



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:** E122836<sup>1</sup>

**CLAIMANT:** Freeman Properties East, LLC  
PO Box 25744  
Portland, OR 97298

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 41S, Range 13W<sup>2</sup>  
Section 00, Tax lot 2300  
Section 23C, Tax lot 100  
Curry County

**AGENT CONTACT INFORMATION:** Cynthia Van Lom  
PO Box 25744  
Portland, OR 97298

The claimant, Freeman Properties East, LLC, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 17, 2005, for property located at the coordinates listed above, near Brookings, in Curry 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 Claimant May Qualify

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; 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

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<sup>1</sup> On July 7, 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 7, 2008.

<sup>2</sup> In its election, claimant included tax lot 2300 (R12W). Inclusion of that tax lot was determined under Measure 37 to be a mistake. Therefore, tax lot 2300 (R12W) will not be addressed in this final order.

was issued, the number of home sites described in the Measure 37 claim filed with the state; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimant has requested ten home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 327 home sites. No Measure 49 appraisal was submitted by the claimant. Therefore, the claimant may qualify for a maximum of ten home site approvals under Section 7 of Measure 49.

## **B. Qualification Requirements**

To qualify for a home site approval under Section 7 of Measure 49, the claimant must meet each of the following requirements:

### **1. Property not high-value farm, forest or groundwater restricted**

The Measure 37 claim property must not be high-value farmland or high-value forestland nor in a ground water restricted area, as defined in Section 2 of Measure 49.

### **Findings of Fact and Conclusions**

The department has not made a final determination as to whether the property is high-value farmland, high-value forestland or in a ground water restricted area. Because the claim is denied under other criteria a final determination on this point is not necessary.

### **2. 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, Freeman Properties East, LLC, filed a Measure 37 claim, M122836, with the state on October 17, 2005. The claimant filed a Measure 37 claim, M37-0516, with Curry County on October 24, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Curry County.

### **3. 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 claimant, Freeman Properties East, LLC is the owner of fee title to the property as shown in the Curry County deed records and, therefore, is an owner of the property under Measure 49.

Curry County has confirmed that the claimant is the current owner of the property.

**4. 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.

**5. 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 Curry County, outside the urban growth boundary and outside the city limits of the nearest city, Brookings.

**6. 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 Forestry Grazing (FG) by Curry 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract.

The claimant's property consists of 363 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the ten home sites the claimant may qualify for under Section 7 of Measure 49.

**7. 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 ten home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

**8. 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 7 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**

Curry County deed records indicate that the claimant acquired the property on August 12, 2003.

On August 12, 2003, the Measure 37 claim property was subject to Curry County's acknowledged Forestry Grazing (FG) zone. Curry County's FG zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant was not lawfully permitted to establish more than one dwelling on a tract on its date of acquisition. The claimant's property consists of 363 acres in a single tract. Therefore, the claimant lawfully could not have established ten home sites on its date of acquisition.

**9. The Enactment of One or More Land Use Regulations that are the Basis for this Claim, Caused a Reduction in the Fair Market Value of the Measure 37 Claim Property that is Equal to or Greater than the Fair Market Value of the Home Site Approvals Requested**

Sections 7 and 8 of Measure 49 require that the reduction in the fair market value of the property be demonstrated through an appraisal that meets several requirements.

The claimant submitted its election on May 30, 2008, and did not file an appraisal that meets these requirements. Therefore, this requirement has also not been met.

In a comment in response to the preliminary evaluation, the claimant's agent asserted that the appraisal submitted with the Measure 37 claim should be adequate to demonstrate a loss in fair market value under Section 7 of Measure 49. Section 7 (6) and (7) and Section 8 of Measure 49 list the requirements for an appraisal. The "Measure 49 Guide" included in the election packet sent to the claimant also explains these requirements. The documents submitted with the claimant's Measure 37 claim do not satisfy the requirements for an appraisal under Section 7 of Measure 49.

**II. COMMENTS ON THE PRELIMINARY EVALUATION**

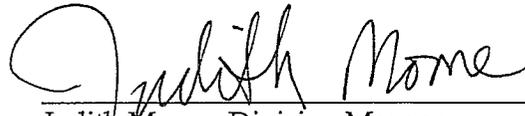
The department issued its Preliminary Evaluation for this claim on February 17, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, the claimants submitted a comment stating that their family acquired the property at an earlier date, and that the department should rely on that earlier date as their date of acquisition. Section 7(5)(f) of Measure 49 requires that "on the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings authorized..." That a non-claimant family member may have owned the Measure 37 property at an earlier date does not affect a claimant's eligibility for relief under Measure 49. Freeman Properties East, LLC is a separate and distinct legal entity from any members of the Freeman family. The acquisition date for the claimant, Freeman Properties East, LLC, is August 12, 2003. The agent also states that the department should have deemed the claim complete within 60 days after the date the claim was filed based on 660-041-0520. However, the provision the agent cites refers to new claims filed under Measure 49. This rule does not apply to supplemental review of Measure 37 claims under Measure 49.

**III. CONCLUSION**

Based on the analysis above, the claimant is not qualified for any relief under Measure 49 because it did not submit an appraisal as required by Sections 7 and 8 of Measure 49 and because the zoning and lawfully permitted use of the claimant's property have not changed since it acquired the 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 19<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.