



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:** E130761

**CLAIMANT:** Katherine R. Clark  
18809 Hill Road  
Klamath Falls, Oregon 97603

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 40S, Range 10E, Section 25  
Tax lots 300 and 400  
Klamath County

**AGENT CONTACT INFORMATION:** Michael L. Spencer  
439 Pine Street  
Klamath Falls, OR 97601

The claimant, Katherine Clark, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 15, 2006, for property located at 18809 Hill Road and 15925 Taylor Road, near Merrill, in Klamath 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 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 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. The Measure 37 waiver issued for this claim describes seven home sites. A letter

submitted by the claimant's attorney attempts to support the assertion that the value of ten home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimant may qualify for a maximum of seven 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**

ORS 195.300(10)(c)(B) defines land that is in a mixed farm and forest zone and that on June 28, 2007, is within the boundaries of a district, as defined in ORS 540.505, as high-value farmland.

The claimant's property is zoned mixed farm and forest. A map of the Klamath Irrigation District obtained from the Oregon Department of Water Resources, available on the DLCD's Measure 49 on-line Map Viewer, indicates that the Measure 37 claim property is located entirely within the boundaries of the Klamath Irrigation District. The Klamath Irrigation District is a district as defined in ORS 540.505. Therefore, the Measure 37 claim property is high-value farmland.

The claimant's attorney submitted a letter from the Klamath Irrigation District indicating that only six acres of the property are within the Klamath Irrigation District and six acres are within the Klamath Basin Improvement District. Research using the Department of Water Resources WRIS system indicates that these acreages represent "point of use" water rights assigned to specific locations within the property. These acreages do not represent the boundaries of a district. In a comment responding to the preliminary evaluation, the attorney submitted a statement from the Klamath Irrigation District showing the number of acres of the claimant's property that are being assessed by the district. However, neither the District nor the claimant provided a map or legal description indicating that any portion of the claimant's property is outside of the Klamath Irrigation District boundaries or that those boundaries are any different from the map provided by the Oregon Department of Water Resources. The claimant has not submitted sufficient evidence showing that the property is not located entirely within the boundaries of any "district," as defined in ORS 540.505.

Based on information in the record, the Measure 37 property is high-value farmland and therefore is not eligible for relief under Section 7 of Measure 49. The property is not high-value forestland and is not in a ground water restricted area.

## **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, Katherine Clark, filed a Measure 37 claim, M130761, with the state on November 15, 2006. The claimant filed a Measure 37 claim, 16-06, with Klamath County on June 3, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Klamath 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, Katherine Clark is the settlor of a revocable trust into which the property was conveyed as shown in the Klamath County deed records and, therefore, is an owner of the property under Measure 49.

Klamath 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 Klamath County, outside the urban growth boundary and outside the city limits of the nearest city, Merrill.

**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 Range (FR) by Klamath 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 and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 55.11 acres and is developed with one dwelling. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the seven 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 seven home sites for which the claimant may qualify for 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**

Klamath County deed records indicate that the claimant acquired the property on December 15, 1965.

On December 15, 1965, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least seven lots or parcels and at least seven dwellings. Therefore, the claimant lawfully could have established the seven home sites the claimant may qualify for under Section 7 of Measure 49.

**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 the following requirements:

**a) The appraisal must be submitted within 180 days after the Measure 49 election is filed with the department.**

The claimant submitted her election on May 12, 2008, and her appraisal on November 7, 2008. Therefore, the appraisal was submitted within 180 days of the election filing.

