



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:** E134377

**CLAIMANT:** Martha D. Weaver  
20384 Tailblock Road  
Bend, OR 97702

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 2S, Range 38E, Section 20  
Tax lot 1201  
Union County

**AGENT CONTACT INFORMATION:** Edward P. Fitch  
Bryant, Emerson & Fitch, LLC  
PO Box 457  
Redmond, OR 97756

The claimant, Martha Weaver, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 14, 2007, for property located near La Grande, in Union 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.

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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes three 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, Martha Weaver, filed a Measure 37 claim, M134377, with the state on May 14, 2007. The claimant filed a Measure 37 claim with Union County on May 14, 2007. The claimants timely filed a Measure 37 claim with both the state and Union County. However, the state claim was filed after December 4, 2006 and was thus subject to the requirements of OAR 660-041-0020 then in effect

OAR 660-041-0020 required in relevant part that Measure 37 claims based on existing DLCD regulations and filed after December 4, 2006:

“(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.”

A final written decision was received from the Union County Planning Department during the 28-day public notice period in response to the department’s initial preliminary evaluation for this claim indicating that an existing regulation of DLCD, another agency or a county was an approval criterion for a completed application that the claimants had submitted to the county. Therefore the claim was filed in compliance with the provisions of OAR 660-041-0020 then in effect.

## **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, Martha Weaver is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

Union 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 Union County, outside the urban growth boundary and outside the city limits of the nearest city, La Grande.

## **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 Timber Grazing (A-4) by Union County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and

include restrictions on establishing more than one dwelling on a single tract. In addition, counties may adopt minimum lot or parcel sizes greater than 80 acres. Union County's A-4 zone requires a minimum of 160 acres for the establishment of a lot or parcel.

The claimant's property consists of 250.11 acres that make up a single tract. 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**

The claimant is the surviving spouse of LaGrande Weaver, and acquired the property upon LaGrande Weaver's death. According to the Union County deed records, LaGrande Weaver acquired the property on October 28, 1992 and married the claimant in 1949. Under Section 21(2) of Measure 49, if the claimant is the surviving spouse of a person who was an owner of the Measure 37 claim property, the claimant's acquisition date is the later of the date the claimant was married to the deceased spouse or the date the spouse acquired the property. Therefore, the claimant's acquisition date is October 28, 1992.

On October 28, 1992, the Measure 37 claim property was subject to Union County's acknowledged Forest (A-2) zone. Union County's A-2 allowed for the establishment of a dwelling on a vacant lot or parcel if certain criteria were met as determined by an administrative review process. The claimant has not submitted any documentation establishing that the claimant satisfied the standards and criteria then in effect for establishing a dwelling on the 250.11 acre property when the claimant acquired it. Therefore it appears that the claimant does not qualify for any home sites, unless the claimant can show that under the discretionary review process and standards described in Union County's land development ordinance, the claimant would have been lawfully permitted to establish dwellings on the Measure 37 claim property when the claimants acquired the property.<sup>1</sup>

## **II. COMMENTS ON THE AMENDED PRELIMINARY EVALUATION**

The department issued an Amended Preliminary Evaluation for this claim on March 30, 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

## **III. CONCLUSION**

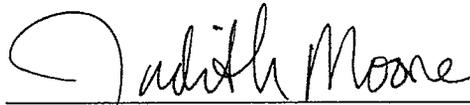
Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the additional lots, parcels or dwellings on the claimants' date of acquisition.

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<sup>1</sup> In the preliminary evaluation issued for this claim on March 30, 2010, the department erroneously determined that the claimant was lawfully permitted for three home sites on the Measure 37 claim property on her date of acquisition. The department has corrected that error for purposes of this final order.

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 3<sup>rd</sup> 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.