



**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 2, 2008

STATE ELECTION NUMBER:

E118637

CLAIMANTS:

Julia Seibert
16300 Falls City Road
Falls City, Oregon 97338

Cory Seibert
PO Box 982
Falls City, Oregon 97338¹

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 8 South, Range 6 West,
Section 24, tax lot 1300
Polk County

I. ELECTION

The claimants, Cory Seibert and Julia Seibert, filed a claim under ORS 197.352 (2005) (Measure 37) on May 20, 2005 for property located at 16300 Falls City Road, near Dallas, in Polk 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. Section 6 allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals for qualified claimants.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears the claimant, Cory Seibert, does not qualify for Measure 49 home site approvals. Claimant Cory Seibert was not lawfully permitted to establish the additional lots, parcels or dwellings on his date of acquisition.

Based on the department's preliminary analysis, it appears that the claimant, Julia Seibert, is not eligible for relief under Measure 49. Julia Seibert has not established her ownership of the property for the purposes of Measure 49. Julia Seibert currently holds a life estate in the Measure

¹ Melinda S. Seibert is listed as a claimant on the election form, but she was not a claimant under Measure 37 and, therefore, is not eligible for relief under Measure 49.

37 claim property. However, a life estate holder is not considered an owner of property under Measure 49.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

Under Section 6, the number of home site approvals issued 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 four home site approvals in the election material. The Measure 37 waiver issued for this claim describes 17 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6, 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, Cory Seibert and Julia Seibert, filed a Measure 37 claim, M118637, with the state on May 20, 2005. The claimants filed a Measure 37 claim with Polk County, Order 05-04, on January 11, 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 Polk 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 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 obtained from Polk County, the claimant Cory Seibert is the owner of fee title to the property as shown in the Polk County deed records and, therefore, is an owner of the property under Measure 49.

Claimant, Julia Seibert has not established her ownership of the property for the purposes of Measure 49. Julia Seibert currently holds a life estate in the Measure 37 claim property. However, a life estate does not qualify her as an owner under Measure 49 because a life estate does not fall into one of the ownership categories defined in the statute as listed above.

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

The deed by which the claimant acquired the property indicates that there is one non-claimant owner. The claimant has submitted a consent form signed by the non-claimant owner.

(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 Polk County, outside the urban growth boundary and outside the city limits of the nearest city, Dallas.

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

As stated in Section III above, the claimants may qualify for up to three home site approvals.

The property is currently zoned Exclusive Farm Use (EFU) and Farm Forest (FF) by Polk County. A 57-acre portion of the property is zoned EFU. The Polk County EFU zone is 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.

A 20-acre portion of the property is zoned Farm Forest (FF). The Polk County FF zone is 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 dwelling on a lot or parcel less than 80 acres in size in a mixed farm/forest zone. 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 Polk County’s FF zone, which requires a minimum lot size of 40 acres.

The Measure 37 claim property consists of 77.94 acres with 57 acres zoned EFU and 20 acres zoned FF. Therefore, state land use regulations prohibit claimant, Cory Seibert, from establishing on the Measure 37 claim property the three home sites he appears to 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 claimant, it does not appear that the establishment of the three home sites 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."

Polk County deed records indicate that claimant, Cory Seibert, acquired the property on June 29, 1990.

On June 29, 1990, the Measure 37 claim property was subject to Polk County's acknowledged EFU and FF zones. Polk County's EFU zone required 80 acres for the establishment of a dwelling on a lot or parcel. Polk County's FF zone required 40 acres for the establishment of a dwelling on a lot or parcel. On the claimant's acquisition date in 1990, the claimant lawfully could not have established a dwelling on a lot or parcel less than 80 acres in the EFU zone and 40 acres in the FF zone. The Measure 37 claim property consists of 77.94 acres with 57 acres zoned EFU and 20 acres zoned FF. Therefore, claimant Cory Seibert lawfully could not have established any additional home sites on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, claimant Cory Seibert does not qualify for Measure 49 home site approvals because he was not lawfully permitted to establish the lots, parcels or dwellings on his date of acquisition.

Based on the preliminary analysis, claimant Julia M. Seibert does not qualify for Measure 49 home site approvals because she has not established her ownership of the property for the purposes of Measure 49.

V. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or the 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.