



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

March 20, 2009

STATE ELECTION NUMBER: E130537

CLAIMANTS: Darrell Sheets
P.O. Box 888
North Plains, OR 97133

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2N, Range 2B, Section 17
Tax lots 6400, 6402, and 6403¹
Washington County

AGENT CONTACT INFORMATION: Bruce Vincent
Bedsaul/Vincent Consulting, LLC
825 NE 20th Avenue, Suite 300
Portland, OR 97232

I. ELECTION

The claimant, Darrell Sheets, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 2, 2006 for property located at 26525 NW Dorland Road, near North Plains, in Washington 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 his 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 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 when he acquired the property.

¹ Information from Washington County indicates that tax lots 6400, 6402, and 6403 make up one legal parcel.

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 claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes two home sites. Therefore, the claimant may qualify for a maximum of two 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 claimant, Darrell Sheets, filed a Measure 37 claim, M130537, with the state on November 2, 2006. The claimant filed a Measure 37 claim, 37CL0434, with Washington County on April 6, 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 Washington 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 claimant 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 deeds submitted by the claimant, Darrell Sheets is the owner of fee title to tax lots 6402 and 6403 as shown in the Washington County deed records. According to the recorded real estate contract submitted by the claimant, Darrell Sheets is the purchaser under a recorded land sale contract in force for tax lot 6400, as shown in the Washington County deed records. Darrell Sheets is therefore an owner of the Measure 37 claim 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 Washington County, outside the urban growth boundary and outside the city limits of the nearest city, North Plains.

(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 up to two home site approvals.

The property is currently zoned Exclusive Forest and Conservation (EFC) by Washington County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 120 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the two home sites 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 two home sites for which the claimants 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."

The Washington County deed records indicate that the claimant acquired tax lots 6402 (40 acres) and 6403 (40 acres) on November 16, 1979, and tax lot 6400 (40 acres) on February 15, 2005.

The claimant acquired tax lots 6402 and 6403 of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Washington 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, the Measure 37 claim property was zoned FRC-38 by Washington County. However, because the Commission had not acknowledged that zone for compliance with the goals, when the claimant acquired the property on November 16, 1979, the statewide planning goals, and in particular Goal 4, and ORS ch. 215 applied directly to tax lots 6402 and 6403 when the claimant acquired them.

On July 31, 1984, the Commission acknowledged the application of Washington County's EFC zone to tax lots 6402 and 6403 of the Measure 37 claim property. The Commission's acknowledgement of Washington County's EFC zone confirmed that zone's compliance with Goal 4 and ORS ch. 215. Washington County's acknowledged EFC zone required 76 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lots 6402 and 6403 together consists of 80 acres. Therefore, on the claimant's acquisition date, he could not have established the three requested home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. It appears that the claimant does not qualify for any home sites on tax lots 6402 and 6403, unless the claimant can show that a direct application of the Goals and ORS ch. 215 would have allowed the claimant to establish additional home sites.

On February 15, 2005, the Measure 37 claim property was subject to Washington County's acknowledged Exclusive Forest and Conservation (EFC) zone. Washington County's EFC zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The Measure 37 claim property on February 15, 2005, including tax lots 6400, 6402, and 6403, together consists of 120 acres. Therefore, the claimants lawfully could not have established the three requested home sites on his date of acquisition.²

² On both of the claimant's acquisition dates he may have been lawfully permitted to establish one home site on the Measure 37 claim property. However, because it appears that the Measure 37 claim property consists of one lot or parcel that is already developed with at least one dwelling, an authorization of one home site approval would not appear to provide the claimant with any benefit.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Darrel Sheets 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 dates 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.