



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: E132949^{1,2}

CLAIMANT: Rosboro Lumber Company LLC
2509 Main Street
Springfield, OR 97477

MEASURE 37 PROPERTY IDENTIFICATION: Township 16S, Range 4E
Section 29, Tax lot 500³
Section 30-40, Tax lot 1200
Section 31, Tax lots 100, 101 and 102
Lane County

AGENT CONTACT INFORMATION: Aaron J. Noteboom and Michael M. Reeder
Arnold Gallagher Saydack, et al.
800 Willamette Street, Suite 800
Eugene, OR 97401

The claimant, Rosboro Lumber Company LLC, filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 90410 Huckleberry Lane, near Finn Rock, in Lane 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 its 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.

¹ Claims E132949 and E132950 have been combined into one claim because the properties are contiguous and in the same ownership. 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 The claimant also has submitted a claim for property not contiguous to the subject property which is identified as E132948.

³ The Measure 37 claim property consisted of the portion of tax lot 500 west of the McKenzie River. Tax lot 500 has since been partitioned into tax lots 500, 501 and 502.

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 six home site approvals in the election material. No waivers were issued for these claims. The Measure 37 claims filed with the state describe sixty-one home sites. Therefore, the claimant 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 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, Rosboro Lumber Company LLC, filed Measure 37 claims, M132949 and M132950, with the state on December 1, 2006. The claimant filed Measure 37 claims, PA06-7281, PA06-7283, PA06-7285 and PA06-7287, with Lane County on December 1, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Lane 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, Rosboro Lumber Company LLC is the owner of fee title to tax lots 100, 102, 501, 1200 and the western portion of tax lot 500 of the property as shown in the Lane County deed records and, therefore, is an owner of the property under Measure 49. Lane County has confirmed that the claimant is the current owner of the property.

According to the information submitted by the claimant, Rosboro Lumber Company LLC has not established its ownership of tax lot 101 and tax lot 502 of the property for the purposes of Measure 49 because it no longer owns that portion of the Measure 37 claim property. Because this requirement has not been met, the claimant is not entitled to any relief on tax lot 101 and tax lot 502 under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for this portion of the claim 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 tax lots 100, 102, 501, 1200 and the western portion of tax lot 500 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 Lane County, outside any urban growth boundary and outside any city limits, near the community of Finn Rock.

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 Non-Impacted Forest (F1) by Lane 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 prohibit the establishment of more than one dwelling on a single tract.

The claimant's property consists of 547.89 acres that make up a single tract. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property 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, it does not appear that the establishment of the three home sites for which the claimant 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

Lane County deed records indicate that the claimant acquired the property on December 30, 1994.

On December 30, 1994, the Measure 37 claim property was subject to Lane County's acknowledged Non-Impacted Forest (F1) zone. Lawfully permitted uses of the property have not changed since the claimant acquired it. As it is today, Lane County's F1 zone required 80 acres for the creation of a new lot or parcel and prohibited the establishment of more than one dwelling on a single tract. Therefore, because the lawfully permitted uses of the property have not changed since the claimant acquired the property in 1994, the claimant is not entitled to relief under Measure 49.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 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.

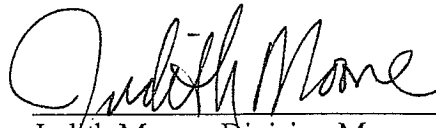
III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals on tax lot 101 and 502 because the claimant no longer owns that portion of the claim property.

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals on tax lots 100, 102, 501, 1200 and the western portion of tax lot 500 because the zoning and lawfully permitted uses of the claimant's property have not changed since it acquired it.

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, Division Manager
Dept. of Land Conservation and Development
Dated this 22nd day of January 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.