



**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 29, 2009

**STATE ELECTION NUMBER:** E131802

**CLAIMANT:** Patricia H. Fleshman<sup>1,2</sup>  
1060 20<sup>th</sup> Street, #11  
Santa Monica, CA 90403

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 12S, Range 12W, Section 20  
Tax lot 103  
Jefferson County

**AGENT CONTACT INFORMATION:** Donald V. Reeder  
Glenn, Sites, & Reeder, LLP  
205 SE 5<sup>th</sup> Street  
Madras, OR 97741

## **I. ELECTION**

The claimant, Patricia Fleshman, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 8356 Public Usage Road, near Culver, in Jefferson 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 on the south half of tax lot 103 when she acquired it, and

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<sup>1</sup> The claimant also has claims E131801, E131955 and E131956 for non-contiguous property in the same ownership.

<sup>2</sup> Information obtained by the department indicates that claimant Patricia Fleshman passed away on March 22, 2009. 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.

because no land use regulation currently prohibit the claimant from establishing the one dwelling the claimant otherwise qualifies for under Measure 49 on the north half of tax lot 103.

### **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. The claimant has requested three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 21 home sites. Therefore, the claimant 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 claimant, Patricia Fleshman, filed a Measure 37 claim, M131802, with the state on November 30, 2006. The claimant filed a Measure 37 claim, 06-M37-75, with Jefferson County on November 29, 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 Jefferson 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, Patricia Fleshman is the settlor of a revocable trust into which she conveyed the Measure 37 claim property 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 Jefferson County, outside the urban growth boundary and outside the city limits of the nearest city, Culver.

**(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 three home site approvals.

The south half of the property is currently zoned Range Land (RL) by Jefferson 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 160 acres in size in an EFU zone that is designated rangeland, and regulate the establishment of dwellings on new or existing lots or parcels.

This southern portion of the claimant's property consists of approximately 38.18 acres. Therefore, state land use regulations prohibit the claimant from establishing on the south half of the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

The north half of the property is currently zoned Rural Residential (RR-10) by Jefferson 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. Jefferson County's RR-10 zone requires a minimum lot size of ten acres. However, the property is also subject to Jefferson County's Wildlife Area Overlay Zone (WA), which requires, among other restrictions, a minimum lot size of 80 acres for the creation of a new lot or parcel on which a dwelling can be established.

This northern portion of the claimant's property consists of approximately 38.18 acres. Therefore, local and state land use regulations prohibit the claimant from dividing the north half

of the Measure 37 claim property for the establishment of the three 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 three home sites 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."

Jefferson County deed records indicate that the claimant acquired the property on November 10, 1997.

On November 10, 1997, the south half of the Measure 37 claim property was subject to Jefferson County's acknowledged Range Land (RL) zone. Jefferson County's RL zone required 160 acres for the creation of a new lot or parcel on which a dwelling could be established. This portion of the claimant's property consists of approximately 38.18 acres. Therefore, the claimant lawfully could not have established any home sites on the south half of the Measure 37 claim property on her date of acquisition

On November 10, 1997, the north half of the Measure 37 claim property, which consists of approximately 38 acres, was subject to Jefferson County's acknowledged Rural Residential (RR-10) zone. Jefferson County's RR zone required ten acres for the creation of a new lot or parcel on which a dwelling could be established. However, the property was also subject to Jefferson County's Wildlife Overlay Combining Zone (WA), which required, among other restrictions, a minimum lot size of 80 acres for the creation of a new lot or parcel on which a dwelling could be established. Therefore, land use regulations in effect when the claimant acquired the property

prohibited her from dividing the northern portion of the property for residential development. However, as it does today, the WA zone allowed establishment of a dwelling on an existing vacant lot or parcel in an RR zone. Therefore, the claimant lawfully could have established one dwelling on the northern portion of her property on her date of acquisition. However, because it appears that no state or local land use regulations currently prohibit the claimant from establishing one home site on the northern portion of the Measure 37 claim property, an authorization under Measure 49 would not appear to provide the claimant with any benefit.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, it appears that the claimant, Patricia Fleshman, does not qualify for home site approvals under Section 6 of Measure 49 because the claimant was not lawfully permitted to establish any dwellings on the south half of tax lot 103 on her date of acquisition, and no land use regulations currently prohibit the claimant from establishing the one dwelling the claimant otherwise qualifies for under Measure 49 on the north half of tax lot 103 of the Measure 37 claim property.

## **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.**