**b) The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.**

The claimant submitted two sets of documents in an attempt to satisfy the appraisal requirements of Sections 7 and 8 of Measure 49. One set of documents was a residential appraisal authored by Charles R. Dehlinger. The Dehlinger appraisal provided values for single, hypothetical lots of 1-2 acres, 20 acres, 34.27 acres and 5 acres that could be developed at the relevant time periods, but provided no value of the Measure 37 property itself. Charles R. Dehlinger is a state-certified general appraiser; therefore, with respect to the tasks performed by Dehlinger, this requirement has been met. The second set of documents submitted was authored by the claimant's attorney, Michael Spencer. Those documents purported to comply with the requirements of Sections 7 and 8 of Measure 49 by using the individual lot values obtained from the Dehlinger appraisal to determine a value for the 55.11-acre Measure 37 property at the relevant time periods. Under Section

7(7) of Measure 49 these activities must be part of the “appraisal” and must be performed by a person certified under ORS chapter 674 or a person registered under ORS chapter 308. Michael Spencer is not a state-certified general appraiser; therefore, with respect to the tasks performed by Michael Spencer, this requirement has not been met.<sup>1</sup>

**c) The appraisal must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.**

An appraisal review commissioned by the department has determined that the appraisal performed by Charles Dehlinger meets the threshold requirements for Uniform Standards of Professional Appraisal Practice compliance for the scope of work outlined by the appraiser with the exception of Rule 1-2(d), which requires that the appraiser “identify the effective date of the appraiser’s opinions and conclusions.” For the retrospective property value opinions, the appraiser identified only the years 1971 and 1973.

As noted above, claimant’s attorney, Michael Spencer, completed significant portions of the analysis required to be included in the appraisal under Section 7(7) of Measure 49. Michael Spencer used the individual lot values identified in the Dehlinger appraisal to determine a value for the entire property at the relevant time periods, although none of these final values were specifically identified as such in the analysis provided by Mr. Spencer. For the date 1971, one year before the land use regulation went into effect, the Dehlinger appraisal determined an individual 1-2-acre parcel had a fair market value of \$3,900. Mr. Spencer appears to have multiplied this figure by 80 to determine a value for the 55.11-acre Measure 37 property of \$312,000. Likewise, Mr. Spencer appears to have taken Dehlinger’s determination that in 1973 a 20-acre parcel and a 34.27-acre parcel had a fair market value of \$21,000 and \$35,000, respectively, and summed those values to conclude that the value of the Measure 37 property after the land use regulation went into effect was \$56,000. Finally, Mr. Spencer took Dehlinger’s determination that in 2008, a 5-acre parcel had a fair market value of \$84,200 to \$98,000 and multiplied the higher figure by 10 to determine the current value of the lots, parcels or dwellings to which claimant was otherwise entitled under Measure 49.

The portions of the Measure 49 appraisal performed by Mr. Spencer contain several errors and do not meet the threshold requirements for Uniform Standards of Professional Appraisal Practice compliance. The value conclusions for the Measure 37 property reached by Mr. Spencer are merely a summation of the hypothetical retail lot values determined by Dehlinger and made no allowance for development costs, holding costs, marketing costs, or developer’s profit. As discussed below, the summations themselves are calculated incorrectly leading to errors in the value of the Measure 37 property both before and after the land use regulation went into effect. As a result of the foregoing, the department concludes that the valuations are inaccurate, lack any meaningful analysis,

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<sup>1</sup> ORS 674.100(2)(c) does not require an attorney to comply with the licensing requirements of the statute when the attorney engages in what otherwise would be deemed real estate appraisal activity when the activity is undertaken “in the performance of duties as an attorney at law.” The fact that an attorney is exempt from the licensing requirements of ORS 674 in certain circumstances is not the same as being “certified” under ORS 674.

and fail to meet the criteria outlined in Standards 1 and 2 of USPAP. As a result, Mr. Spencer's analysis is not compliant with USPAP.

Based on the foregoing, this requirement has not been met.

**d) The appraisal must expressly determine the highest and best use of the property at the time the land use regulation was enacted and the highest and best use must be determined to be residential use.**

Neither the appraisal submitted by Dehlinger, nor the analysis submitted by Mr. Spencer, identified what the highest and best use of the property was at the time the land use regulation was enacted. In response to the preliminary evaluation, Mr. Dehlinger attempted to clarify the highest and best use of the property at the time the land use regulation was enacted. Mr. Dehlinger stated that "the Highest & Best Use of this property during the early 1970's and through 1977 would have been as a building sites" and "In fact, Highest & best Use would have been with a residence constructed on the property." Between these statements, the highest and best use at the time the land use regulation was enacted was determined to be residential use. Therefore, this requirement has been met.

