



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: E130493A¹

CLAIMANT: Alta M. Werth
251 27th Street W
Merced, CA 95340

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 6S, Range 7W, Section 8
Tax lot 700
Polk County

AGENT CONTACT INFORMATION:

Alan M. Sorem
Saalfeld Griggs PC
PO Box 470
Salem, OR 97308

The claimant, Alta Werth, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 30, 2006, for property located at 26781 Salmon River Highway, near Grand Ronde, in Polk 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 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

¹ Claim E130493 has been split into two claims, E130493A and E130493B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E130493A addresses the claimant's eligibility for Measure 49 relief on tax lot 700 and E130493B addresses her relief on tax lot 800.

claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes more than three home sites. 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, Alta Werth, filed a Measure 37 claim, M130493, with the state on October 30, 2006. The claimant filed a Measure 37 claim, M06-86, with Polk County on October 30, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Polk 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 information submitted by the claimant, Alta Werth has not established her ownership of the property for the purposes of Measure 49. Claimant Alta Werth acquired tax lot 700 on August 16, 1972, as reflected by a recorded deed included with the claim. However, Alta Werth subsequently conveyed fee title to Susan Meeker, Mervin Edward Werth, Jr., Mary Margaret Erickson, and Carolyn Corrine Werth on August 22, 1980, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Alta Werth was no longer an owner of tax lot 700 after August 22, 1980.

Because this requirement has not been met, the remaining approval criteria will not be evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

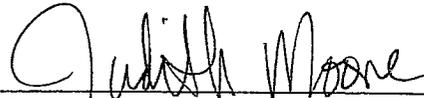
The department issued its Preliminary Evaluation for this claim on November 30, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimant's agent submitted a comment asserting that the claimant did not convey tax lot 700 in 1980 and continues to own fee title interest in the property. Information obtained by the department from a title company shows that the claimant conveyed her fee title interest in tax lot 700 on August 22, 1980, retaining for herself a life estate in the property. This document was recorded on October 31, 1980, in the Polk County deed records at Volume 152, Page 1810. Therefore, the claimant no longer owns the property because a life estate holder is not an owner of property for purposes of Measure 49.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant is no longer an owner 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 15 day of March 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.