



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 NUMBER: E119597G<sup>1</sup>

CLAIMANTS: Laverne W. and Mary Jean Ratzlaff<sup>2</sup>  
15391 Airlie Road  
Monmouth, OR 97361

MEASURE 37 PROPERTY  
IDENTIFICATION: Township 8S, Range 5W, Section 33  
Tax lots 203, 600, 621 and 622<sup>3,4</sup>  
Polk County

The claimants, Laverne and Mary Ratzlaff, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 4, 2005, for property located on Fishback Road, near Monmouth, in Polk 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.

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<sup>1</sup> Claim E119597 has been divided into ten claims because the claim includes multiple tax lots or parcels that are not in the same ownership and/or are not contiguous. E119597A refers to tax lot 101 (T9S R5W S5) and claimants Laverne W. and Mary Jean Ratzlaff. E119597B refers to tax lots 102 and 108 (T9S R5W S5) and claimant Mary Ratzlaff. E119597C refers to tax lot 104 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597D refers to tax lot 105 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597E refers to tax lot 106 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597F refers to tax lot 107 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597G refers to tax lots 203, 600, 621 and 622 (T8S R5W S33) and claimants Laverne and Mary Ratzlaff. E119597H refers to tax lots 604, 612, 614 and 616 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597I refers to tax lot 610 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597J refers to tax lot 608 (T8S R5W S33) and claimant Mary Ratzlaff.

<sup>2</sup> The claimants have also submitted claims for properties not contiguous to the subject property, which are identified as E133893 and E133868.

<sup>3</sup> The Measure 37 claim property consisted of tax lots 101, 102, 104, 105, 106, 107, 108 (T9S R5W S5), 203, 600, 604, 608, 610, 612, 616, 621 and 622 (T8S R5W S33). The claimants did not elect supplemental review for tax lot 104; however, a claim cannot be amended to remove claim property. The claimants also included tax lots 103 and 110 (T9S R5W S5), and tax lots 602, 603 and 605 (T8S R5W S33), in their Measure 49 claim but those lots were not part of the State Measure 37 claim and a claim cannot be amended to add claim property.

<sup>4</sup> The Measure 37 claim property included tax lot 621. Tax lot 621 has since been partitioned into tax lots 621, 630, 632, 633 and 634.

## 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 more than three home site approvals in the election material. No Measure 37 waiver was issued for this portion of the claim property. The Measure 37 claim filed with the state describes more than three 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, Laverne and Mary Ratzlaff, filed a Measure 37 claim, M119597, with the state on February 4, 2005. The claimants filed a Measure 37 claim, M05-10, with Polk County on February 2, 2005. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Polk 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 claimants, Laverne and Mary Ratzlaff are the owners of fee title to tax lots 203, 600, 621 and 622 of the property as shown in the Polk County deed records and, therefore, are owners of tax lots 203, 600, 621 and 622 of the property under Measure 49.

Polk County has confirmed that the claimants are the current owners of tax lots 203, 600, 621 and 622 of the property.

According to the information submitted by the claimants, Laverne and Mary Ratzlaff have not established their ownership of tax lots 632, 633 and 634 of the property for the purposes of Measure 49. It appears the claimants have sold tax lots 632, 633 and 634 and, therefore, are no longer owners of that portion of the property.

**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 Polk County, outside the urban growth boundary and outside the city limits of the nearest city, Monmouth.

**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 Farm/Forest (FF) by Polk County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land

Conservation and Development Commission (the Commission). The Commission has approved Polk County's FF zone, which requires a minimum lot size of 40 acres.

The Measure 37 claim property consists of 24.01 acres.<sup>5</sup> 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**

Polk County deed records indicate that the claimants acquired the property on March 25, 1976.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Polk 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

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<sup>5</sup> In the preliminary evaluation issued for this claim the department erroneously stated that the claimants' property consists of 5.76 acres. The Measure 37 claim property consisted of 24.01 acres. Accordingly, the department has amended statements regarding the acreage within the Measure 37 claim property throughout this final order.

property was zoned Acreage Residential (AR-5) by Polk County. Polk County's AR-5 zone included a fixed minimum acreage standard of five acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on March 25, 1976. Accordingly, the statewide planning goals, and in particular Goals 3 and 4, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On April 22, 1988, the Commission acknowledged the application of Polk County's Farm/Forest (FF) zone to the Measure 37 claim property. The Commission's acknowledgement of Polk County's FF zone confirmed that zone's compliance with Goals 3 and 4 and ORS chapter 215. Polk County's acknowledged FF zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 24.01 acres. Therefore, on the claimants' acquisition date, they could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

However, because of uncertainty during the time period between adoption of the statewide planning goals in 1975 and each county's acknowledgment of its plan and land use regulations regarding the factual and legal requirements for establishing compliance with the statewide planning goals, the 2010 Legislative Assembly amended Measure 49. Senate Bill 1049 (2010) specifies the number of home sites considered lawfully permitted, for purposes of Measure 49, for property acquired during this period unless the record for the claim otherwise demonstrates the number of home sites that a claimant would have been lawfully permitted to establish. Those amendments provide, in relevant part, that subject to consistency with local land use regulations in effect when they acquired the Measure 37 claim property, claimants whose property consists of 20 or more acres but less than 40 were lawfully permitted to establish two home sites.

The Measure 37 claim property consists of 24.01 acres. Therefore, based on the analysis under SB 1049 (2010), the claimants were lawfully permitted to establish two dwellings on the Measure 37 claim property on their date of acquisition.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on March 16, 2010. 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. The claimants requested and the department approved an extension of the comment period to May 10, 2010. No additional comments were received in response to the extension of time of the comment period. In their request for an extension, the claimants submitted comments objecting to the department's exclusion of certain tax lots from the claimants' Measure 49 claim. Upon further review, it appears that tax lots 113 and 630 were originally part of the Measure 37 claim property but have since been partitioned into new tax lots. Therefore, the department agrees that the claimants included tax lots 113 and 630 in their Measure 37 claim filed with the state. However tax lots 103, 110, 602, 603 and 605 were not part of the Measure 37 claim filed with the state and a claim cannot be amended to add

claim property. Therefore, the department will not analyze the claimants' eligibility for relief on those five tax lots.

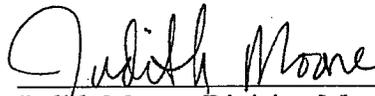
The claimants also commented that they believe a property transfer between husband and wife does not constitute a change in ownership. The department disagrees with this assertion. Section 2(16)(a) of Measure 49 (2007) defines owner as "the owner of fee title to the property as shown in the deed records of the county where the property is located." Similarly, Section 21(1) of Measure 49 defines acquisition date as "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." Therefore, if the deed records reflect a change in ownership, whether between husband and wife or a third party, the department must rely on those records to determine the ownership of the property.

### **III. CONCLUSION**

Based on the analysis above, the claimants were lawfully permitted to establish two home sites on their date of acquisition. However, because the Measure 37 claim property includes three developed lots or parcels that have been transferred to a different owner (tax lots 632, 633 and 634), the number of home site approvals that the claimants qualify for is reduced to zero. Therefore, the claimants do not qualify for any home site approvals under Section 6 of Measure 49.

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:



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Judith Moore, Division Manager  
Dept. of Land Conservation and Development  
Dated this 7<sup>th</sup> day of June 2010

#### **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 is 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.