



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

September 15, 2009

STATE ELECTION NUMBER: E130653

CLAIMANTS: Virginia Bojorquiz¹
PO Box 185
Aguanga, CA 92536

Roger Gorham
25982 Highway 126
Veneta, OR 97487

Mark Gorham
87900 Huston Road
Veneta, OR 97487

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 17S, Range 5W
Section 32, Tax lots 100, 101, 102 and 103
Section 3210, Tax lot 1500²
Lane County

AGENT CONTACT INFORMATION: Norman Waterbury LLC
28788 Gimpl Hill Road
Eugene, OR 97402

I. ELECTION

The claimants, Virginia Bojorquiz, Roger Gorham and Mark Gorham, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 9, 2009, for property located at 25980 Highway 126, near Veneta, in Lane 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

¹ Information included with the election material indicates that claimant Virginia Bojorquiz passed away on March 12, 2007. Under ORS 197.353(3), if a claimant filed a claim on or after November 1, 2006 and died following submission of the claim, entitlement to prosecute the claim passes to the person who acquires the claim property by devise or by operation of law.

² The Measure 37 claim property consisted of tax lots 100, 101, 102, 103 and 1500. The claimants did not elect supplemental review for tax lot 1500; however, a claim cannot be amended to remove claim property.

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 the claimant Virginia Bojorquiz is not eligible for any relief under Measure 49 because the claimant no longer owns the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that the claimants Roger Gorham and Mark Gorham are not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the claimants' property have not changed since they acquired it.

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. The Measure 37 waiver issued for this claim describes eighteen 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, Virginia Bojorquiz, Roger Gorham and Mark Gorham, filed a Measure 37 claim, M130653, with the state on November 9, 2006. The claimants filed a Measure 37 claim, PA06-6928, with Lane County on November 8, 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 Lane 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, Roger Gorham and Mark Gorham are the owners of fee title to the property as shown in the Lane County deed records and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Virginia Bojorquiz has not established ownership of the property for the purposes of Measure 49. Claimant Virginia Bojorquiz acquired tax lots 100, 101, 102, 103 and 1500 on June 20, 2000, as reflected by a recorded deed included with the claim. However, Virginia Bojorquiz conveyed fee title to Roger Gorham and Mark Gorham on June 21, 2000, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Virginia Bojorquiz was no longer an owner of the claim property after June 21, 2000.

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

(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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Veneta.

(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.

Tax lot 100, 101, 102 and 103 of the Measure 37 claim property are currently zoned Impacted Forest (F-2) by Lane 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. This portion of the claim property consists of 106.09 acres.

Tax lot 1500 of the Measure 37 claim property is currently zoned Rural Residential (RR-5) by Lane County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Lane County's RR-5 zone requires a minimum lot size of 5 acres. This portion of the claimants' property consists of 9.72 acres.

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 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."

Lane County deed records indicate that the claimants Roger Gorham and Mark Gorham acquired the property on June 21, 2000.

On June 21, 2000, tax lots 100, 101, 102 and 103 of the Measure 37 claim property were subject to Lane County's acknowledged Impacted Forest (F-2) zone. As it does today, on June 21, 2000 Lane County's F-2 zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 106.09 acres.

On June 21, 2000, tax lot 1500 of the Measure 37 claim property was subject to Lane County's acknowledged Rural Residential (RR-5) zone. As it does today, on June 21, 2000 Lane County's RR-5 zone required 5 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 9.52 acres.

Therefore, on their date of acquisition the claimants lawfully could not have established any home sites that they are currently prohibited from establishing.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Virginia Bojorquiz, does not qualify for any Measure 49 home site approvals because the claimant no longer owns the Measure 37 claim property.

Based on the preliminary analysis, the claimants, Roger Gorham and Mark Gorham, do not qualify for Measure 49 home site approvals because the zoning and lawfully permitted uses of the claimants' property have not changed since they acquired it on June 21, 2000.

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.