



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:

E130951

CLAIMANT:

Donna R. King<sup>1</sup>  
326 NW Congress Street  
Bend, OR 97701

MEASURE 37 PROPERTY  
IDENTIFICATION:

Township 18S, Range 13E, Section 20  
Tax lot 104<sup>2</sup>  
Deschutes County

AGENT CONTACT INFORMATION:

Robert Lovlien  
Bryant, Lovlien & Jarvis, PC  
PO Box 880  
Bend, OR 97709

The claimant, Donna King, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 20, 2006, for property located at 22605 Rickard Road, near Bend, in Deschutes 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.

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<sup>1</sup> Sunray, Inc. and Edward and Sandra Willard were also Measure 37 claimants; however, they are not owners of tax lot 104 and have not elected supplemental review.

<sup>2</sup> The Measure 37 claim property consisted of tax lots 100 and 104. The claimant was denied relief on tax lot 100 under Measure 37 because she was not an owner of tax lot 100. The claimant did not indicate that she would like the department to review her eligibility for relief under Measure 49 for tax lot 100. Therefore, this final order addresses only the claimant's eligibility for relief for tax lot 104 and all references to Measure 37 claim property refer only to tax lot 104.

## 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 claimant has requested two home site approvals in the election material. The Measure 37 waiver issued for this claim describes one home site on tax lot 104. 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, Donna King, filed a Measure 37 claim, M130951, with the state on November 20, 2006. The claimant filed a Measure 37 claim, 2007-065, with Deschutes County on November 20, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Deschutes 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 and trust documents submitted by the claimant, Donna King is the settlor of a revocable trust into which she conveyed the Measure 37 claim property

Deschutes 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 Deschutes County, outside the urban growth boundary and outside the city limits of the nearest city, Bend.

**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:**

The property is currently zoned Exclusive Farm Use (EFU-TRB) by Deschutes 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. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 9.39 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the one home site the claimant may qualify for under Section 6 of Measure 49.

**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 on the property 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**

Deschutes County deed records indicate that the claimant acquired the property on December 14, 1981.

On December 14, 1981, the Measure 37 claim property was subject to Deschutes County's acknowledged Exclusive Farm Use (EFU-20) zone. Deschutes County's EFU-20 zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 9.39 acres. Therefore, the claimant lawfully could not have established any home sites on her date of acquisition.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on December 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 comments asserting that the EFU-20 zone would have allowed the claimant to develop at least one dwelling at the time the claimant acquired the property. The claimant's agent states "[c]laimant's position is that in 1981 with any showing of farm use, single-family dwellings were permitted with the EFU-20 Zone on legal lots of records, regardless of minimum lot sizes. Therefore, with a minimal showing of a farm use, the Claimant would have been entitled to a single-family residential permit under the existing EFU-20 Zone." However, the claimant has made no showing that the property was in farm use at the time the claimant acquired the property. Additionally, in responding to a neighbor comment, the claimant's agent asserts that there is "no feasible way to deliver irrigation water to

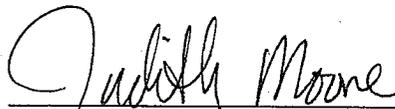
the property.” The response goes on to say, “[w]ithout irrigation water, the subject property is essentially worthless for any kind of agricultural use.” Therefore, while the department acknowledges that the EFU-20 zone did allow the development of a dwelling on a lot or parcel smaller than 20 acres provided additional requirements were satisfied, based on the information in the record, it does not appear that the claimant satisfied the requirements in order to develop a dwelling on the subject property at the time she acquired the property.

### **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 lots, parcels or dwellings on the claimant’s date of acquisition.

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:



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Judith Moore, Division Manager  
Dept. of Land Conservation and Development  
Dated this 6<sup>th</sup> day of May 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.