



**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:

E131303¹

CLAIMANTS:

Dorothy M. McCormick
7415 S Lone Elder Road
Canby, OR 97013

Steven P. McCormick
Suzanne McCormick
7471 S Lone Elder Road
Canby, OR 97013

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 4S, Range 1E, Section 8
Tax lots 1400 and 1500
Clackamas County

The claimants, Dorothy McCormick, Steven McCormick and Suzanne McCormick, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 27, 2006, for property located at 7471 S Lone Elder Road, near Canby, 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 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 three home site approvals in the election material. The Measure 37

¹ The claimants also have a claim E129790 for property that is not contiguous to tax lots 1400 and 1500.

waiver issued for this claim describes more than three home sites. Therefore, the claimants 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 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, Dorothy McCormick, Steven McCormick and Suzanne McCormick, filed a Measure 37 claim, M131303, with the state on November 27, 2006. The claimants filed a Measure 37 claim, ZC284-06, with Clackamas County on November 6, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Clackamas 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, Dorothy McCormick is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

According to the deeds submitted by the claimants, Steven McCormick and Suzanne McCormick are the owners of fee title to the property as shown in the Clackamas County deed records and, therefore, are owners of the property under Measure 49.

Clackamas County has confirmed that the claimants are the current owners of the 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:

Documentation received by the department during the Preliminary Evaluation comment period indicates that there is a non-claimant owner who has not consented to the claim: Paul J. McCormick. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent was not provided in writing within the time periods set for comment on this claim set forth in OAR 660-041-0090.

II. COMMENTS ON THE PRELIMINARY EVALUATION

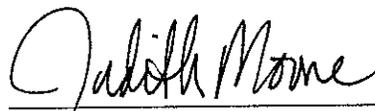
The department issued its Preliminary Evaluation for this claim on October 22, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Non-claimant owner Paul J. McCormick submitted a comment indicating that he does not consent to the claim. The claimant submitted a response indicating that Paul J. McCormick has only been an owner since February 27, 2009, and was, therefore, not an owner when the Measure 37 claim and the Measure 49 election were filed. Nonetheless, Paul J. McCormick, as a trustee of an irrevocable trust into which an interest in the Measure 37 claim property has been conveyed, is an owner of the Measure 37 claim property for purposes of Measure 49 and he has not consented to the claim.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because there are non-claimant owners who have not consented to the 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, Division Manager
Dept. of Land Conservation and Development
Dated this 25th 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 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.