



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:** E134021B<sup>1,2</sup>

**CLAIMANT:** Derry Farms, Inc.  
30180 Pickett Road  
Malin, OR 97632

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 41S, Range 12E, Section 7  
Tax lot 600  
Klamath County

**AGENT CONTACT INFORMATION:** Justin Throne  
Attorney at Law  
280 Main Street  
Klamath Falls, OR 97601

The claimant, Derry Farms, Inc., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 22102 Harpold Road, near Malin, in Klamath 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.

<sup>1</sup> Claim E134201 has been split into two claims, E134201A and E134201B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E134201A addresses the claimant's eligibility for Measure 49 relief on tax lots 900, 600 (Section 33) and 800, and E134201B addresses its relief on tax lot 600 (Section 7).

<sup>2</sup> On July 3, 2008, the department sent the claimant a letter stating that no further action would be taken regarding this claim. That letter was sent in error. This Final Order supersedes the letter dated July 3, 2008, and this claim will continue to be processed under Measure 49.

## 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 supplemental review under Section 6 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes land division and development that could have resulted in more than three home sites.<sup>3</sup> 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, Derry Farms, Inc., filed a Measure 37 claim, M134021, with the state on December 4, 2006. The claimant filed a Measure 37 claim, M37-96-06, with Klamath County on December 4, 2006. The state claim was filed on December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Klamath 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."

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<sup>3</sup> The Measure 37 waiver described the property and provided relief for tax lots 900, 600 (Section 33), 800 and 600 (Section 7).

**Findings of Fact and Conclusions:**

According to the information obtained by the department from Klamath County, Derry Farms, Inc. has not established its ownership of the property for the purposes of Measure 49 because the claimant no longer owns the property.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated.

**II. COMMENTS ON THE PRELIMINARY EVALUATION**

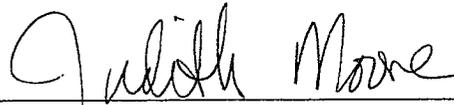
The department issued its Preliminary Evaluation for this claim on January 13, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

**III. CONCLUSION**

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant no longer owns the Measure 37 claim 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, Division Manager  
Dept. of Land Conservation and Development  
Dated this 7<sup>th</sup> day of April 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.