



**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:** E133933

**CLAIMANTS:** Tigard Sand & Gravel LLC

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 2S, Range 1W  
Section 27C, Tax lots 300, 400 and 900  
Section 34B, Tax lots 100, 200 and 800  
Section 34C, Tax lot 500  
Washington County

**AGENT CONTACT INFORMATION:** Elaine R. Albrich  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204

The claimant, Tigard Sand & Gravel LLC, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at the coordinates listed above, near Tualatin, in Washington 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 its 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.

**I. ANALYSIS OF CLAIM**

**A. Qualification Requirements**

To qualify for a home site approval under Section 7 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

## **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, Tigard Sand & Gravel LLC, filed a Measure 37 claim, M133933, with the state on December 4, 2006. The claimant filed a Measure 37 claim, M06-276, with Washington County on December 4, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Washington County.

Additionally, to qualify for a home site approval under the Section 7 option, a claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7(6) of Measure 49. The appraisal must be filed with the department or with the county if the claim is being processed by the county, within 180 days after the date the claimant files the election to obtain relief under section 7 of Measure 49.

The claimant, Tigard Sand & Gravel LLC, elected to proceed under the Section 7 option with the state on June 20, 2008. The claimant was required to submit an appraisal by December 17, 2008, within 180 days after the date it filed its election. No appraisal has been received by the department.

In addition to filing a claim with both the state and the county in which the property is located and submitting an appraisal, to qualify for a home site approval under Section 7 of Measure 49 the claimant must establish each of the following:

## **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 claimant, Tigard Sand & Gravel LLC, is the owner of fee title to the property as shown in the Washington County deed records and, therefore, is an owner of the property under Measure 49.

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

**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 Washington County, inside the urban growth boundary of Metro.

Because these requirements have 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**

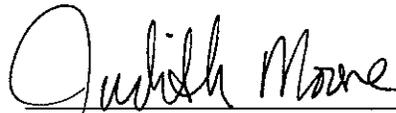
The department issued its Preliminary Evaluation for this claim on January 14, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

**III. CONCLUSION**

Based on the analysis above, the claimant Tigard Sand & Gravel LLC does not qualify for Measure 49 home site approvals because the Measure 37 claim property lies entirely within an urban growth boundary of Metro and because the claimant failed to submit an appraisal in compliance with the requirements for Supplemental Review under section 7, stated in section 8(5) of Measure 49 that a claimant must file an appraisal with the state within 180 days after the claimant files their election (Chapter 424, Oregon Laws 2007).

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 30<sup>th</sup> day of March 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.