



**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:

E130653

CLAIMANTS:

Virginia Bojorquiz¹
PO Box 185
Aguanga, CA 92536

Roger Gorham
25982 Highway 126
Veneta, OR 97487

Mark Gorham
87900 Huston Road
Veneta, OR 97487

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 17S, Range 5W
Section 32, Tax lots 100, 101, 102 and 103
Section 3210, Tax lot 1500²
Lane County

AGENT CONTACT INFORMATION:

Norman Waterbury LLC
28788 Gimpl Hill Road
Eugene, OR 97402

The claimants, Virginia Bojorquiz, Roger Gorham and Mark Gorham, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 9, 2009, for property located at 25980 Highway 126, near Veneta, in Lane 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.

¹ Information included with the election material indicates that claimant Virginia Bojorquiz passed away on March 12, 2007. Under ORS 197.353(3), if a claimant filed a claim on or after November 1, 2006 and died following submission of the claim, entitlement to prosecute the claim passes to the person who acquires the claim property by devise or by operation of law.

² The Measure 37 claim property consisted of tax lots 100, 101, 102, 103 and 1500. The claimants did not elect supplemental review for tax lot 1500; however, a claim cannot be amended to remove claim property.

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 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. The Measure 37 waiver issued for this claim describes eighteen home sites. 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, Virginia Bojorquiz, Roger Gorham and Mark Gorham, filed a Measure 37 claim, M130653, with the state on November 9, 2006. The claimants filed a Measure 37 claim, PA06-6928, with Lane County on November 8, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Lane 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 claimants, Roger Gorham and Mark Gorham are the owners of fee title to the property as shown in the Lane County deed records and, therefore, are owners of the property under Measure 49. Lane County has confirmed that the claimants, Roger Gorham and Mark Gorham are the current owners of the property.

According to the information submitted by the claimants, Virginia Bojorquiz has not established ownership of the property for the purposes of Measure 49. Claimant Virginia Bojorquiz acquired tax lots 100, 101, 102, 103 and 1500 on June 20, 2000, as reflected by a recorded deed included with the claim. However, Virginia Bojorquiz conveyed fee title to Roger Gorham and Mark Gorham on June 21, 2000, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Virginia Bojorquiz was no longer an owner of the claim property after June 21, 2000.

Because this requirement has not been met, the remaining approval criteria will not be evaluated for claimant Virginia Bojorquiz.

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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Veneta.

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:

Tax lot 100, 101, 102 and 103 of the Measure 37 claim property are currently zoned Impacted Forest (F-2) by Lane County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is "forest land" under Goal 4. Applicable provisions of ORS chapter 215

and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels. This portion of the claim property consists of 106.09 acres.

Tax lot 1500 of the Measure 37 claim property is currently zoned Rural Residential (RR-5) by Lane 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. Lane County's RR-5 zone requires a minimum lot size of 5 acres. This portion of the claimants' property consists of 9.72 acres.

Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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

Lane County deed records indicate that the claimants Roger Gorham and Mark Gorham acquired the property on June 21, 2000.

On June 21, 2000, tax lots 100, 101, 102 and 103 of the Measure 37 claim property were subject to Lane County's acknowledged Impacted Forest (F-2) zone. As it does today, on June 21, 2000 Lane County's F-2 zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 106.09 acres.

On June 21, 2000, tax lot 1500 of the Measure 37 claim property was subject to Lane County's acknowledged Rural Residential (RR-5) zone. As it does today, on June 21, 2000 Lane County's RR-5 zone required 5 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 9.52 acres.

Therefore, on their date of acquisition the claimants lawfully could not have established any home sites that they are currently prohibited from establishing.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on September 15, 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.

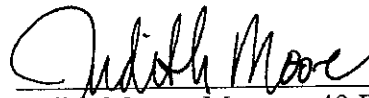
III. CONCLUSION

Based on the analysis above, the claimant, Virginia Bojorquiz does not qualify for any Measure 49 home site approvals because the claimant no longer owns the Measure 37 claim property.

Based on the analysis above, the claimants Roger Gorham and Mark Gorham do not qualify for Measure 49 home site approvals because the zoning and lawfully permitted uses of the claimants' property have not changed since they acquired it on June 21, 2000.

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, Measure 49 Division Manager
Dept. of Land Conservation and Development
Dated this 2ND day of November 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.