



**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:

E129399

CLAIMANT:

Judy L. Benton
3630 Benton Road
Hood River, OR 97031

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 2N, Range 10E, Section 14
Tax lot 2005
Hood River County

AGENT CONTACT INFORMATION:

Steven B. Andersen
571 NW Spring Street
White Salmon, WA 98672

The claimant, Judy Benton, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 26, 2006, for property located at 3600 Tucker Road, near Parkdale, in Hood River 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 her 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 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 material; 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 one home site approval in the election material. The Measure 37 waiver issued for this claim describes one home site. Therefore, the claimant may qualify for a maximum of one home site approval 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, Judy Benton, filed a Measure 37 claim, M129399, with the state on May 26, 2006. The claimant filed a Measure 37 claim, 05-M037, with Hood River County on July 28, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Hood River 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 claimant, Judy Benton is the owner of fee title to the property as shown in the Hood River County deed records and, therefore, is an owner of the property under Measure 49.

Hood River County has confirmed that the claimant is the current owner 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:

All owners of the property 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 Hood River County, outside the urban growth boundary and outside the city limits of the nearest city, Hood River.

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:

Approximately 19 acres of the property are currently zoned Exclusive Farm Use (EFU) by Hood River County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of a dwelling in an EFU zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres in size in an EFU zone and generate a minimum annual income from the sale of farm products.

The combined effect of the standards for the establishment of a dwelling in an EFU zone is to prohibit the claimant from establishing a dwelling on the 19-acre EFU-zoned portion of the Measure 37 claim property.

Approximately one acre of the property is currently zoned Rural Residential (RR-2.5) by Hood River County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, allow the establishment of a dwelling on a vacant legally established lot or parcel in a rural residential zone. Therefore, no state law prohibits the claimant from establishing one dwelling on the approximately one acre RR-2.5 zoned portion of the Measure 37 claim property.

Because this requirement has not been met with respect to the one acre RR-2.5 zoned portion of the property, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for that portion of the property. The remainder of this final order addresses the claimant's eligibility for relief on the 19-acre EFU-zoned portion of the Measure 37 claim property.

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 one home site for which the claimant may qualify 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

Hood River County deed records indicate that the claimant acquired the 19-acre EFU-zoned portion of the property on January 21, 1986.

On January 21, 1986, the EFU-zoned portion of the Measure 37 claim property was subject to Hood River County's acknowledged Exclusive Farm Use (EFU) zone. Hood River County's EFU zone required 20 acres for the establishment of a dwelling on a vacant lot or parcel. The EFU-zoned portion of the Measure 37 claim property consists of 19 acres. Therefore, the claimant lawfully could not have established a home site on the EFU-zoned portion of the Measure 37 claim property on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 22, 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.

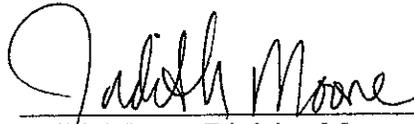
III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the dwellings on the claimant's date of acquisition of the 19-acre EFU-zoned portion of the Measure 37 claim property

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals on the approximately one-acre portion of the Measure 37 claim property zoned RR-2.5 because no state law prohibits the claimant from establishing a dwelling on that portion of 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 16th day of February 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.