**e) The appraisal must show the fair market value of the property one year before and one year after the enactment of the regulation(s) the claimant asserts have resulted in a reduction of the fair market value of the Measure 37 claim property.**

The claimant asserts that the enactment of Klamath County's FR zone reduced the fair market value of the Measure 37 claim property. The claimant submitted two sets of documents in an attempt to satisfy this requirement, the Dehlinger appraisal and Mr. Spencer's analysis.

The Dehlinger appraisal does not purport to determine the fair market value of the 55.11-acre Measure 37 claim property for either relevant date. Instead, the appraisal shows a fair market value of one hypothetical 2-acre parcel in 1971 "as if within a sub-division or partition had the property been so divided" and of one hypothetical 20-acre parcel and one hypothetical 34.27-acre parcel in 1973 "had the property been so divided." Therefore, with respect to the tasks performed by Dehlinger, this requirement has not been met.

The analysis submitted by Mr. Spencer as part of the Measure 49 appraisal attempts to establish the value of the entire Measure 37 property one year before and one year after the land use regulation went into effect. However, the values determined by Mr. Spencer are the result of mathematical errors, lack any meaningful analysis, and fail to meet the criteria outlined in Standards 1 and 2 of USPAP. There are several reasons for this conclusion. First, the value established by Mr. Spencer for 1971, one year before the enactment of the regulation, was accomplished by merely multiplying the value of a single 1-2-acre parcel as determined by the Dehlinger appraisal by 80. Likewise, the value established by Mr. Spencer for 1973, one year after the enactment of the regulation,

was accomplished by merely summing the values of a 20-acre parcel and a 34.27-acre parcel as determined by the Dehlinger appraisal. In both instances, the analysis made no allowance for costs of development, holding, marketing or profit. It is clear from the Dehlinger appraisal that the values for the individual lots likewise did not make any allowance for costs of development, holding, marketing or profit.

Second, as noted above, the value of the Measure 37 property established by Mr. Spencer for 1971 of \$312,000 was accomplished by multiplying the value of a single 1-2-acre parcel (\$3,900), as determined by the Dehlinger appraisal, by 80 –  $\$3,900 \times 80 = \$312,000$ . No explanation is provided as to why the individual value is multiplied by 80. It is clear that the 55.11-acre property could not have accommodated 80, 1-2-acre parcels. At most, the Measure 37 property could have been divided into 55, 1-acre parcels. Under Mr. Spencer's methodology this would have resulted in a value of the Measure 37 property in 1971 of \$214,500, not \$312,000 as calculated by Mr. Spencer. Finally, although the narrative of the Dehlinger appraisal asserts that the fair market value of \$3,900 was for a 1-2-acre parcel in 1971, it is clear that the data relied on by Mr. Dehlinger to determine that value was based solely on a 2-acre parcel. Mr. Dehlinger's report states: "Four comparable Sales have been included in this report. Based on the analysis the value estimate for the 2-acre building sites is \$3900 or \$1950 per acre in 1971." The size of the four comparables utilized by Mr. Dehlinger ranged from 1.29-5.35-acres, and the sale prices of the same were adjusted in comparison to a 2-acre parcel. Thus, when Mr. Spencer multiplied the \$3,900 value of a "1-2-acre parcel" as determined by Dr. Dehlinger, Mr. Spencer in effect more than doubled the value of the Measure 37 property in 1971. If an appraisal of the Measure 37 property could legitimately be based on summing the retail value of a single 2-acre lot to fill up 55 acres of land without development costs, the total retail value would be \$105,300 and not \$312,000 as concluded by Mr. Spencer.

Therefore, with respect to the tasks performed by Mr. Spencer, this requirement has not been met.

**f) As required by Section 7 (6) and (7) the reduction in the fair market value of the Measure 37 property determined by the appraisal is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.**

The Dehlinger appraisal does not purport to determine whether the reduction in the fair market value of the Measure 37 property is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. Therefore, with respect to the tasks performed by Mr. Dehlinger, this requirement has not been met.

