



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:**

E129959

**CLAIMANT:**

Ruby M. Peevy<sup>1</sup>  
41568 Kingston Lyons Drive SE  
Stayton, OR 97383

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 9S, Range 1W, Section 24  
Tax lot 100  
Linn County

The claimant, Ruby Peevy, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 31, 2006, for property located at 41568 Kingston Lyons Drive SE, near Stayton, in Linn 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 two home sites. Therefore, the claimant may qualify for a maximum of two home site approvals under Section 6 of Measure 49.

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<sup>1</sup> Oreaan L. Peevy was also a Measure 37 claimant; however, he passed away since the filing of the Measure 37 claim.

## **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, Ruby Peevy, filed a Measure 37 claim, M129959, with the state on August 31, 2006. The claimant filed a Measure 37 claim, M37-064-06, with Linn County on August 29, 2006. The state claim was filed prior to December 4, 2006.

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

Linn 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 Linn County, outside the urban growth boundary and outside the city limits of the nearest city, Stayton.

**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-5) by Linn 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 the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Linn County's RR-5 requires a minimum lot size of five acres.

The claimant's property consists of 2.63 acres. Therefore, state land use regulations 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
- (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**

The Linn County deed records indicate that the claimant acquired a 1.68-acre portion of the property on January 10, 1975, and a 0.95-acre portion of the property on April 14, 1981.

On January 10, 1975, the Measure 37 claim property consisted of 1.68 acres and was subject to state statutes and Linn County's Agriculture, Residential and Timber (ART) zone. Linn County's ART zone required at least five acres for the creation of a new lot or parcel on which a dwelling could be established. Therefore, under the local zone then in effect, the claimant lawfully could not have established any home sites on her date of acquisition.

The claimant acquired a 0.95 acre portion of the Measure 37 claim property on April 14, 1981, after adoption of the statewide planning goals, but before the Commission acknowledged Linn County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251.

At that time, the Measure 37 claim property consisted of 2.63 acres and was zoned RR-1 by Linn County, which required a minimum parcel size of one acre for the creation of a new lot or parcel. On September 9, 1993, the Commission acknowledged the application of Linn County's Rural Residential (RR-5) zone to the Measure 37 claim property. However, the Commission had not acknowledged Linn County's comprehensive plan and land use regulations for compliance with the goals when the claimants acquired the property on April 14, 1981. Accordingly, the statewide planning goals, and in particular Goal 14, applied directly to the Measure 37 claim property when the claimant acquired it.

On April 14, 1981, Goal 14 required counties "to provide for an orderly and efficient transition from rural to urban land use." The Goal required the creation of urban growth boundaries to "identify and separate urbanizable land from rural land," and prohibited the location "urban uses" outside urban growth boundaries without the approval of a Goal 2 Exception to Goal 14. In general, and consistent with subsequent judicial interpretation and LCDC rules implementing Goal 14, urban uses included residential lots or parcels less than two acres in size. Ultimately,

the County's acknowledged plan zoned the subject property to require a minimum parcel size of five acres for the creation of a new lot or parcel. Therefore, the establishment of a new lot or parcel of five acres on the subject property would have complied with Goal 14 on the claimant's date of acquisition. However, based on the evidence in the record and consistent with judicial and regulatory authority, under a direct application of the goals, prior to acknowledgement, a lot or parcel of two acres or more could also have complied with the requirements of Goal 14.

The claimant's property consists of 2.63 acres and is developed with a dwelling. Given the size of the claimant's property, a direct application of Goal 14 allowing lots or parcels as small as two acres would not allow the claimant to divide the property for any further development. Without additional evidence to establish that, as applied to the subject property, the requested smaller parcels would have complied with the requirements Goal 14, the claimant could not have created any additional lots or parcels when she acquired the property. Therefore, the claimant does not qualify for any home sites.

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

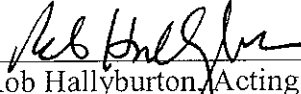
The department issued its Preliminary Evaluation for this claim on May 29, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, 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:

  
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Rob Hallyburton, Acting Deputy Director  
Dept. of Land Conservation and Development  
Dated this 15<sup>th</sup> day of July, 2009.

#### 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.