



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 NUMBERS: E133282B and E133749^{1, 2}

CLAIMANT: James D. Wynne
1978 Fieldcrest Court South
Salem, OR 97306

MEASURE 37 PROPERTY
IDENTIFICATION: Township 13S, Range 1W, Section 23
Tax lots 1204 and 1206
Linn County

The claimant, James Wynne, filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, and December 4, 2006, for property located near Sweet Home, 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 claims 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

¹ The claimant filed Measure 37 claim M133282 which requested relief on tax lots 1201, 1204, 1205, 1206, and 1207. Under Measure 49, claim E133282 has been split into three claims, E133282A E133282B and E133282C, because the Measure 37 claim sought relief for non-contiguous parcels and contiguous parcels that have different ownership. E133282A has been combined with E133742A and addresses the claimant's relief for tax lots 1201 and 1205. E133282B has been combined with E133749 and addresses the claimant's relief for tax lots 1204 and 1206. E133282C has been combined with E133742B and addresses the claimant's entitlement to Measure 49 relief for tax lot 1207.

² The claimant filed two claims for tax lots 1204 and 1206. Claim E133749 requested relief on tax lots 1204 and 1206 and claim E133282B requested relief on tax lots 1204 and 1206. This final order addresses both E133282B and E133749 because both claims included requests for relief for tax lots 1204 and 1206.

was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant has requested 15 home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes up to 15 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, James Wynne, filed Measure 37 claims, M133282 and M133749 with the state on December 1, 2006, and December 4, 2006, respectively. The claimant filed Measure 37 claims, M37-261-06 and M37-264-06, with Linn County on December 1, 2006. The state claims were filed prior to and on December 4, 2006.

The claimant timely filed Measure 37 claims 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 Linn County deed records, James Wynne, has not established his ownership of the property for the purposes of Measure 49 because he is not an owner of the Measure 37 claim property. To establish his ownership of tax lots 1204 and 1206, the claimant submitted two different unrecorded deeds. However, unrecorded documents do not establish ownership for purposes of Measure 49.

The claimant submitted a comment in response to the Preliminary Evaluation, referencing the unrecorded deeds through which the claimant initially acquired an interest in the property. The claimant argues that he should be considered an owner of the Measure 37 claim property as of the date of this unrecorded deed. However, Section 2(16) of Measure 49 (2007) defines "owner" in relevant part as: "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located." Based on this definition, a claimant's ownership interest must be recorded in order for the claimant to qualify as an owner 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

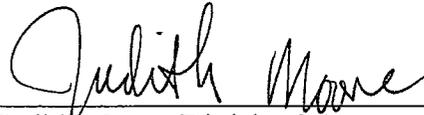
The department issued its Preliminary Evaluation for this claim on March 2, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. As indicated above, comments received from the claimant have been taken into account by the department in the issuance of this Final Order of Denial.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because he is not an owner of the Measure 37 claim 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 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.