



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:

E134171¹

CLAIMANT:

Cindy Lou Evans Pease
22289 S Mollala Hwy 213
Oregon City, OR 97045

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 3S, Range 2E, Section 29
Tax lots 102 and 192²
Clackamas County

The claimant, Cindy Lou Pease, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 13356 S. New Era Road, near Oregon City, in Clackamas 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.³

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 claimant has requested thirteen home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes five home sites.

¹ The claimant also has submitted a claim for property not contiguous to the subject property which is identified as E134077.

² The Measure 37 claim property consisted of tax lots 102 and 192. The claimant attempted to elect supplemental review for tax lots 400, 490 and 500; a claim cannot be amended to add property that was not part of a Measure 37 claim.

³ The claimant initially elected to have claim E134171 reviewed under Section 7 of Measure 49, but amended her election to request review under Section 6.

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, Cindy Lou Pease, filed a Measure 37 claim, M134171, with the state on December 4, 2006. The claimant filed a Measure 37 claim, ZC720-06, with Clackamas County on or before December 13, 2006. The state claim was filed prior on December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Clackamas 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 obtained from a title company, Cindy Lou Pease is the owner of fee title to the property as shown in the Clackamas County deed records and, therefore, is an owner of the property under Measure 49.

Clackamas 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Oregon City.

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 Exclusive Farm Use (EFU) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 100.72 acres. Therefore, state land use regulations prohibit 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.

6. The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or

(d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

Findings of Fact and Conclusions

Based on the documentation submitted by the claimant, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

Findings of Fact and Conclusions

Clackamas County deed records indicate that the claimant acquired the property on October 28, 1997.

On October 28, 1997, the Measure 37 claim property was subject to Clackamas County's acknowledged Exclusive Farm Use (EFU) zone. Clackamas County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 100.72 acres and is developed with one dwelling. Therefore, the claimant lawfully could not have established any additional home sites on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on March 26, 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. Specifically, the claimant asserts that she acquired tax lot 102 of the Measure 37 property prior to 1997. The claimant states that she included supporting documentation with her response to comments, but no additional documentation was received by the department. The claimant also requests additional time to find cancelled checks and an unrecorded land sale contract to support her assertion of a different acquisition date. ORS 195.328 states that a claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records." Because an unrecorded land sale contract would not be reflected in the deed records, submission of an unrecorded document or other unrecorded evidence would not affect the claimant's acquisition date for purposes of Measure 49. In addition, the department can no longer extend the comment period because the department is required to file a final order for all claims by June 30, 2010.

The claimant also requested to add family members as claimants; however, a claim cannot be amended to add new claimants. The claimant also comments that a member of her family acquired the property at an earlier date, and that the department should rely on that earlier date as their date of acquisition. Section 6(6)(f) of Measure 49 requires that “on the claimant’s acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings authorized...” That a non-claimant family member may have owned the Measure 37 property at an earlier date does not affect a claimant’s eligibility for relief under Measure 49.

The claimant asserts that, per OAR 660-041-0520(7), the department was required to notify the claimant one year ago that her acquisition date was in dispute. OAR 660-041-0520(7) requires that the department notify the claimant if the claim is incomplete. The claim was deemed complete because the department had the recorded documents necessary to determine an acquisition date. Under Measure 49 the claimant is required to submit all information necessary for the resolution of their claim.

The claimant also states that “under Measure 49, the DLCD does not have the right nor the authority to combine multiple claims into one claim if the Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the same ownership.” Section 2(17) of Measure 49 defines “property” as “the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim.” Based on this, OAR 660-041-0150 specifically requires that the department combine contiguous property under the same ownership: “To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the Measure 37 Claim Property contains multiple lots or parcels that are not in the same ownership. In addition, DLCD will combine multiple Claims into one claim if the Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the same ownership.”

The claimant states: “660-041-0130 clearly favors Measure 37/49 Claim Property that is planted in wine grapes...” OAR 660-041-0130 restates and clarifies the requirements in ORS 195.300(10) for determining if property is high-value farmland or forestland under Measure 49. It is unclear how this rule is unfair or relevant to the claimant’s property.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish any additional lots, parcels or dwellings on the claimant’s date of acquisition.

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 15th day of June 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.