CLAIMANTS:**

D. Edward Germond  
5462 Hubbard Creek Road  
Umpqua, OR 97486

Clyde D. Germond  
2807 Daysha Drive  
Roseburg, OR 97470

Paula L. Germond  
PO Box 1437  
Sutherlin, OR 97479

David E. Germond  
6894 Hubbard Creek Road  
Umpqua, OR 97486

Sharon L. Wiseman  
5462 Hubbard Creek Road  
Umpqua, OR 97486

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 25S, Range 7W  
Section 29, Tax lot 900  
Section 30, Tax lot 800<sup>2</sup>  
Douglas County

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<sup>1</sup> The claimants D. Edward Germond, Clyde Germond, Paula Germond and David Germond and Sharon Wiseman also have a claim, E131176, for property that is not contiguous to tax lots 900 (Section 29) and 800 (Section 30). Claimant D. Edward Germond also has a claim, E133953, for property that is not contiguous to tax lots 900 (Section 29) and 800 (Section 30).

<sup>2</sup> Douglas County approved a land partition for the Measure 37 property on August 4, 2009. The approval was not based on any Measure 37 waiver because no waiver was issued.

## **I. ELECTION**

The claimants, D. Edward Germond, Clyde Germond, Paula Germond and David Germond and Sharon Wiseman, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 24, 2006, for property located at 6894 Hubbard Creek Road, near Umpqua, in Douglas 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 claimants D. Edward Germond and Clyde Germond are not eligible for any relief under Measure 49 because the claimants would not have been lawfully permitted to establish any additional home sites when they acquired the property.

Based on the department's preliminary analysis, it appears that claimants Paula Germond, David Germond and Sharon Wiseman have not established their ownership of the property for the purposes of Measure 49.

## **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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 11 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, D. Edward Germond, Clyde Germond, Paula Germond and David Germond and Sharon Wiseman, filed a Measure 37 claim, M131177, with the state on November 24, 2006. The claimants filed a Measure 37 claim, M37-167, with Douglas County on November 21, 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 Douglas 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 the trust documents submitted by the claimant, D. Edward Germond and Clyde Germond are the trustees of an irrevocable trust into which the Measure 37 property has been conveyed and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Paula Germond, David Germond and Sharon Wiseman have not established their ownership of the property for the purposes of Measure 49. Claimants are listed as beneficiaries of the Germond Loving Trust, but have not submitted any documentation establishing they are owners of the property under Measure 49.

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

It appears that claimants D. Edward Germond and Clyde Germond 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 Douglas County, outside any urban growth boundary and outside any city limits, near the community of Umpqua.

**(d) One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling**

As stated in Sections III and IV(a) above, claimants D. Edward Germond and Clyde Germond may qualify for up to three home site approvals.

Approximately 9 acres in the northwest portion of tax lot 900 are currently zoned Exclusive Farm Use Grazing (FG) by Douglas 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.

Approximately 110.24 acres of the property are currently zoned Farm Forest (FF) by Douglas County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants may qualify for under Section 6 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 three home sites for which claimants D. Edward Germond and Clyde Germond 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 6 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.”

Douglas County deed records indicate that claimants D. Edward Germond and Clyde Germond acquired the property on March 10, 2004.

On March 10, 2004, the Measure 37 claim property was subject to Douglas County's acknowledged Farm Grazing (FG) and Farm Forest (FF) zones. Douglas County's FG and FF zones each required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The FG-zoned portion of the claimants' property consists of approximately 9 acres and the FF-zoned portion consists of approximately 110.24 acres. The property is developed with at least one dwelling. Therefore, the claimants lawfully could not have established any additional home sites on their date of acquisition.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, claimants D. Edward Germond and Clyde Germond do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition.

Based on the preliminary analysis, claimants Paula Germond, David Germond and Sharon Wiseman do not qualify for Measure 49 home site approvals because the claimants have not established their ownership of the property for purposes of Measure 49.

## **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.**