The analysis submitted by Mr. Spencer as part of the Measure 49 appraisal attempts to determine whether the reduction in the fair market value of the Measure 37 property is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. Mr. Spencer's analysis of this requirement is not credible for several reasons. First, as noted above, Mr. Spencer's analysis of the value of the Measure 37 property prior to the enactment of the land use regulation is not credible and fails to meet the criteria outlined in Standards 1 and 2 of USPAP because it (1) made no allowance for costs of development, holding, marketing or developer profit, (2) multiplied the fair market value of a "1- 2-acre parcel" by 80 acres rather than 55 acres to determine the fair market value of the whole in 1971, and (3) multiplied acreage by the fair market value of a 2-acre parcel rather than the fair market value of a 1-acre parcel to determine the fair market value of the whole.

Second, Mr. Spencer's analysis of the value of the Measure 37 property after the enactment of the land use regulation is not credible and fails to meet the criteria outlined in Standards 1 and 2 of USPAP because it made no allowance for costs of development, holding, marketing or developer profit. Third, because of the errors noted above, Mr. Spencer's analysis grossly exaggerates the reduction in value caused by the land use regulation. Finally, although Mr. Spencer correctly adjusted the alleged loss in value by calculating interest thereon using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, Mr. Spencer failed to adjust the reduction in fair market value by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Therefore, with respect to the tasks performed by Mr. Spencer, this requirement has not been met.

**g) The appraisal must show the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49.**

The Dehlinger appraisal does not purport to show the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49. Instead, the Dehlinger appraisal merely determines the present fair market value of one, 5-acre building site "as if the subject property was divided into 5 acre parcels as if within a subdivision." The appraisal concluded that the value of a 5-acre building site would be between \$84,200 and \$98,000 "depending on the amenities such as view available to the lot, access roads, power, availability of domestic water, and potential cost of the septic

system.” The appraisal does not show the present fair market value of each of the requested ten, buildable home sites as they would exist on the 55.11-acre Measure 37 property. Therefore, with respect to the tasks performed by Mr. Dehlinger, this requirement has not been met.

The analysis submitted by Mr. Spencer as part of the Measure 49 appraisal attempts to determine the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49. In completing this analysis, Mr. Spencer took the value of a 5-acre building site as determined in the Dehlinger appraisal of \$98,000 and multiplied that number by ten, the number of home site approvals sought by the claimant. Mr. Spencer’s analysis of this requirement is not credible for three reasons. First, Mr. Spencer’s analysis contains no explanation as to why Mr. Spencer utilized the high end of the range of values determined by the Dehlinger appraisal (\$98,000) to calculate the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49. Indeed, the Dehlinger appraisal clearly states that fair market value of each 5-acre parcels will vary “depending on the amenities such as view available to the lot, access roads, power, availability of domestic water, and potential cost of the septic system.” Second, Mr. Spencer’s analysis makes no allowance for costs of development, holding, marketing or profit. Third, Mr. Spencer’s analysis contained no evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Therefore, with respect to the tasks performed by Mr. Spencer, this requirement has not been met

**h) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.**

As discussed in subsections (e), (f), and (g) above, the Dehlinger appraisal and the analysis submitted by Mr. Spencer taken together fail to establish the prerequisites necessary to demonstrate that the enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals. Therefore, this requirement has not been met.

## II. COMMENTS ON THE PRELIMINARY EVALUATION

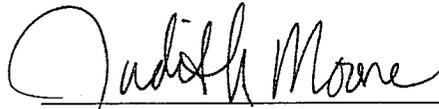
The department issued its Preliminary Evaluation for this claim on February 17, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account and have been addressed by the department in the issuance of this Final Order of Denial.

### III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the property is entirely within the Klamath Falls Irrigation District boundary and is therefore high-value farmland; and because the appraisal submitted by the claimant does not meet all of the qualification standards described in Sections 7 and 8 of Measure 49.

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 28<sup>th</sup> day of June 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.