



**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 30, 2009

**STATE ELECTION NUMBER:**

E131814

**CLAIMANTS:**

Florence E. Hartwig  
495 NE Main Street  
Estacada, Oregon 97023

Tamara M. Bliley  
193 AV Davis Road  
Oregon City, Oregon 97045

Vickie L. Thun  
PO Box 97  
Oregon City, Oregon 97045

Richard R. Hartwig  
PO Box 97  
Estacada, Oregon 97023

Steven H. Hartwig  
417 E Evans Drive  
Tidewater, Oregon 97390

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 2S, Range 4E  
Section 19, tax lot 1200  
Section 30, tax lot 300  
Clackamas County

**I. ELECTION**

The claimants, Florence Hartwig, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 20001 SE Brackett Lane, near Sandy, in Clackamas 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 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 claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun are not eligible for any relief under Measure 49 because the lawfully permitted uses of the property have not changed since the claimants acquired the property.

Based on the department's preliminary analysis, it appears that claimant Florence Hartwig is not eligible for any relief under Measure 49 because she no longer owns the Measure 37 claim property.

## **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 four home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 40 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, Florence Hartwig, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, filed a Measure 37 claim, M131814, with the state on November 30, 2006. The claimants filed a Measure 37 claim, ZC 417-06, with Clackamas County on November 29, 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 Clackamas 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, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, are the owners of fee title to the property as shown in the Clackamas County deed and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Florence Hartwig has not established her ownership of the property for the purposes of Measure 49. Claimant Florence Hartwig acquired tax lots 300 and 1200 on February 26, 1965, as reflected by a recorded warranty deed included with the claim. However, Florence Hartwig conveyed fee title to Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, on January 27, 2004, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Florence Hartwig was no longer an owner of tax lot tax lots 300 and 1200 after January 27, 2004.

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

**(b) All Owners of the Property Have Consented in Writing to the Claim**

It appears that the claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Sandy.

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

As stated in Section III above, the claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun may qualify for up to three home site approvals.

The property is currently zoned Timber District (TBR) by Clackamas 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 claimants' property consists of 82.41 acres. Therefore, state land use regulations prohibit the claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun 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 Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun 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."

Clackamas County deed records indicate that the claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun acquired the property on January 27, 2004.

The zoning of tax lots 1200 and 300 has not changed since the claimants acquired the property. As it is currently, on January 27, 2004, the Measure 37 claim property was zoned Timber District (TBR) by Clackamas County in accordance with applicable provisions of ORS chapter 215 and OAR 660, division 6.

The claimants are not qualified for Measure 49 relief on the Measure 37 claim property because the zoning and lawfully permitted uses of the property have not changed since the claimants acquired the property.

## **2. Preliminary Conclusion**

Based on the preliminary analysis, the claimants, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, do not qualify for Measure 49 home site approvals because the zoning and lawfully permitted uses of the property have not changed since the claimants acquired the property.

According to the information submitted by the claimants, Florence Hartwig does not qualify for Measure 49 home site approvals because she has not established her ownership of the property for the purposes of Measure 49.

## **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.**