



OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT

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

November 30, 2009

STATE ELECTION NUMBER: E132949^{1,2}

CLAIMANT: Rosboro Lumber Company LLC
2509 Main Street
Springfield, OR 97477

MEASURE 37 PROPERTY IDENTIFICATION: Township 16S, Range 4E
Section 29, Tax lot 500³
Section 30-40, Tax lot 1200
Section 31, Tax lots 100, 101 and 102
Lane County

AGENT CONTACT INFORMATION: Aaron J. Noteboom and Michael M. Reeder
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I. ELECTION

The claimant, Rosboro Lumber Company LLC, filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 90410 Huckleberry Lane, near Finn Rock, 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 claimant has elected supplemental review of its 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.

¹ Claims E132949 and E132950 have been combined into one claim because the properties are contiguous and in the same ownership. Per OAR 660-041-0150 the Department of Land Conservation and Development will combine multiple claims into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

² The claimant also has submitted a claim for property not contiguous to the subject property which is identified as E132948.

³ The Measure 37 claim property consisted of the portion of tax lot 500 west of the McKenzie River. Tax lot 500 has since been partitioned into tax lots 500, 501 and 502.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief on tax lot 100 and 502 under Measure 49 because the claimant no longer owns that portion of the Measure 37 claim property.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief on tax lots 100, 102, 501, 1200 and the western portion of tax lot 500 under Measure 49 because the lawfully permitted uses of the property have not changed since the claimant acquired the property in 1994.

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 six home site approvals in the election material. No waivers were issued for these claims. The Measure 37 claims filed with the state describe sixty-one 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, Rosboro Lumber Company LLC, filed Measure 37 claims, M132949 and M132950, with the state on December 1, 2006. The claimant filed Measure 37 claims, PA06-7281, PA06-7283, PA06-7285 and PA06-7287, with Lane County on December 1, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed Measure 37 claims 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 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, Rosboro Lumber Company LLC is the owner of fee title to tax lots 100, 102, 501, 1200 and the western portion of tax lot 500 of the property as shown in the Lane County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimant, Rosboro Lumber Company LLC has not established its ownership of tax lot 101 and tax lot 502 of the property for the purposes of Measure 49 because it no longer owns that portion of the Measure 37 claim property. Because this requirement has not been met, the claimant is not entitled to any relief on tax lot 101 and tax lot 502 under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for this portion of the claim property.

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

It appears that the claimant is the sole owner of tax lots 100, 102, 501, 1200 and the western portion of tax lot 500. 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 any urban growth boundary and outside any city limits, near the community of Finn Rock.

(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 property is currently zoned Non-Impacted Forest (F1) 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and prohibit the establishment of more than one dwelling on a single tract.

The claimant’s property consists of 547.89 acres that make up a single tract. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property 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."

Lane County deed records indicate that the claimant acquired the property on December 30, 1994.

On December 30, 1994, the Measure 37 claim property was subject to Lane County's acknowledged Non-Impacted Forest (F1) zone. Lawfully permitted uses of the property have not changed since the claimant acquired it. As it is today, Lane County's F1 zone required 80 acres for the creation of a new lot or parcel and prohibited the establishment of more than one dwelling on a single tract. Therefore, because the lawfully permitted uses of the property have not changed since the claimant acquired the property in 1994, the claimant is not entitled to relief under Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Rosboro Lumber Company LLC, does not qualify for Measure 49 home site approvals on tax lot 101 and 502 because the claimant no longer owns that portion of the claim property.

Based on the preliminary analysis, the claimant, Rosboro Lumber Company LLC, does not qualify for Measure 49 home site approvals on tax lots 100, 102, 501, 1200 and the western

portion of tax lot 500 because the zoning and lawfully permitted uses of the claimant's property have not changed since it acquired it.

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.