



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: E119726¹

CLAIMANTS: Lowell Patton
Pacific Western Company
PO Box 85
Carver, OR 97015

MEASURE 37 PROPERTY IDENTIFICATION: Township 13S, Range 12W, Section 12
Tax lots 100 and 200²
Township 13S, Range 11W, Section 7
Tax lot 3600
Lincoln County

AGENT CONTACT INFORMATION: William C. Cox, Attorney
0244 SW California Street
Portland, OR 97219

The claimants, Lowell Patton and Pacific Western Company, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 11, 2005, for property located near Waldport, 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 claimants have elected supplemental review of their 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.

¹The claimant, Lowell Patton, also has submitted claims for property not contiguous to the subject property which are identified as M118611, E119727, E119728 and E131735. The claimant did not elect relief under Measure 49 for claim M118611.

²According to information in the claim, tax lot 200 is not a legal lot. In recent legal proceedings in Lincoln County, a court ruled that Lowell Patton's creation of tax lot 200 and transfer of that lot to Pacific Western Company was illegal and without force.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites for Which the Claimants 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 claimants have 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 residential development. Therefore, the claimants 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 claimants 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 claimants, Lowell Patton and Pacific Western Company, filed a Measure 37 claim, M119726, with the state on February 11, 2005. The claimants filed a Measure 37 claim, 10-LURCC-05, with Lincoln County on January 3, 2005. The state claim was filed prior to December 4, 2006.

The claimants 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 deeds submitted by the claimants and information obtained from the county, Lowell Patton 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 claimant Lowell Patton is the current owner of the property.

According to the information obtained from the Lincoln County, Pacific Western Company has not established its ownership of tax lot 200 of the property for the purposes of Measure 49. Because this requirement has not been met, the claimant is not entitled to any relief on tax lot 200 under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for that portion of the claim 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 the urban growth boundary and outside the city limits of the nearest city, Waldport.

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 (RR-2) 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. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than two acres in a rural residential zone established before October 4, 2000, in which the County specified a minimum lot or parcel size of less than two acres.

The claimant's property consists of 24.50 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.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 24, 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.

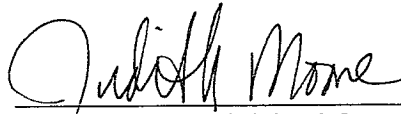
III. CONCLUSION

Based on the analysis above, claimant Lowell Patton does not qualify for Measure 49 home site approvals because no land use regulation prohibits the claimant from establishing the lots, parcels or dwellings.

Based on the analysis above, claimant Pacific Western Company does not qualify for Measure 49 home site approvals because the claimant has not established its ownership of tax lot 200 of 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 25th 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.