



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:

E133024

CLAIMANTS:

Michael M. Watkins
230 NE 2nd St., Suite D
Hillsboro, Oregon, 97124

David S. Watkins
362 NE 9th Place
Hillsboro, Oregon, 97124

Cheryl L. Dowling
Thomas W. Dowling
1246 NE Parksedge Circle
Hillsboro, Oregon, 97124

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 1S, Range 10W, Section 7AD
Tax lots 1100, 1200, 2000 and 2702¹
Tillamook County

The claimants, Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at the coordinates listed above, near Cape Meares, in Tillamook 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten home site approvals to qualified claimants.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

¹ The Measure 37 claim property consisted of tax lots 1100, 1200, 2000 and 2702. The claimants elected supplemental review for the entire Measure 37 claim property; however, the appraisal submitted by the claimants attempts to limit the review to tax lot 2702. A claim cannot be amended to remove claim property; therefore this final order of denial addresses the entire Measure 37 claim property.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites for Which the Claimants May Qualify

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; the number stated by the claimants in the election materials; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimants have requested ten home site approvals in the election material. The appraisal submitted by the claimants attempts to support the assertion that the value of ten home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 22 home sites. Therefore, the claimants may qualify for a maximum of ten home site approvals under Section 7.

B. Qualification Requirements

To qualify for a home site approval under Section 7 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 Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling filed a Measure 37 claim, M133024, with the state on December 1, 2006. The claimants filed a Measure 37 claim, M-05-12, with Tillamook County on September 30, 2005. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Tillamook 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 deeds submitted by the claimants, Michael Watkins and David Watkins are the owners of fee title to the property as shown in the Tillamook County deed records and, therefore, are owners of the property under Measure 49. According to the deeds submitted by the claimants, Cheryl Dowling is the settlor of a revocable trust into which she conveyed her interest in the Measure 37 claim property and, therefore, is an owner of the property under Measure 49. According to the information submitted by the claimants, Thomas Dowling has not established his ownership of the property for the purposes of Measure 49. Thomas Dowling is a co-trustee of the revocable trust into which Cheryl Dowling conveyed her interest in the property, but he is not a settlor of the revocable trust and, therefore, not an owner of the claim property for purposes of Measure 49.

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 Tillamook County, outside the urban growth boundary and outside any city limits near the community of Cape Meares.

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 Rural Residential-2 acre (RR-2) by Tillamook County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than two acres in a rural

residential zone established before October 4, 2000, in which the County specified a minimum lot or parcel size of less than two acres.

Based on Tillamook County Assessor's data, the claimants' property consists of 22.08 acres. Therefore, no state law prohibits the claimants from establishing on the Measure 37 claim property the ten home sites the claimants may qualify for under Section 7 of Measure 49.

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

II. COMMENTS ON THE PRELIMINARY EVALUATION

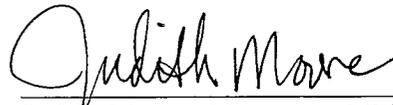
The department issued its Preliminary Evaluation for this claim on October 29, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the analysis above, the claimants, Michael Watkins, David Watkins, Cheryl Dowling and Thomas Dowling, do not qualify for Measure 49 home site approvals, because no land use regulation prohibits the claimants from establishing the requested lots, parcels or dwellings.

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, Measure 49 Division Manager
Dept. of Land Conservation and Development
Dated this 7th 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 it 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.