



**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 18, 2008

STATE ELECTION NUMBER: E124329

CLAIMANT: Richard Semmes
1144 State Rt. 32
Round Pond, Maine 04564

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 1N, Range 10E, Section 22B
Tax lot 1302¹
Hood River County

I. ELECTION

The claimant, Richard Semmes, filed a claim under ORS 197.352 (2005) (Measure 37) on March 13, 2006 for property located at 4197 Semmes Drive, near Hood River, in Hood River County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed a Measure 37 claim to elect supplemental review of their claim under either Section 6 or Section 7 of Measure 49. The claimant has elected supplemental review of his Measure 37 claim under Section 6, which authorizes the Department of Land Conservation and Development (the department) to issue 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 qualified for up to three home site approvals on the 3.47-acre portion of the Measure 37 claim property, depending on whether the property was served by a sanitary sewer system on the claimant's date of acquisition. The claimant's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of two lots or parcels, which are undeveloped. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property and the contiguous property under the same ownership, it appears that the home site approvals will allow the claimant to establish one additional lot or parcel and three dwellings on the Measure 37 claim property, depending on whether the property was served by a sanitary sewer system on the claimant's date of acquisition.

¹ The Measure 37 claim property consisted of tax lot 1302. The property has since been partitioned and now consists of tax lots 1302 and 1303.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief on the .92-acre portion of the Measure 37 claim property under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites when he acquired the .92-acre portion of 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 issued 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. The Measure 37 waiver issued for this claim describes three home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6.

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, Richard Semmes, filed a Measure 37 claim, M124329, with the state on March 13, 2006. The claimant filed a Measure 37 claim, 05-M053, with Hood River County on November 22, 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 Hood River 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, Richard Semmes is the owner of fee title to the property as shown in the Hood River 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 Hood River County, outside the urban growth boundary and outside the city limits of the nearest city, Hood River.

(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 Rural Residential (RR-2.5) by Hood River County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable land 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 dwelling on 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 greater than two acres. Hood River County’s RR-2.5 zone requires a minimum lot size of 2.5 acres.

The claimant’s property consists of 4.39 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 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."

The Hood River County deed records indicate that the claimant acquired a 3.47-acre portion of the property on August 1, 1973 and a .92-acre portion of the property on December 3, 1979.

On August 1, 1973 the 3.47-acre portion of the Measure 37 claim property was subject to Hood River County's A-2 zone. Hood River County's A-2 zone required at least 7,500 square feet if served by a sanitary sewer system, for the creation of a new lot or parcel on which a dwelling could be established. On August 1, 1973, the claimant's property consisted of 3.47 acres.

The record is not clear whether the subject property was served by a sanitary sewer system on the claimant's acquisition date. Provided that the property was served by a sanitary sewer system at the time the claimant acquired the property, the claimant lawfully could have established the maximum limit of three home sites on his date of acquisition.

On December 3, 1979, the Measure 37 claim property consisted of 4.39 acres and was subject to state statutes, the statewide planning goals and implementing regulations. On December 3, 1979, the property was zoned A-2 by Hood River County. However, because the Commission had not acknowledged the county's comprehensive plan and land use regulations as being in compliance with the statewide planning goals, Goal 14 in particular, and ORS ch. 215 applied directly to the claimant's property.

On January 11, 1985 the Commission acknowledged the application of Hood River County's RR-2.5 zone to the Measure 37 claim property. The Commission's acknowledgement of Hood River County's RR-2.5 zone confirmed that zone's compliance with Goal 14 and ORS ch. 215. Hood River County's acknowledged RR-2.5 zone required 2.5 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 4.39 acres. Therefore, on December 3, 1979, the claimant lawfully could have established one home site on the Measure 37 claim property in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. Under current zoning the claimants would be lawfully permitted to establish one home site.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Richard Semmes, qualifies for up to three home site approvals on the 3.47-acre portion of the Measure 37 claim property under Section 6 of Measure 49, provided that he establish that the property was served by a sanitary sewer system when he acquired it. The claimant does not appear to qualify for relief under Measure 49 for the .92-acre portion of the Measure 37 claim property.

V. NUMBER OF LOTS, PARCELS OR DWELLINGS ON OR CONTAINED WITHIN THE PROPERTY

The number of lots, parcels or dwellings that a claimant is authorized to establish pursuant to the home site approvals is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership. However, if a claimant otherwise qualifies for relief under Section 6 of Measure 49, the claimant will be able to establish at least one additional lot, parcel or dwelling regardless of the number of lots, parcels or dwellings currently in existence.

Based on the documentation provided by the claimant, the Measure 37 claim property appears to currently include two lots or parcels and no dwellings. There is no contiguous property under the same ownership. Therefore, provided the property was served by a sanitary sewer system on the claimant's acquisition date, the three home site approvals the claimant appears to qualify for under Section 6 of Measure 49 will allow the claimant to establish up to one additional lot or parcel and three additional dwellings on the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within the 3.47-acre portion of the Measure 37 claim property.

VI. PRELIMINARY STATEMENT OF PROPOSED LIMITATIONS AND CONDITIONS ON THE NUMBER AND SCOPE OF HOME SITE APPROVALS

The department has identified the following limitations and conditions that may affect the number or scope of the home site approvals that the claimant would otherwise be entitled to under Section 6 of Measure 49. This list may not be comprehensive and does not preclude the possibility that other considerations, not yet identified by the department, may affect land divisions or the establishment of dwellings authorized by the home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.

2. A home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed.
4. The number of lots, parcels or dwellings a claimant may be eligible to establish under a Measure 49 home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to the home site authorization must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.
5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a Measure 49 home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.
6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which a claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the future site of a dwelling that may be established pursuant to the home site approval.
7. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of lots parcels or dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.
8. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on

which the claimant is eligible for Measure 49 relief, pursuant to a home site approval, is sited on a separate lot or parcel.

9. Once the department issues a final home site authorization, a home site approval granted under that authorization will run with the property and will transfer with the property. A home site approval will not expire, except that if a claimant who received a home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on the home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.

VII. 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.