



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:

E133003B¹

CLAIMANT:

Joyce M. Estremado
2585 Galls Creek Road
Gold Hill, OR 97525

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 36S, Range 3W
Section 28, Tax lots 1500, 1800 and 1900
Section 32, Tax lot 100
Section 33, Tax lots 1000, 1100, 1300,
1301, 1302 and 1900
Jackson County

The claimant, Joyce Estremado, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located along Galls Creek Road, near Central Point, in Jackson 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. However, if the number of lots, parcels and dwellings currently in existence on the Measure 37

¹ Claim E133003 has been split into two claims, E133003A and E133003B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E133003A addresses the claimant's eligibility for Measure 49 relief on tax lot 900, and E133003B addresses her relief on tax lots 1500, 1800, 1900 (section 28), 100, 1000, 1100, 1300, 1301, 1302 and 1900 (section 33).

claim property and the contiguous property under the same ownership is equal to or greater than the maximum number of home sites a claimant could otherwise qualify for under Section 6 of Measure 49, a claimant may qualify for only one home site approval.

The claimant has requested supplemental review under Section 6 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes non-residential use.² However, because it appears that the Measure 37 claim property and contiguous property in the same ownership contain three or more lots or parcels that are developed with dwellings the claimants may qualify for a maximum of one home site approval.

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, Joyce Estremado, filed a Measure 37 claim, M133003, with the state on December 1, 2006. The claimant filed Measure 37 claims, M37 2005-00001, with Jackson County on December 2, 2004, and M37 2006-00258 and M37 2006-00259, with Jackson County on December 1, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Jackson 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."

² The Measure 37 claim described the property and relief for tax lots 900, 1500, 1800, 1900 (section 28), 100, 1000, 1100, 1300, 1301, 1302 and 1900 (section 33).

Findings of Fact and Conclusions:

According to the deeds submitted by the claimant, Joyce Estremado is the owner of fee title to the property as shown in the Jackson County deed records and, therefore, is an owner of the property under Measure 49.

Jackson County has confirmed that the claimant is the current owner of the property.

3. All Owners Have Consented in Writing to the Claim

All owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

The Jackson County property records obtained by the department indicate that there are non-claimant owners who have not consented to the claim: Antonio D. Estremado, Jarret Estremado and Crystal Estremado. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49.

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

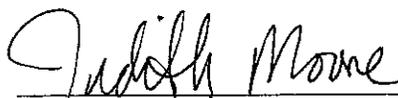
The department issued its Preliminary Evaluation for this claim on date of evaluation. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 approvals because there are owners of the property who have not consented to the claim in writing. Without the consent of Antonio D. Estremado, Jarret Estremado and Crystal Estremado, the department is not authorized to provide any relief under 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 19th 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.