



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

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

March 16, 2010

**STATE ELECTION NUMBER:** E119597I<sup>1</sup>

**CLAIMANTS:** Laverne W. Ratzlaff<sup>2</sup>  
15391 Airlie Road  
Monmouth, OR 97361

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 8S, Range 5W, Section 33  
Tax lots 610<sup>3</sup>  
Polk County

**I. ELECTION**

The claimant, Laverne Ratzlaff, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 4, 2005, for property located on Fishback Road, near Monmouth, in Polk 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 his 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.

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<sup>1</sup> Claim E119597 has been divided into ten claims because the claim includes multiple tax lots or parcels that are not in the same ownership and/or are not contiguous. E119597A refers to tax lot 101 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597B refers to tax lot 102 (T9S R5W S5) and claimant Mary Ratzlaff. E119597C refers to tax lot 104 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597D refers to tax lot 105 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597E refers to tax lot 106 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597F refers to tax lot 107 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597G refers to tax lots 203, 600, 621 and 622 (T8S R5W S33) and claimants Laverne and Mary Ratzlaff. E119597H refers to tax lots 604, 612, 614 and 616 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597I refers to tax lot 610 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597J refers to tax lot 608 (T8S R5W S33) and claimant Mary Ratzlaff.

<sup>2</sup> The claimant has also submitted claims for properties not contiguous to the subject property, which are identified as E133893 and E133868.

<sup>3</sup> The Measure 37 claim property consisted of tax lots 101, 102, 104, 105, 106, 107, 108 (T9S R5W S5), 203, 600, 604, 608, 610, 612, 616, 621 and 622 (T8S R5W S33). The claimant did not elect supplemental review for tax lot 104; however, a claim cannot be amended to remove claim property. The claimant also included tax lots 103, 110 and 113 (T9S R5W S5), and tax lots 602, 603, 605 and 630 (T8S R5W S33), in their Measure 49 claim but those lots were not part of the Measure 37 claim and a claim cannot be amended add claim property.

## **II. SUMMARY OF PRELIMINARY EVALUATION**

Based on the department's preliminary analysis, it appears that the claimant Laverne Ratzlaff 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 he acquired the 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 claimant requested more than three home site approvals in the election material. The Measure 37 waiver issued for this claim, which includes this portion of the claim property, describes more than three 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, Laverne Ratzlaff, filed a Measure 37 claim, M119597, with the state on February 4, 2005. The claimant filed a Measure 37 claim, M05-10, with Polk County on February 2, 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 Polk 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 claimants, Laverne Ratzlaff is the owner of fee title to the property as shown in the Polk 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 Polk County, outside the urban growth boundary and outside the city limits of the nearest city, Monmouth.

**(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 Farm/Forest (FF) by Polk County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Polk County's FF zone, which requires a minimum lot size of 40 acres.

The claimant's property consists of 20.07 acres. 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.”

Polk County deed records indicate that the claimant Laverne Ratzlaff acquired the property on December 31, 1992.

On December 31, 1992, the Measure 37 claim property was subject to Polk County’s acknowledged Farm/Forest (FF) zone. As it does today, in 1992 Polk County’s FF zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant’s property consists of 20.07 acres. Therefore, the claimant lawfully could not have established any home sites on his date of acquisition.

**2. Preliminary Conclusion**

Based on the preliminary analysis, the claimant, Laverne Ratzlaff, does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimants’ 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 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 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.**