



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:** E131406

**CLAIMANT:** Kay Donn Rasch  
10477 SE Waverly Court #2007  
Milwaukie, OR 97222

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 38S Range 14W, Section 31  
Tax lot 300  
Curry County

**AGENT CONTACT INFORMATION:** Donn C. Rasch  
15626 SE 202<sup>nd</sup> Avenue  
Damascus, OR 97089

The claimant, Kay Rasch, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 28, 2006, for property located at 94458 Byrdies Road, near Brookings, in Curry 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 claimant has requested supplemental review under Section 6 of Measure 49 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes six 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, Kay Rasch, filed a Measure 37 claim, M131406, with the state on November 28, 2006. The claimant filed a Measure 37 claim, M37-0633, with Curry County on November 27, 2006. The state claim was filed prior to December 4, 2006.

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

Curry 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 Curry County, outside the urban growth boundary and outside the city limits of the nearest city, Gold Beach.

**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 Beaches and Dunes Conservation (CON) by Curry County, in compliance with the Statewide Planning Goals.

The county's CON zone allows a single family dwelling as a conditional use in specified locations. The minimum lot size for conditionally permitted dwellings is "as large as necessary as appropriate conduct of the proposed use including property installation and operation of a water supply and a sewage disposal system."

The claimant's property consists of 6.5 acres and is developed with a dwelling. The claimant has not established that any additional lots or parcels and dwellings would comply today with the applicable conditional use criteria. Therefore, the department cannot conclude that any land use regulations currently prohibit the claimant's desired home sites.

**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 three home sites 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**

Curry County deed records indicate that the claimant acquired the property on June 20, 1988.

As it is today, on June 20, 1988, the Measure 37 claim property was also subject to Curry County's acknowledged Beach and Dunes Conservation (CON) zone.

In 1988, as it does today, Curry County's CON zone required the minimum lot size for new lots or parcels to be "as determined by the appropriate sanitary authority as necessary for proper installation and operation of water supply and sewage disposal." In addition, in 1988 Curry County's CON zone only permitted a dwelling as a conditional use "when authorized in accordance with Article VI," which contained the applicable procedures, criteria and standards required to be met for approval. The claimant has not submitted any evidence that her property would have qualified for additional lots, parcels or dwellings under Article VI or that the current requirements under Curry County's zoning regulations are more restrictive than the county's 1988 regulations for establishing dwellings in the CON zone.

The property zoning and the lawfully permitted uses of the Measure 37 claim property have not changed since the claimant acquired the property. Accordingly, because the claimant's lawful use of the property has not changed since she acquired it, she is not entitled to any relief under Measure 49.

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

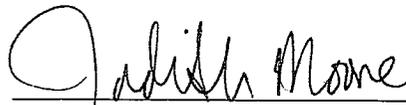
The department issued its Preliminary Evaluation for this claim on November 17, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

### III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the lawfully permitted use of the claimant's property has not changed since she acquired the 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 19<sup>th</sup> 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 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.