



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

January 12, 2010

STATE ELECTION NUMBER: E131485

CLAIMANTS: Leona Jones¹
1540 Sunset Drive
Ontario, OR 97914

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 10S, Range 39E, Section 29
Tax lot 100
Baker County

I. ELECTION

The claimant, Leona Jones, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 28, 2006, for property located at 18119 Sumpter Stage Highway, near Baker City, in Baker 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 her 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 she 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

¹ Information provided by the claimant indicates that claimant William F. Jones passed away on October 30, 2008. Under Measure 49, if a claimant dies on or after December 6, 2007, entitlement to prosecute the claim passes to the person who acquires the claim property by devise or by operation of law.

material; 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 one home site approval in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes one home site. Therefore, the claimant may qualify for a maximum of one home site approval 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, Leona Jones, filed a Measure 37 claim, M131485, with the state on November 28, 2006. The claimant filed a Measure 37 claim, M37-05-50, with Baker County prior to December 21, 2005. 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 Baker 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 deed submitted by the claimant, Leona Jones is the owner of fee title to the property as shown in the Baker County deed records 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 Baker County, outside the urban growth boundary and outside the city limits of the nearest city, Baker City.

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

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

The property is currently zoned Timber-Grazing (T-G) by Baker 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, provide standards for the establishment of a dwelling in a forest zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres.

The combined effect of the standards for the establishment of a dwelling in a mixed farm/forest zone is to prohibit the claimant from establishing a dwelling on the Measure 37 claim property.

(e) The Establishment of the 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 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."

Baker County deed records indicate that the claimant acquired the property on October 12, 1976.

The claimant acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Baker 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 Agriculture (A-1) by Baker County, which required at least 40 acres for the establishment of a dwelling. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired the property on October 12, 1976. Accordingly, the statewide planning goals, and in particular Goal 4, and ORS chapter 215 applied directly to 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 4, OAR 660-041-0110 provides that DLCDC will apply the first acknowledged local land use regulations, unless the evidence in the record, including but not limited to, county records, 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 1976, Goal 4 was "to conserve forest lands for forest uses." It required that forest land "be retained for the production of wood fiber and other forest uses," and that "[l]ands suitable for forest uses be inventoried and designated as forest lands."²

On May 16, 1986, the Commission acknowledged the application of Baker County's Timber Grazing (T-G) zone to the Measure 37 claim property. The Commission's acknowledgement of Baker County's T-G zone confirmed that zone's compliance with Goal 4 and ORS chapter 215. Baker County's acknowledged T-G zone required 80 acres for the establishment of a dwelling on a vacant lot or parcel. The claimant's property consists of 20 acres.

Therefore, on the claimant's acquisition date, she could not have established any home sites on the Measure 37 claim property in the zone in effect when she acquired the property or in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. There is no evidence in the record that establishes that the creation of a new parcel of less than 80 acres for the development of a dwelling would have satisfied Goal 3 and ORS 215 prior to acknowledgement. It appears that the claimant does not qualify for a home site unless the claimant can show that a direct application of the goals and ORS chapter 215 would have allowed the claimant to establish a home site on the Measure 37 claim property.

² As adopted in 1975, Goal 4 defined "Forest Lands" as:

"(1) [L]ands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use."

Goal 4 defined "Forest Uses" as:

(1) [T]he production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Leona Jones, does not qualify for a Measure 49 home site approval because the claimant was not lawfully permitted to establish a dwelling 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.