



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 4, 2009

STATE ELECTION NUMBER: E131686 and E131685¹

CLAIMANT: Leota E. Lariza
1070 Eastside Road
Hood River, OR 97031

MEASURE 37 PROPERTY IDENTIFICATION: Township 2N, Range 10E, Section 1
Tax lots 201 and 1801²
Township 2N, Range 11E, Section 6
Tax lots 1200, 1201, and 2200
Hood River County

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I. ELECTION

The claimant, Leota Lariza, filed claims with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 1061, 1074, 1080 and 1280 Eastside Road and at 1070 Highway 35, near Hood River, in Hood River 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 her 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 E131686 and E131685 have been combined into one claim because the properties are contiguous. 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 In the Hood River County Measure 37 reports, county states that two of the tax lots comprising the Measure 37 claim property, tax lots 1801 and 2200, are one legal parcel and that two of the tax lots comprising the Measure 37 claim property, tax lots 201 and 1201 together with contiguous tax lot 202 (T2N, R10E, S1) are one legal parcel. In reliance on those reports, this Preliminary Evaluation considers the Measure 37 claim property as three legal parcels.

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 tax lots 1801, 2200, the 12.50-acre portion of 201 and the 4.80-acre portion of 1201 of the Measure 37 claim property that lie outside the Columbia River Gorge National Scenic Area. The claimant's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of three lots or parcels, which are developed with two dwellings. 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 no additional lots or parcel and one additional dwelling on the portion of the Measure 37 claim property that is outside the Columbia River Gorge National Scenic Area.

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 on the 15.59-acre portion of tax lot 201, the 14.76-acre portion of tax lot 1201, and tax lot 1200 of the Measure 37 claim property that are within the Columbia River Gorge National Scenic Area, because the establishment of a lot, parcel or dwelling is prohibited by a land use regulation described in ORS 195.305(3)c.

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 three home site approvals in the election material for E131686. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. The claimant has requested three home site approvals in the election material for E131685. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 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, Leota Lariza, filed Measure 37 claims, M131686 and M131685, with the state on November 29, 2006. The claimant filed Measure 37 claims, 06-M110 and 06-M111, with Hood River County on November 27, 2006. The state claims were filed prior to December 4, 2006.

It appears that the claimant timely filed Measure 37 claims 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 deed submitted by the claimant, Leota Lariza is the settlor of a revocable trust into which she conveyed the Measure 37 claim property 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.

Tax lots 1801, 2200 and a 12.5-acre portion of 201 and a 4.8-acre portion of 1201 of the Measure 37 claim property that are outside of the Columbia River Gorge National Scenic Area are currently zoned Exclusive Farm Use (EFU) by Hood River 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, generally

prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

Tax lots 1801, 2200 and the 12.5-acre portion of 201 and the 4.8-acre portion of 1201 of the Measure 37 claim property that are outside of the Columbia River Gorge National Scenic Area consist of 51.66 acres. Therefore, state land use regulations prohibit the claimant from establishing on tax lots 1801, 2200 and the 12.5-acre portion of 201 and the 4.8-acre portion of lot 1201 of the Measure 37 claim property that are outside of the Columbia River Gorge National Scenic Area 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.

According to information obtained from Hood River County, a 15.59-acre portion of tax lot 201, a 14.76-acre portion of tax lot 1201 and tax lot 1200 of the Measure 37 claim property are within the Columbia River Gorge National Scenic Area. County ordinances pertaining to property within the Columbia River Gorge National Scenic Area that are adopted and approved pursuant to the Columbia River Gorge Commission's management plan are required by federal law. Such laws prohibit the establishment of any additional lots, parcels or dwellings on the portions of the Measure 37 claim property within the Columbia River Gorge National Scenic Area. Therefore, the establishment of lots, parcels or dwellings on the 15.59-acre portion of tax lot 201, the 14.76-acre portion of tax lot 1201 and tax lot 1200 of the Measure 37 claim property that lie within the Columbia River Gorge National Scenic Area is prohibited by land use regulations described in ORS 195.305(3)c.

Based on the documentation submitted by the claimant, it does not appear that land use regulations described in ORS 195.305(3) prohibit the establishment of the three home sites the claimant may qualify for on the 51.66-acre portion of the property that is outside the Columbia River Gorge National Scenic Area.

(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.”

Hood River County deed records indicate that the claimant acquired tax lots 1801 (14 acres) and 2200 (20.36 acres) on August 1, 1973, tax lots 201 (27.59 acres) and 1201 (19.56 acres) on February 25, 1974, and tax lot 1200 (7.26 acres) on April 30, 1975.

On August 1, 1973, the Measure 37 claim property consisted of tax lots 1801 and 2200 and was subject to Hood River County’s Agriculture (A-1) zone. Hood River County’s A-1 zone required at least five acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lots 1801 and 2200 of the Measure 37 claim property consist of 34.36 acres. Therefore, the claimant lawfully could have established the requested three home sites on tax lots 1801 and 2200 on her date of acquisition.

