



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

October 24, 2008

STATE ELECTION NUMBER: E122130

CLAIMANTS: Berj and Georgia Martin
64646 Collins Road
Bend, Oregon 97701

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2 South, Range 3 East,
Section 10C, tax lot 800
Clackamas County

**AGENT/
PRIMARY CONTACT INFORMATION:** Zupancic Group, Inc.
Layne McWilliams
16869 Southwest 65th Avenue #196
Lake Oswego, Oregon 97035

I. ELECTION

The claimants, Berj and Georgia Martin, filed a claim under ORS 197.352 (2005) (Measure 37) on August 30, 2005, for property located at 16149 Southeast 232ND Drive, in Damascus, in Clackamas County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed a Measure 37 claim to elect supplemental review of their claim under either Section 6 or Section 7 of Measure 49. The claimants have elected supplemental review of their Measure 37 claim under Section 7, which authorizes the Department of Land Conservation and Development (the department) to issue 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 Section 7 of Measure 49 because the Measure 37 claim property is located within the boundary of the city of Damascus.

III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

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, Berj and Georgia Martin, filed a Measure 37 claim, M122130, with the state on August 30, 2005. The claimants filed a Measure 37 claim, ZC254-05, with Clackamas County on August 29, 2005. 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 Clackamas 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 deed submitted by the claimants, Berj and Georgia Martin are the owners of fee title to the property as shown in the Clackamas 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 Clackamas County, at 16149 Southeast 232ND Drive, within the boundary of the city of Damascus.

Because this requirement has not been met, the remaining approval criteria will not be evaluated.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Berj and Georgia Martin, do not qualify for any Measure 49 home site approvals because the Measure 37 claim property is located within the boundary of the city of Damascus.

IV. 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.