



**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:

E134109¹

CLAIMANT:

William C. Brown
10928 SW Collina Avenue
Portland, OR 97219

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 12S, Range 12W, Section 25DD
Tax lots 3100, 3200 and 3500
Lincoln County

The claimant, William Brown, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 9404 NW Egret Street, 9538 NW Seal Rock Street and 1276 NW Cross Street, near Seal Rock, in Lincoln 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 elected supplemental review of his 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. The

¹The Measure 37 claim property consists of tax lots 3100, 3200, 3500, 2800 and 1600. The claimant clarified in comments responding to the Preliminary Evaluations for claim E134109 that he did not elect supplemental review for tax lots 2800 and 1600. While a claim cannot be amended to remove claim property, analysis of a claimant's eligibility for relief on a portion of claim property may, in some cases, be immaterial. In this case whether the claimant is eligible for relief on tax lots 2800 and 1600 is not relevant to the analysis of whether the claimant is eligible for relief on tax lots 3100, 3200 and 3500. Therefore, although tax lots 2800 and 1600 are Measure 37 claim property, review of the claimant's eligibility for relief on tax lots 2800 and 1600 is omitted and all references to Measure 37 claim property refer only to tax lots 3100, 3200 and 3500. Additionally, the department will not issue separate final orders regarding tax lots 2800 (E134109B) and 1600 (E134109C).

claimant has requested three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes land division and development that could have resulted in more than three home sites and commercial development. 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, William Brown, filed a Measure 37 claim, M134109, with the state on December 4, 2006. The claimant filed a Measure 37 claim, 151-LURCC-06, with Lincoln County on December 4, 2006. The state claim was filed on December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Lincoln 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 claimant, William Brown is the owner of fee title to the property as shown in the Lincoln County deed records and, therefore, is an owner of the property under Measure 49.

Lincoln 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 Lincoln County, outside any urban growth boundary and outside any city limits, near the community of Seal Rock.

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 (R-1) by Lincoln 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. Lincoln County's R-1 zone requires a minimum lot size of 15,000 square feet per dwelling unit when a lot is served by either a public or community water source or public or community sewage disposal system and is within a Rural Community Boundary.

The claimant's property is within the Seal Rock Suburban Residential-Rural Community and consists of 8.55 acres. Therefore, no state law prohibits the claimant from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

Because this requirement has not been met the remaining criteria are not evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 8, 2010. 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. The claimant submitted comments clarifying that he did not request

supplemental review for tax lots 2800 and 1600. The department will therefore, not issue final orders regarding those tax lots.

With regard to the remaining property, the claimant submitted evidence indicating that his property was served by a public or community water supply system on his acquisition date and was therefore subject to a 4,000 sq. ft. minimum lot size. The claimant also indicated that despite the existence of an RV park on tax lot 3500 he would have been lawfully permitted to establish three home sites on the property on his acquisition date. However, evidence that the claimant was lawfully permitted to establish the requested home sites on his acquisition date does not entitle him to Measure 49 relief because the claimant is not also currently prohibited from establishing the *number* of home sites requested.

The claimant requested that the department find:

“That on my acquisition date (July 26, 1974) I was lawfully permitted to establish at least three home sites of 4000 sq. ft. each on Tax Lot 3500, subject to a height limit of 35 feet and lot coverage not to exceed 40%; and

That I am eligible for relief under Measure 49, and that I may establish 3 home sites of 4000 sq. ft. each on Tax Lot 3500, subject to a height limit of 35 feet and lot coverage not to exceed 40%.

The lot size of 4000 sq. ft. is important, because on of the changes in regulations that occurred after I acquired the property, and which greatly prejudiced me, was the large increase in the minimum lot size.”

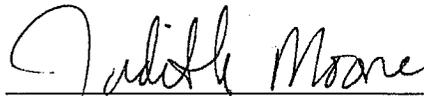
However, the analysis under Measure 49 is statutorily limited to whether a claimant was lawfully permitted to establish one or more home sites on the claimant’s acquisition date and, due to regulations established subsequent to that acquisition, is currently prohibited from establishing that number of home sites. As the claimant recognized in the Measure 49 election materials “I understand that I can seek county approval to create additional lots or parcels on Tax Lot 3500, with the current minimum 15,000 square feet and other current restrictions.” Because the claimant is not currently prohibited from establishing the requested number of lots or parcels and dwellings on the property the claimant is not eligible for relief under Measure 49 even though some of the standards that affect the specifications of the lots or parcels and dwellings the claimant could establish may have changed.

III. CONCLUSION

Based on the analysis above, the claimant is not eligible for any relief under Measure 49 on the Measure 37 claim property because no land use regulation prohibits the claimant from establishing the requested number of lots parcels or dwellings on the 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 6th day of May 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.