



**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:** E130967

**CLAIMANTS:** Michael and Barbara Meredith  
3200 Camp Baker Road  
Medford, OR 97501

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 38S, Range 1W, Section 17  
Tax lot 4407  
Jackson County

The claimants, Michael and Barbara Meredith, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 20, 2006, for property located at 3200 Camp Baker Road, near Medford, in Jackson 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 two home site approvals in the election material. The Measure 37 waiver issued for this claim describes two home sites. Therefore, the claimants may qualify for a maximum of two 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, Michael and Barbara Meredith, filed a Measure 37 claim, M130967, with the state on November 20, 2006. The claimants filed a Measure 37 claim, M37 2006-00150, with Jackson County on November 16, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Jackson 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, Michael and Barbara Meredith are the owners of fee title to the property as shown in the Jackson County deed records and, therefore, are owners of the property under Measure 49.

Jackson County has confirmed that the claimants are the current owners 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 Jackson County, outside the urban growth boundary and outside the city limits of the nearest city, Medford.

**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 Open Space Reserve (OSR) by Jackson 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 and regulate the establishment of dwellings on new or existing lots or parcels.

The claimants’ property consists of 9.57 acres.<sup>1</sup> Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the two 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 two home sites for which the claimants may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

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<sup>1</sup>According to the Jackson County assessor’s records, the Measure 37 claim property is 9.57 acres. In comments in response to the preliminary evaluation, the claimants argue that for taxation purposes, the property is 9.57 acres, but that the property actually includes 10.01 acres.

**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**

Jackson County deed records indicate that the claimants acquired the property on December 30, 1980.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Jackson 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 Farm Residential (F-5) by Jackson County. The F-5 zone required five acres for the creation of a new lot or parcel on which a dwelling could be established and therefore would not have allowed any additional home sites on the Measure 37 claim property. However, because the property was not subject to an acknowledged zone, when the claimant acquired it on December 30, 1980, the statewide planning goals, and in particular Goal 4 applied directly to the Measure 37 claim property when the claimants acquired it.

To determine whether a use of property that was not subject to an acknowledged zone at the time the claimant acquired would have complied with Goal 4, OAR 660-041-0110 provides that DLCDD will apply the first acknowledged local land use regulations, unless the evidence in the record, including but not limited to, county records, county Measure 37 waivers or local land use determinations issued at the time the property was acquired, establishes that a greater number of lots, parcels or dwellings would have been lawfully permitted.

In 1980, Goal 4 was "to conserve forest lands for forest uses." It required that forest land "be retained for the production of wood fiber and other forest uses," and that "[l]ands suitable for forest uses be inventoried and designated as forest lands."<sup>2</sup>

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<sup>2</sup> As adopted in 1975, Goal 4 defined "Forest Lands" as:

"(1) [L]ands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use."

Goal 4 defined "Forest Uses" as:

(1) [T]he production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

On May 16, 1983, the Commission acknowledged the application of Jackson County's Open Space Reserve (OSR) zone to the Measure 37 claim property. The Commission's acknowledgement of Jackson County's OSR zone confirmed that zone's compliance with Goal 4. Jackson County's acknowledged OSR zone then required twenty acres for the creation of a new lot or parcel on which a dwelling could be established. There is no other evidence in the record that establishes that the creation of two, approximately 5-acre parcels for the development of dwellings on the subject property would have satisfied Goal 4 prior to acknowledgement. The claimants have submitted comments that division of their approximately 10-acre parcel would have been allowed under the county's unacknowledged zone at the time they acquired it. However, the claimants' argument does not substantiate that a division of the property would have complied with Goal 4 at that time. Specifically, there is no evidence in the record to establish that approximately 5-acre parcels with dwellings would serve to "conserve forest lands for forest uses" or would allow forest land to "be retained for the production of wood fiber and other forest uses."

Neither the acknowledged plan and land use regulations nor any other evidence in the record establishes that the division of the claimants' approximately 10-acre property into two home sites would have been lawfully permitted at the time the claimants acquired the M37 claim property in 1980. Therefore, the claimants do not qualify for any additional home sites under Measure 49.

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

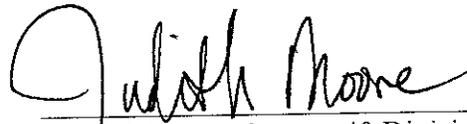
The department issued its Preliminary Evaluation for this claim on April 7, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments were received by both the claimants and nearby property owners, and have been taken into account by the department in the evaluation of this Final Order of Denial.

## **III. CONCLUSION**

Based on the analysis above, the claimants, Michael and Barbara Meredith, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish any additional lots, parcels or dwellings on the claimants' date of acquisition.

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 21<sup>st</sup> day of August 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.