



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Final Order of Denial**

STATE ELECTION NUMBERS: E130680 and E131640¹

CLAIMANTS: George Raymond Smith²
Raymond Smith LLC
Lenske Properties LLC
PO Box 183
Corbett, OR 97019

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 1N, Range 4E
Section 34C, Tax lots 300 and 1800
Section 36D, Tax lot 500
Township 1S, Range 4E
Section 1, Tax lot 100
Section 1A, Tax lots 100 and 200
Section 1B, Tax lots 100, 800 and 1000
Section 1C, Tax lot 1000
Section 1DC, Tax lots 1000 and 1300
Township 1S, Range 5E
Section 3, Tax lots 1200, 1300 and 1400
Section 6, Tax lots 200, 300, 400,
500, 600
Section 6C, Tax lot 300
Section 6D, Tax lot 100
Multnomah County

AGENT CONTACT INFORMATION: Kristian Roggendorf
O'Donnell Clark & Crew LLP
1650 NW Naito Parkway Suite 302
Portland, OR 97209

The claimants, George Smith, Raymond Smith, LLC and Lenske Properties, LLC, filed claims with the state under ORS 197.352 (2005) (Measure 37) on May 12, 2006 and November 29,

¹Because the analysis is the same for the subject property in both claims E130680 and E131640, the department has combined the Final Orders for those claims.

²The claimants also have submitted a claim for property that is noncontiguous to the subject properties which is identified as E131682.

2006, for property located at 39826 SE Loudon Road and 46724 E Larch Mountain Road, near Corbett, in Multnomah 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 claimants have elected supplemental review of their 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 of Denial is the conclusion of the supplemental review of this claim.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites for Which the Claimants 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 claimants have requested thirteen home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 200 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 6 of Measure 49, the claimants 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 claimants, George Smith, Raymond Smith, LLC and Lenske Properties, LLC, filed Measure 37 claims, M130680 and M131640, with the state on May 12, 2006 and November 29, 2006. The claimants filed a Measure 37 claims, T1-06-089 and T1-06-124, with Multnomah County on November 15, 2006, and December 1, 2006. The state claims were filed prior to December 4, 2006.

The claimants timely filed the Measure 37 claims with both the state and Multnomah 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 deed submitted by the claimants, Raymond Smith, LLC and Lenske Properties, LLC are the owners of fee title to the property as shown in the Multnomah County deed records and, therefore, are owners of the property under Measure 49. Multnomah County has confirmed that claimants Raymond Smith, LLC and Lenske Properties, LLC are the current owners of the property.

According to the information submitted by the claimants, George Raymond Smith has not established his ownership of the property for the purposes of Measure 49.

3. All Owners of the Property 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 Multnomah County, outside any urban growth boundary and outside of any city limits, near the community of Corbett.

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 majority of the Measure 37 claim property, 765.73 acres, is currently zoned Commercial Forest Use (CFU) by Multnomah County, in accordance with ORS chapter 215 and OAR 660,

division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract.

Tax lots 1000, 1300, 1000, 300 and 1800, (11.55 acres), of the Measure 37 claim property are currently zoned Rural Residential (RR) in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable 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 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 of two or more acres. Multnomah County’s RR zone requires a minimum lot size of 5 acres.

The claimants’ property consists of 11.55 acres zoned RR and approximately 765.73 acres zoned CFU that make up a single tract. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants may qualify on the property is 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

Multnomah County deed records indicate that claimants Raymond Smith, LLC and Lenske Properties, LLC acquired the property on August 9, 2001.

On August 9, 2001, the Measure 37 claim property was subject to Multnomah County’s acknowledged Commercial Forest Use (CFU) and Rural Residential (RR) zones. Multnomah County’s CFU zone required 160 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants’ property consists of 11.55 acres zoned RR and approximately 765.73 acres zoned CFU. The zoning and lawfully permitted uses have not changed since the claimants’ acquisition date and the claimants would not have been lawfully permitted to establish any additional home sites when they acquired the property.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on September 30, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

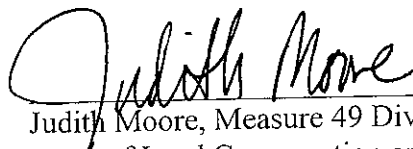
III. CONCLUSION

Based on the analysis above, claimant George Smith is not eligible for any relief under Measure 49 because the claimant no longer owns the Measure 37 claim property.

Based on the analysis above, claimants Raymond Smith, LLC and Lenske Properties, LLC are not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses have not changed since the claimants’ acquisition date and the claimants would not have been lawfully permitted to establish any additional home sites when they acquired the property.

IT IS HEREBY ORDERED that this Final Order of Denial 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:



Judith Moore, Measure 49 Division Manager.
Dept. of Land Conservation and Development
Dated this 14th day of November 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.