



**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:

E130242

CLAIMANT:

Adeline Miller
45008 Houghton Creek Road
Baker City, OR 97814

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 7S, Range 41E
Sections 23 and 24, Tax lot 3401
Baker County

The claimant, Adeline Miller, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 10, 2006, for property located near Medical Springs, in Baker 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 two home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimant may qualify for a maximum of two 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, Adeline Miller, filed a Measure 37 claim, M130242, with the state on October 10, 2006. The claimant filed a Measure 37 claim, M37-05-032, with Baker County on June 7, 2005. The state claim was filed prior to December 4, 2006.

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

Baker 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 Baker County, outside any urban growth boundary and outside any city limits, near the community of Medical Springs.

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 Baker 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, or 160 acres in an EFU zone that is designated rangeland.¹ Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include the requirement that the property generate a minimum annual income from the sale of farm products.

The claimant’s property consists of 170.63 acres, of which approximately 20 acres are farmland and approximately 150 acres are rangeland. Therefore, the combined effect of the standards for the establishment of new lots or parcels and for the establishment of a dwelling prohibit the claimant from establishing on the Measure 37 claim property the two 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

¹ Baker County’s EFU zone does not identify rangeland separately from farmland. The county distinguishes its rangeland and farmland by determining whether the land is irrigated, i.e., whether the land has adjudicated water rights for irrigation. Farmland is irrigated and rangeland is non-irrigated.

(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 two 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

Baker County deed records indicate that the claimant acquired the property on April 20, 1994.

On April 20, 1994, the Measure 37 claim property was subject to Baker County's acknowledged Exclusive Farm Use (EFU) zone. Baker County's EFU zone required 80 irrigated acres² or 160 non-irrigated acres for the creation of a new lot or parcel on which a dwelling could be established, and included the requirement that the property generate a minimum annual income from the sale of farm products. The claimant's property consists of 170.63 acres of which approximately 20 acres are irrigated and approximately 150 acres are non-irrigated. There is no evidence in the claim record that the property could have met the standard to generate the required minimum annual income from the sale of farm products. Therefore, the claimant lawfully could not have established any home sites on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 12, 2009. 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.

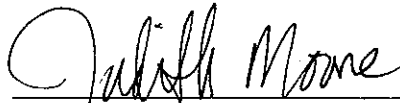
² On April 20, 1994, Baker County's zoning ordinance indicated 40 irrigated acres (i.e., 40 acres fully covered with adjudicated water rights); or in the alternative, a combination of irrigated acres and non-irrigated acres whereby four non-irrigated acres were considered equal to one irrigated acre, up to 160 non-irrigated acres. However, in March 1994, administrative rules adopted by LCDC to implement HB 3661 became effective, and effectively superseded the county's zoning provisions regulating minimum lot or parcel sizes in the EFU zone. Baker County was required to apply the new administrative rule directly until it amended its zoning ordinance to be consistent with the administrative rule. Baker County's amended EFU zone requires a minimum lot or parcel size of 80 irrigated acres (i.e., 80 acres fully covered with adjudicated water rights); or in the alternative, a combination of irrigated acres and non-irrigated acres whereby two non-irrigated acres are considered equal to one irrigated acre, up to 160 non-irrigated acres.

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 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 19th day of January, 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 it 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.