



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: E131634

CLAIMANT: James E. Knight, Sr.  
32625 Denny School Road  
Lebanon, OR 97355

MEASURE 37 PROPERTY  
IDENTIFICATION: Township 12S, Range 2W, Section 8D  
Tax lot 1200  
Linn County

The claimant, James Knight, Sr., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located on Denny School Road, near Lebanon, in Linn 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 his 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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state 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, James Knight, Sr., filed a Measure 37 claim, M131634, with the state on November 29, 2006. The claimant filed a Measure 37 claim, M37-208-06, with Linn County on November 28, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Linn 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 and Linn County, James Knight, Sr. is not an owner of the property for the purposes of Measure 49.

According to the information provided in the claim and from the Linn County deed records, the claimant has never been an owner of the property. The record of ownership for the subject property is as follows:

On January 16, 1991, a land sale contract was executed between the Pruitts (seller) and James E. Knight, Jr. (buyer) and recorded in Linn County on April 5, 1991. On October 7, 1993, a warranty deed conveyed the property from the Pruitts (grantors) to James E. Knight, Jr. (grantee). Finally, on November 3, 2006, the 1993 warranty deed was recorded again with a handwritten change to the grantee's name from James E. Knight, Jr. to James E. Knight, Sr. The claim does not include any information or documentation of how an ownership interest in the property may have been conveyed from James Knight, Jr. to the claimant, James E. Knight, Sr. Without further documentation, James E. Knight, Sr. cannot be the current owner based solely on the twice-recorded 1993 deed.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49 and, therefore, the remaining approval criteria will not be evaluated.

## II. COMMENTS ON THE PRELIMINARY EVALUATION

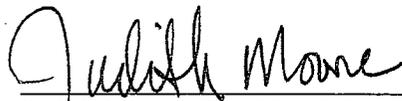
The department issued its Preliminary Evaluation for this claim on December 3, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimant submitted a comment regarding the history of family ownership of the property. The applicable definition of "owner" in Measure 49 is "the owner of fee title to the property as shown in the deed records of the county where the property is located" ORS 195.300(16). The department is limited to applying the statutory definition of "owner" when determining who has an ownership interest in the property for purposes of Measure 49. That a non-claimant family member may have owned the Measure 37 property at an earlier date, or that there may have been a different intent, does not affect a claimant's eligibility for relief under Measure 49.

## III. CONCLUSION

Based on the analysis above, claimant James Knight, Sr., does not qualify for Measure 49 home site approvals because he has not established that he is an owner of the property for purposes of Measure.

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 5<sup>th</sup> day of April 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.