



**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 19, 2008

STATE ELECTION NUMBER: E129426

CLAIMANTS: Margaret P. Mansfield
28386 S Elisha Road
Canby, OR 97013

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 4S, Range 1E, Section 15
Tax lots 2800 and 2900
Clackamas County

PRIMARY CONTACT INFORMATION: George A Mansfield
8137 SW Pokegama
Powell Butte, OR 97753

I. ELECTION

The claimant, Martha P. Mansfield, filed a claim under ORS 197.352 (2005) (Measure 37) on May 30, 2006 for property located near Canby in Clackamas 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 her 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 one home site approval on tax lot 2900 of the Measure 37 claim property. 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 undeveloped lots or parcels. 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 approval will allow the claimant to establish one dwelling on tax lot 2900.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 for tax lot 2800 because the claimant would not have been lawfully permitted to establish any additional home sites when she acquired that 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 two home site approvals in the election material. The Measure 37 waiver issued for this claim describes one home site. Therefore, the claimant may qualify for a maximum of one home site approval 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, Margaret Mansfield, filed a Measure 37 claim, M129426, with the state on May 30, 2006. The claimant filed a Measure 37 claim, ZC174-06B, with Clackamas County on September 6, 2006. 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 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 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 deed submitted by the claimant, Margaret Mansfield is the owner of fee title to the property as shown in the Clackamas 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Canby.

(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 one home site approval.

The property is currently zoned Exclusive Farm Use (EFU) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of dwellings in an EFU zone. Those standards include a requirement that the property generate a minimum annual income from the sale of farm products.

The combined effect of the standards for the establishment of a dwelling in an EFU zone is to prohibit the claimant from establishing a dwelling on the Measure 37 property.

(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 a home site 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 claimant acquired tax lot 2900 (2.5 acres) on April 10, 1970 and tax lot 2800 (2.5 acres) on October 5, 1979.

On April 10, 1970, tax lot 2900 was subject to Clackamas County’s General Use (GU) zone. Clackamas County’s GU zone required at least one acre for the creation of a new lot or parcel on which a dwelling could be established. The claimant’s property consisted of 2.5 acres on that date. Therefore, the claimant lawfully could have established at least one home site on her of acquisition.

On October 5, 1979, the Measure 37 claim property consisted of tax lots 2800 and 2900 and was subject to state statutes, the statewide planning goals and implementing regulations. On the claimant’s date of acquisition the property was zoned Exclusive Farm Use (EFU-20) by Clackamas 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, the statewide planning goals and Goal 3, in particular, and ORS ch. 215 applied directly to the claimant’s property.

On December 31, 1981, the Commission acknowledged the application of Clackamas County’s EFU-20 zone to the Measure 37 claim property. The Commission’s acknowledgement of Clackamas County’s EFU-20 zone confirmed that zone’s compliance with Goal 3 and ORS ch. 215. Clackamas County’s acknowledged EFU-20 zone required twenty acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant’s property consists of five acres. Therefore, on the claimant’s acquisition date, she could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. It appears that the claimant does not qualify for a home site on tax lot 2800 unless the claimant can show that a direct application of the Goals and ORS ch. 215 would have allowed the claimant to establish a home site.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Margaret Mansfield, qualifies for one home site approval on tax lot 2900 under Section 6 of Measure 49. The claimant does not

appear to qualify for Measure 49 home site approvals for tax lot 2800 because the claimant was not lawfully permitted to establish a dwelling on that tax lot on the claimant's date of acquisition.

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 and Clackamas County, 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, the one home site approval the claimant appears to qualify for under Section 6 of Measure 49 will allow the claimant to establish one dwelling on tax lot 2900 of the Measure 37 claim property. The dwelling must be contained within 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 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 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 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 claimant 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 a new dwelling on the Measure 37 claim property. 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.
7. The claimants may use a home site approval that does not authorize a new dwelling to convert a dwelling currently located on the Measure 37 claim property to an authorized home site. If the number of dwellings existing on the Measure 37 claim property exceeds the number of home site approvals the claimants qualifies for under a home site authorization, the claimants may select which existing dwellings to convert to authorized home sites.
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.
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 dwellings within 10 years of the conveyance. A dwelling lawfully created based on a home site approval is a permitted use.
10. Because the property is located in an exclusive farm use zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.

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.