



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:**

E131814

**CLAIMANTS:**

Florence E. Hartwig  
495 NE Main Street  
Estacada, Oregon 97023

Tamara M. Bliley  
193 AV Davis Road  
Oregon City, Oregon 97045

Vickie L. Thun  
PO Box 97  
Oregon City, Oregon 97045

Richard R. Hartwig  
PO Box 97  
Estacada, Oregon 97023

Steven H. Hartwig  
417 E Evans Drive  
Tidewater, Oregon 97390

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 2S, Range 4E  
Section 19, Tax lot 1200  
Section 30, Tax lot 300  
Clackamas County

The claimants, Florence Hartwig, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 20001 SE Brackett Lane, near Sandy, in Clackamas 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 claimants have elected supplemental review of their 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 Claimants 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 claimants have requested four home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 40 home sites. Therefore, the claimants 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 claimants 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 claimants, Florence Hartwig, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, filed a Measure 37 claim, M131814, with the state on November 30, 2006. The claimants filed a Measure 37 claim, ZC 417-06, with Clackamas County on November 29, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Clackamas 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 claimants, Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun, are the owners of fee title to the property as shown in the Clackamas County deed and, therefore, are owners of the property under Measure 49.

Clackamas County has confirmed that claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun are the current owners of the property.

According to the information submitted by the claimants, Florence Hartwig has not established her ownership of the property for the purposes of Measure 49. Claimant Florence Hartwig acquired tax lots 300 and 1200 on February 26, 1965, as reflected by a recorded warranty deed included with the claim. However, Florence Hartwig conveyed fee title to Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun on January 27, 2004, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus, Florence Hartwig was no longer an owner of tax lots 300 and 1200 after January 27, 2004.

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

**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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Sandy.

**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 Timber District (TBR) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimants’ property consists of 82.41 acres. Therefore, state land use regulations prohibit claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun 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**

Clackamas County deed records indicate that claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun acquired the property on January 27, 2004.

The zoning of tax lots 1200 and 300 has not changed since the claimants acquired the property. As it is currently, on January 27, 2004, the Measure 37 claim property was zoned Timber District (TBR) by Clackamas County in accordance with applicable provisions of ORS chapter 215 and OAR 660, division 6.

The claimants are not qualified for Measure 49 relief on the Measure 37 claim property because the zoning and lawfully permitted uses of the property have not changed since the claimants acquired the property.

## **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. Specifically, the claimants submitted a comment stating that Florence Hartwig acquired the property at an earlier date. However, as stated above, as the holder of only a life estate interest in the property, Florence Hartwig is not an owner of the property for purposes of Measure 49. All current owners of the property acquired their interests on January 27, 2004. Section 6(6)(f) of Measure 49 requires that "on the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings authorized..." That a family member who is not a current owner may have owned the Measure 37 property at an earlier date does not affect a claimant's eligibility for relief under Measure 49.

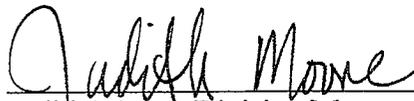
## **III. CONCLUSION**

Based on the analysis above, claimants Steven Hartwig, Richard Hartwig, Tamara Bliley and Vickie Thun do not qualify for Measure 49 home site approvals because the zoning and lawfully permitted uses of the property have not changed since the claimants acquired the property.

Based on the analysis above, claimant Florence Hartwig does not qualify for Measure 49 home site approvals because she has not established her ownership of the property for the purposes 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 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.