



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Amended Final Order of Denial on Reconsideration**

STATE ELECTION NUMBER: E131038

CLAIMANT: Connie L. Piper (Moe)
3455 Three Mile Road
The Dalles, OR 97058

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 1N, Range 13E, Section 33
Tax lot 1800
Wasco County

The claimant, Connie Moe, filed a claim with the state under Oregon Revised Statutes (ORS) 197.352 (2005) (Measure 37) on November 21, 2006, for property located at 3455 Three Mile Road, near The Dalles, in Wasco 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.

The department issued a Final Order of Denial on April 21, 2010. The claimant requested reconsideration under House Bill 3620 on March 9, 2012. This Amended Final Order of Denial on Reconsideration 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.

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 Oregon Administrative Rule (OAR) 660-041-0020 then in effect.

Findings of Fact and Conclusions

The claimant, Connie Moe, filed a Measure 37 claim, M131038, with the state on November 21, 2006. The claimant filed a Measure 37 claim, M37-06-116, with Wasco County on November 20, 2006. The state claim was filed prior to December 4, 2006.

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

Wasco 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 Wasco County, outside the urban growth boundary and outside the city limits of the nearest city, The Dalles.

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 (A-1) by Wasco 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 and regulate the establishment of dwellings on new or existing lots or parcels. In addition, counties may adopt larger minimum lot or parcel sizes. Wasco County’s A-1 zone requires a minimum of 160 acres for the establishment of a dwelling on a lot or parcel.

The claimant’s property consists of 183.19 acres and is developed with a dwelling.¹ 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

¹ The claimant submitted comments in the reconsideration materials that the property does not currently contain a dwelling. However, the election materials submitted by the claimant and records from the Wasco County Assessor’s Office document the existence of a dwelling. Whether or not the property contains a dwelling is irrelevant to the analysis of whether the claimant was lawfully permitted to develop two home sites on the property under Measure 49. Further, the requirements for developing a replacement dwelling have not changed since the claimant acquired the property on February 26, 1996.

(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

Wasco County deed records indicate that the claimant acquired the property on February 26, 1996.

The claimant transferred tax lot 1800 on September 30, 2004, and reacquired it on October 1, 2004, as reflected by the recorded bargain and sale deeds included with the claim.

Measure 49, as passed by the voters in 2007, addressed property transfers and reacquisitions of property, stating: "If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property." Measure 49 §21 (3). In 2011 the legislature changed this provision with the passage of House Bill (HB) 3620. HB 3620 amends ORS 195.328(3) to provide that a transfer and reacquisition would not affect the claimant's original acquisition date of the property if the claimant reacquired the property within ten days of the original transfer. The claimant transferred tax lot 1800 on September 30, 2004, and reacquired it on October 1, 2004, a period of less than 10 days. Based on HB 3620, the claimant's acquisition date is not affected by the transfer and therefore the claimant's date of acquisition for purposes of this claim is February 26, 1996.

On February 26, 1996, the Measure 37 claim property was subject to Wasco County's acknowledged Exclusive Farm Use (A-1) zone. Wasco County's A-1 zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. However, state law in effect when the claimant acquired the property, specifically OAR 660-041-0110 (2)(c) (1995 edition), required a minimum lot size of 160 acres for land zoned for exclusive farm use and not identified as high-value farmland or designated rangeland.²

² HB 3661, which was passed in 1993, and related provisions in ORS 215 and OAR 660 Division 33 were directly applicable to the claimant's property on the dates those provisions were enacted in 1994.

In addition, the property was subject to applicable provisions of ORS chapter 215 (1995 edition), regulating the establishment of dwellings on new or existing lots or parcels and OAR 660-033-0135 (1995 edition) which included restrictions on establishing more than one dwelling on a single tract and farm income standards for the establishment of a farm dwelling. These regulations have not substantively changed since the claimant acquired the Measure 37 property.

ORS 215.284 and OAR 660-033-0130 provide the criteria for the establishment of a non-farm-related dwelling in an EFU zone. Non-farm dwellings are subject to criteria that have not substantively changed since the claimant acquired the Measure 37 claim property.

The state law in effect on February 26, 1996, would have prohibited the claimant from lawfully partitioning the Measure 37 claim property into lots smaller than 160 acres, absent proven compliance with subjective criteria that have not changed substantively since the claimant acquired the property. The claimant's property consists of 183.19 acres. In addition, the claimant was not lawfully permitted to establish more than one dwelling on a tract on her date of acquisition. Therefore, the claimant lawfully could not have established the two home sites she has requested on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 4, 2010 and a Final Order of Denial on April 21, 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 Amended Final Order of Denial on Reconsideration. Specifically, the claimant states that the Wasco County zoning in effect on her date of acquisition would have allowed her to divide the property into two, 80-acre parcels each with a home site. However, the rules of Measure 49 (OAR 660-041-0110 (2)(c)) require:

If the Claimant's acquisition date is on or after the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and local land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the applicable local land use regulations and comprehensive plan provisions along with any directly-applicable state statutes, Statewide Planning Goals, LCDC rules, or the standard set forth in section 4 of Chapter 8, Oregon Laws 2010.

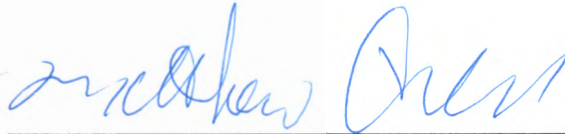
Accordingly, as discussed in Section I(B)(7) above, OAR 660 division 33 and ORS chapter 215 applied directly to the Measure 37 claim property when the claimant acquired it. On the claimant's acquisition date (and since 1994) the minimum lot size for establishing a farm-related dwelling on land not identified as high-value farmland and not designated rangeland was 160 acres. The claimant's property is not identified as high-value farmland and is not designated rangeland, therefore when the claimant acquired the property on February 26, 1996, the county was required to implement OAR 660-033-0135(1)(a)(A) and restrict the property to a minimum of 160 acres to develop a farm-related dwelling.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because state regulations in effect on February 26, 1996, would have prohibited the claimant from lawfully partitioning the Measure 37 claim property into lots smaller than 160 acres and from establishing more than one dwelling on a tract on her date of acquisition.

IT IS HEREBY ORDERED that this Amended Final Order of Denial on Reconsideration 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 195.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:



Matthew Crall, Planning Services Division Manager
Dept. of Land Conservation and Development
Dated this 4th day of June 2012

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.