



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Final Order and Home Site Authorization**

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

The claimant, Richard Semmes, filed a claim with the state 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 Measure 37 claims to elect supplemental review of their claims. The claimant 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.

This Final Order and Home Site Authorization is the conclusion of the supplemental review of this claim.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites 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. 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 of Measure 49.

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.

B. Qualification Requirements

To qualify for a home site approval under Section 6 of Measure 49, the claimant must meet each of the following requirements:

1. Timeliness of Claim

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.

Findings of Fact and Conclusions

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.

The claimant timely filed a Measure 37 claim with both the state and Hood River County.

2. 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."

Findings of Fact and Conclusions:

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.

Hood River County has confirmed that the claimant is the current owner of the property.

3. All Owners Have Consented in Writing to the Claim

All owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

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

4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

Findings of Fact and Conclusions:

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.

5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

Findings of Fact and Conclusions:

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 two of the three home sites the claimant may qualify for under Section 6 of Measure 49.

6. 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.

Findings of Fact and Conclusions

Based on the documentation submitted by the claimant, the establishment of the three home sites

for which the claimant may qualify on the property is not prohibited by land use regulations described in ORS 195.305(3).

7. 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."

Findings of Fact and Conclusions

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 the property was served by a sanitary sewer system, for the creation of a new lot or parcel on which a dwelling could be established. If the property was not served by a sanitary sewer system, the lot area was increased to conform with the requirements of the Hood River County Health Department. On August 1, 1973, the claimant's property consisted of 3.47 acres.

The record does not establish that the subject property was served by a sanitary sewer system on the claimant's acquisition date. However, given that the claimant is subject to current Hood River County Environmental Health Department requirements in his use of any home site approvals for which he is eligible under Section 6 of Measure 49, and that current County Health Department requirements are at least as restrictive as those that were in effect when the claimant acquired the Measure 37 claim property, the claimant is authorized for the number of home site approvals (up to the maximum of three home site approvals), determined by the Hood River County Environmental Health Department to be allowed based on the lot area requirements necessary to accommodate on-site sewage disposal.

On December 3, 1979, the claimants acquired the remaining .92-acre portion of the Measure 37 claim property. The claimant acquired this portion of the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned A-2 by Hood River County.

Notwithstanding the county zoning then in effect, because the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired the .92-acre portion of the property on December 3, 1979, the statewide planning goals, and Goal 14 in particular, applied directly to the claimant's property. The County's first acknowledged comprehensive plan and implementing land use regulations establish the number of home sites

that would have been lawfully permitted under Goal 14, unless evidence in the record establishes that a greater number of home sites would have been lawfully permitted.

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. 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 claimant's acquisition date for this portion of the property.

Under current zoning, the claimants would be lawfully permitted to establish one home site. Therefore the claimant is not eligible for any relief on the .92-acre portion of the Measure 37 claim property acquired on December 3, 1979 under Measure 49 because at that time the claimant would not have been lawfully permitted to establish any home sites that he is currently prohibited from establishing on the Measure 37 claim property.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 18, 2008. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order and Home Site Authorization.

III. CONCLUSION

Based on the analysis above, the claimant is authorized on the 3.47-acre portion of the Measure 37 claim property acquired on August 1, 1973 for the number of home site approvals (up to the maximum of three home site approvals), determined by the Hood River County Environmental Health Department to be allowed based on the lot area requirements necessary to accommodate on-site sewage disposal. However, the number of lots, parcels or dwellings that a claimant may 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.

Based on the documentation provided by the claimant, the Measure 37 claim property includes two lots or parcels and no dwellings. There is no contiguous property under the same ownership. Therefore, the claimant is authorized for up to one additional lot or parcel and three dwellings on the 3.47-acre portion of the property, as determined by the Hood River County Environmental Health Department to be allowed based on the lot area requirements necessary to accommodate on-site sewage disposal.

The claimant is not eligible for Measure 49 relief on the .92-acre portion of the property acquired on December 3, 1979 because on his date of acquisition the claimant was not lawfully permitted

to establish on the Measure 37 claim property, any lots parcels or dwellings that he is currently prohibited from establishing.

IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and claimant qualifies on the 3.47-acre portion of the Measure 37 claim property, for the number of home site approvals (up to the maximum of three home site approvals), determined by the Hood River County Environmental Health Department to be allowed based on the lot area requirements necessary to accommodate on-site sewage disposal. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for up to one additional lot or parcel and three dwellings on the property on which the claimant is eligible for Measure 49 relief, subject to the following terms:

1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this 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. This 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. If a claimant has developed the limit of twenty home sites under Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.
4. The number of lots, parcels or dwellings a claimant may establish under this 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 this 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 home site approval. Otherwise, any temporary

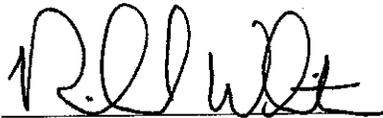
dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.

6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the 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 the 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 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. 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 claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
9. If an owner of the property is authorized by other home site authorizations 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/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/forest zone, but is less suitable for farm or forest use than the other Measure 37 claim properties.
10. If the claimant transferred his ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this 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 this 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.

11. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

IT IS HEREBY ORDERED that this Final Order and Home Site Authorization is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:



Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this 14~~th~~ day of April, 2009.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that it the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.