



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

September 4, 2008

STATE ELECTION NUMBER: M124374

CLAIMANTS: Margaret Fossholm
9562 Nusom Road NE
Silverton, Oregon 97381

Robert Fossholm
9582 Nusom Road NE
Silverton, Oregon 97381

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 6S, Range 1W, Section 19
Tax lot 1200¹
Marion County

I. ELECTION

The claimants, Margaret Fossholm and Robert Fossholm, filed a claim under ORS 197.352 (2005) (Measure 37) on March 15, 2006, for property located at 9562 Nusom Road NE, near Silverton, in Marion 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 (Express option) or 7 (Conditional option) of Measure 49. The claimants have elected supplemental review of their Measure 37 claim under the Express option. The Express option 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 evaluation, set forth below, it appears that claimant Margaret Fossholm may be qualified for up to one home site approval on the Measure 37 claim property. Claimant Margaret Fossholm's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of two parcels, which are developed with two dwellings total. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property, it appears that the

¹ The M37 Claim Property consisted of tax lot 1200. The property has since been partitioned into two parcels consisting of tax lots 1200 and 1201.

home site approval claimant Margaret Fossholm may qualify for under the Express option will allow one additional dwelling on the newly created Parcel 2 of Partition Plat 2007-006 (tax lot 1201) on the Measure 37 claim property

Claimant Robert Fossholm has not established his ownership of the Measure 37 claim property and is not eligible for relief under Measure 49.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

The claimants have requested one home site approval in their election. Under the Section 6 Express option, the number of home site approvals issued by the department cannot exceed the lesser of the number described in a Measure 37 waiver issued by the state or a total of three; or, if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state, up to a total of three. The Measure 37 waiver issued for this claim describes one home site. Therefore, the claimants may qualify for a maximum of one home site approval under the Section 6 Express option.

IV. PRELIMINARY EVALUATION OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under the Section 6 Express option, 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, Margaret Fossholm and Robert Fossholm, filed a Measure 37 claim, M124374, with the state on March 15, 2006. The claimants filed a Measure 37 claim with Marion County, M37 06-03, on March 15, 2006. The state claim was filed prior to or on December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Marion 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 the Express option 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, Margaret Fossholm is an owner of fee title to the property and, therefore, an owner of the property under Measure 49.

According to the information submitted by the claimants, Robert Fossholm has not established his ownership of the property. Although Robert Fossholm is identified as a claimant, Robert Fossholm has not submitted any documentation that demonstrates his current ownership of the subject property.

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

All owners of the property have consented to the claim in writing.

(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, tax lot 1200 (Township 6 South, Range 1 West, Section 19, is located in Marion County, at 9562 Nusom Road NE, outside the urban growth boundary and outside the city limits of the nearest city, Silverton.

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

As stated in Section III above, claimant Margaret Fossholm may qualify for up to one home site approval.

The property is currently zoned Exclusive Farm Use (EFU) by Marion County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.² Goal 3 requires agricultural land to be zoned exclusive farm use (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a dwelling on a lot or parcel less than 80 acres in size in an EFU zone.

Claimant Margaret Fossholm’s property consists of 16 acres. Therefore, state land use regulations prohibit her from establishing on the Measure 37 claim property the one home site she 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:

² The claimant’s property is “agricultural land” because it contains Natural Resources Conservation Service Class I–IV soils and is located in western Oregon.

- (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 claimants, it does not appear that the establishment of 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.”

Marion County deed records indicate that claimant Margaret Fossholm acquired the property on October 30, 1959.

On October 30, 1959, the Measure 37 claim property was not subject to any local or state laws that would have prohibited claimant Margaret Fossholm from establishing the requested home site. Therefore, claimant Margaret Fossholm lawfully could have established the one home site for which she seeks home site approval under Section 6 of Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Margaret Fossholm, qualifies for up to one home site approval under the Section 6 Express option of Measure 49.

Based on the preliminary analysis, the claimant, Robert Fossholm, does not qualify for Measure 49 home site approval; he has not submitted any documentation that demonstrates his current ownership of the subject property.

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

The number of additional lots or parcels that a claimant may establish pursuant to the home site approvals is reduced by the number of lots, parcels or permanent 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 the Section 6 Express option, 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 claimants, the Measure 37 Claim Property appears to currently include two parcels and two dwellings. There is no contiguous property under the same ownership. Therefore, the one home site approval claimant Margaret Fossholm may qualify for under the Express option will allow one new dwelling on the newly created Parcel 2 of Partition Plat 2007-0060 (tax lot 1201) on 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 Margaret Fossholm 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 approval 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 approval 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 authorization is reduced by the number of lots, parcels and permanent 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 permanent dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or permanent 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 approval 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 claimants may choose to convert any temporary dwelling

currently located on the Measure 37 claim property to an authorized home site pursuant to the 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 one or more new lots, parcels or dwellings on the Measure 37 claim property. No additional development is authorized on contiguous property for which no Measure 37 claim was filed. Each 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 will be established pursuant to the home site approval. The 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 Measure 37 claim property, pursuant to the home site approval, is sited on a separate lot or parcel.
7. Once the department issues a final home site approval, the home site approval will run with the property and will transfer with the property. The home site approval will not expire, except that if a claimant who received a home site approval 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 approval 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.
8. Because the property is located in an exclusive farm use zone the home site approval will not authorize new lots or parcels that exceed five acres. Before beginning construction in one of these zones, the owner must comply with the requirements of ORS 215.293. Further, the home site approval will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area.
9. Because the property is located in an exclusive farm use zone Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site approvals to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.

VII. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or the claimants' 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. The claimant or the claimants' 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.