On February 25, 1974, the Measure 37 claim property consisted of tax lots 1801, 2200, 1201 and 201 and was subject to state statutes and Hood River County’s Agriculture (A-1) zone.

On February 25, 1974, Hood River County’s A-1 zone required at least five acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lots 1801, 2200, 201 and 1201 consisted of 81.51 acres. Therefore, under the local zoning then in effect, the claimant lawfully could have established the three home sites on tax lots 1801, 2200, 201 and 1201 on her date of acquisition of tax lots 201 and 1201.

However, state law in effect when the claimant acquired the property, specifically ORS 197.175(1) and 197.280 (1973 edition), required that counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). Those interim land use planning goals included: “To preserve the quality of the air, water and land resources of the state”; “To conserve prime farm lands for the production of crops”; “To provide for the orderly and efficient transition from rural to urban land use”; “To protect life and property in areas subject to floods, landslides and other natural disasters”; and “To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development” ORS 215.515 (1973 edition).

The interim planning goals would not have prohibited the claimant from lawfully establishing three home sites on tax lots 1801, 2200, 201 and 1201 when she acquired tax lots 201 and 1201 on February 25, 1974. Rather, the applicable provisions of the interim goals are furthered by provisions of Section 6 of Measure 49, which limits the number of home sites authorized, and by Section 11(3), which regulates the size and location of lots or parcels on high value farm or forest land. Measure 49 Section 11(3) requires new parcels on high-value farm or forest land to be no larger than two acres and “clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.”

It appears that the claimant’s property is high-value farmland. Therefore, when the claimant acquired tax lots 201 and 1201, the claimant lawfully could have established the requested three home sites on the property, provided they were developed in a manner that conserved the high-value or prime farmland for the production of crops. In order to meet this requirement, the

additional home sites to which the claimant may be entitled must be located on a lot or parcel no larger than two acres, and clustered so as to maximize the suitability of the remnant lot or parcel for farm use.

Because tax lot 1200 is not eligible for relief due to being subject to land use regulations described in ORS 195.305(3), no analysis is provided as to whether the claimant could have established any home sites on tax lot 1200 on her date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Leota Lariza, qualifies on tax lots 1801, 2200 and the 12.50-acre portion of 201 and the 4.80-acre portion of 1201 of the Measure 37 claim that lie outside of the Columbia River Gorge National Scenic Area property for up to three home site approvals under Section 6 of Measure 49.

Based on the preliminary analysis, it appears that the claimant does not qualify for any Measure 49 home site approvals on the 15.59-acre portion of tax lot 201, the 14.76-acre portion of tax lot 1201 and tax lot 1200 of the Measure 37 claim property that are inside the Columbia River Gorge National Scenic Area because relief on those portions of the property is prohibited by land use regulations described in ORS 195.305(3).

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 a home site authorization 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 according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. 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 information from Hood River County, the Measure 37 claim property appears to currently include three lots or parcels and two dwellings.³ As demonstrated by information from Hood River County, the claimant also owns tax lot 202 (T2N R10E S1) which is contiguous to the Measure 37 claim property. The contiguous property under the same ownership appears to include one lot or parcel and no dwellings. Together, it appears that the Measure 37 claim property and the contiguous property in the same ownership include three lots or parcels and two dwellings. Therefore, the three home site approvals the claimant appears to qualify for under Section 6 of Measure 49 will allow the

³The documentation for this claim indicates that there may be five temporary dwellings currently located on the subject property. Temporary dwellings are not considered in determining the number of dwellings currently existing on the property. The claimant may choose to convert a temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief, to an authorized home site through the Measure 49 home site approval. Otherwise, the temporary dwellings are subject to the terms of local permit requirements under which they were approved, and are subject to removal at the end of term for which they are allowed.

claimant to establish no additional lots or parcels and up to one additional dwelling on tax lots 1801, 2200 and the 12.50-acre portion of 201 and the 4.80-acre portion of 1201 of the Measure 37 claim property that lie outside of the Columbia River Gorge Scenic Area. The dwelling must be on a separate lot or parcel, and must be contained within tax lots 1801, 2200 and the 12.50-acre portion of 201 and the 4.80-acre portion of 1201 of the Measure 37 claim property that lie outside of the Columbia River Gorge Scenic Area.

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 the establishment of a land division or dwelling authorized by a 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 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, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this preliminary evaluation regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.

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 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. The claimant may not implement the relief described in a Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in section 5(3) of Measure 49 to any use on the Measure 37 claim property, then any Measure 49 Home Site Authorization for the property will be void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. 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.
10. Because the property is located in an exclusive farm use zone, the home site authorization will not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may 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

authorization 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. However, existing or remnant lots or parcels may exceed two acres.

11. Because tax lots 1201 and 201 of the property are located on high-value farmland and were acquired during the period when the interim land use planning goals set forth in ORS 215.515 (1973) applied to the property, Measure 49 requires new home sites to be no more than two acres and clustered on the portion of the property least suitable for farm use. Because tax lots 1801 and 220 of the property are 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.
12. 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.