



**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: E118365 and E130682¹

CLAIMANTS: Melvin A. and Robin A. Babb
15600 S. Spangler Road
Oregon City, OR 97045

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 4S, Range 2E, Section 3
Tax lots 300 and 301
Clackamas County

AGENT CONTACT INFORMATION: Kristen S. David
Bowerman and David PC
PO Box 100
Oregon City, OR 97045

The claimants, Melvin and Robin Babb, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on April 28, 2006, for property located at 15604 S Spangler Road and on November 13, 2006, for property located at 15600 S Spangler Road, near Oregon City, in Clackamas 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 claims 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

During the 2009 legislative session, the Oregon State Legislature amended Measure 49 through the passage of House Bill 3225. Section 7 of House Bill 3225 states that “a claimant is not entitled to implement relief under the theory of common law vested right and under sections 5 to 11, chapter 424, Oregon law 2007 [Measure 49].”

¹Claims E118365 and E130682 have been combined into one claim because the properties are contiguous. 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. For purposes of combining claims, ownership of claim property is determined as of the date of the Measure 37 claim.

Based upon the August 1, 2008 Hearings Officer Decision (Z0105-08-VR) it appears that Melvin and Robin Babb have been determined to have a common law vested right to continue a use described in a Measure 37 waiver on the Measure 37 claim property. Accordingly, Melvin and Robin Babb are not also entitled to relief under Measure 49, on the Measure 37 claim property.

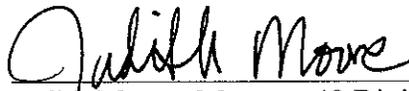
II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on August 3, 2009. 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 of Denial. The claimants' attorney submitted comments disagreeing with the combining of claims E118365 and E130682. The attorney indicated that the claimants have been determined to have a vested right to a Measure 37 use on tax lot 301 and asserted that the department should therefore address the claims separately. This Final Order of Denial reflects the additional information obtained regarding the status of the vested rights claim on tax lot 301.

The attorney also asserted that because the claimants changed the ownership of tax lots 300 and 301 so that they were no longer under identical ownership shortly before electing, the claim properties should not be combined into a single claim property. The attorney cited OAR 660-041-0120 as evidence that the ownership on the date of the election controls the combination of claims. However, that provision concerns contiguous non-claim property rather than claim property. OAR 660-041-0150 addresses combining claim properties that are contiguous and in the same ownership. For purposes of combining or dividing claims, ownership of claim property is determined as of the date of the Measure 37 claim.

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 3rd day of December 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 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.