



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 4, 2009

STATE ELECTION NUMBER: E124326¹

CLAIMANT: Willis Family, Inc.²
2385 Eastside Road
Hood River, OR 97031

MEASURE 37 PROPERTY IDENTIFICATION: Township 2N, Range 10E
Section 12, Tax lot 3401
Section 13, Tax lots 600, 700,
800, 900 and 1000
Hood River County

AGENT CONTACT INFORMATION: Steven B. Andersen
Cascade Planning Associates
571 NW Spring Street
White Salmon, WA 98672

I. ELECTION

The claimant, Willis Family, Inc., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on March 13, 2006, for property located at 2755 Pasch Drive; 2160, 2162 and 2166 Mason Drive; and 2025, 2115 and 2165 Highway 35, near Hood River, in Hood River 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 claimant has elected supplemental review of its 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.

¹ The claimant also has claims for properties not contiguous to the subject property which are identified as E124323, E124324 and E124325.

² Norma Jean Willis was also a Measure 37 claimant; however, she has not elected supplemental review.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites it acquired the property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANT 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. However, if the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and the contiguous property under the same ownership is equal to or greater than the maximum number of home sites a claimant could otherwise qualify for under Section 6 of Measure 49, a claimant may qualify for only one home site approval.

The claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes residential uses. However, because it appears that the Measure 37 claim property and contiguous property in the same ownership contain three or more lots or parcels that are developed with dwellings, the claimants may qualify for a maximum of one home site approval.

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 claimant, Willis Family, Inc., filed a Measure 37 claim, M124326, with the state on March 13, 2006. The claimant filed a Measure 37 claim, 06-M006, with Hood River County on March 2, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Hood River 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 corporation merger documents, deed and land sale contract submitted by the claimant, Willis Family, Inc. is the owner of fee title to tax lots 3401, 700, 800, 900 and 1000 as shown in the Hood River County deed records, and the purchaser under a recorded land sale contract in force for tax lot 600 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 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 Hood River County, outside the urban growth boundary and outside the city limits of the nearest city, Hood River.

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

As stated in Section III above, the claimant may qualify for one home site.

The property is currently zoned Exclusive Farm (EFU) by Hood River 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.

The claimant's property consists of 68.01 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the one home site the claimant 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 claimant, it does not appear that the establishment of the one home site for which the claimant 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."

Hood River County deed records indicate that the claimant acquired tax lots 3401 (2.70 acres), 800 (16.95 acres), 900 (10 acres) and 1000 (18.62 acres) on December 10, 1981, tax lot 700 (10.19 acres) on March 23, 1988, and tax lot 600 (9.55 acres) on July 3, 1990.

The claimant acquired tax lots 3401, 800, 900 and 1000 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, tax lots 3401, 800, 900 and 1000 of the Measure 37 claim property were zoned Exclusive Farm (EFU) by Hood River County, which required a minimum of 20 acres for the creation of a new lot or parcel on which a dwelling could be established. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired the property on December 10, 1981. Accordingly, the statewide planning goals, and in particular Goal 3, and ORS chapter 215 applied directly to tax lots 3401, 800, 900 and 1000 of the Measure 37 claim property when the claimant acquired it.

To determine whether a use of property that was not subject to an acknowledged zone at the time the claimant acquired would have complied with Goal 3 and ORS 215, OAR 660-041-0110 provides that DLCD will apply the first acknowledged local land use regulations, unless the evidence in the record, including but not limited to, county Measure 37 waivers or local land use

determinations issued at the time the property was acquired, establishes that a greater number of lots, parcels or dwellings would have been lawfully permitted.

In 1981, Goal 3 was “to preserve and maintain agricultural lands. It required the adoption of exclusive farm use zones pursuant to ORS chapter 215, and required that “[s]uch minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area.”

On January 11, 1985, the Commission acknowledged the application of Hood River County’s Exclusive Farm Use (EFU) zone to tax lots 3401, 800, 900 and 1000 of the Measure 37 claim property. The Commission’s acknowledgement of Hood River County’s EFU zone confirmed that zone’s compliance with Goal 3 and ORS chapter 215. Hood River County’s acknowledged EFU zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lots 3401, 800, 900 and 1000 of the Measure 37 claim property consist of 48.27 acres and are developed with three dwellings. Therefore, on the claimant’s acquisition date, it could not have established a home site in addition to the existing lots or parcels with dwellings, in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

On March 23, 1988, and July 3, 1990, the Measure 37 claim property was subject to Hood River County’s acknowledged Exclusive Farm Use (EFU) zone. Hood River County’s EFU zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant’s property consists of 68.01 acres, and is developed with three dwellings. Therefore, the claimant lawfully could not have established a home site, in addition to the existing lots or parcels with dwellings, on its date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Willis Family, Inc, does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimant’s date of acquisition.

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.