



**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:** E132163B<sup>1</sup>

**CLAIMANT:** Webster E. Briggs  
4422 Gazley Road  
Myrtle Creek, OR 97457

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 30S Range 5W<sup>2</sup>  
Section 22, Tax lot 800  
Section 23, Tax lot 400  
Section 27A, Tax lot 100  
Douglas County

**AGENT CONTACT INFORMATION:** Michael M. Reeder  
Arnold, Gallagher, Saydack, Percell,  
Roberts & Potter, PC  
800 Willamette Street, Suite 800  
Eugene, OR 97401

<sup>1</sup> Claim E132163 has been divided into two claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E132163A refers to tax lot 801(T30S R5W S22) and claimant Gerald Briggs. E132163B refers to tax lots 800 (T30S R5W S22), 400 (T30S R5W S23) and 100 (T30S R5W S27A) and claimant Webster Briggs.

<sup>2</sup> The Measure 37 claim property consists of tax lots 200 (T30S R5W S1), 800 and 900 (T30S R5W S2), 100 and 300 (T30S R5W S11), 200 and 300 (T30S R5W S12), 300 (T30S R5W S13), 800 and 801 (T30S R5W S22), 400 (T30S R5W S23), and 100 (T30S R5W S27A). The claimants did not elect supplemental review for of tax lots 200 (T30S R5W S1), 800 and 900 (T30S R5W S2), 100 and 300 (T30S R5W S11), 200 and 300 (T30S R5W S12), and 300 (T30S R5W S13). While a claim cannot be amended to remove claim property, analysis of a claimant's eligibility for relief on a portion of claim property may, in some cases, be immaterial. In this case, whether the claimant is eligible for relief on tax lots 200 (T30S R5W S1), 800 and 900 (T30S R5W S2), 100 and 300 (T30S R5W S11), 200 and 300 (T30S R5W S12), and 300 (T30S R5W S13) is not relevant to the analysis of whether the claimants are eligible for relief on tax lots 800 (T30S R5W S22), 400 (T30S R5W S23), and 100 (T30S R5W S27A). Therefore, although tax lots 200 (T30S R5W S1), 800 and 900 (T30S R5W S2), 100 and 300 (T30S R5W S11), 200 and 300 (T30S R5W S12), and 300 (T30S R5W S13) are part of the Measure 37 claim property, review of the claimant's eligibility for relief on tax lots 200 (T30S R5W S1), 800 and 900 (T30S R5W S2), 100 and 300 (T30S R5W S11), 200 and 300 (T30S R5W S12), and 300 (T30S R5W S13) is omitted and all references to Measure 37 claim property refer only to tax lots 800 (T30S R5W S22), 400 (T30S R5W S23), and 100 (T30S R5W S27A).

The claimant, Webster Briggs, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 4046 Gazley Road, near Myrtle Creek, in Douglas 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 his 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 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 division and development that could have resulted in more than three home sites. Therefore, the claimant 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 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, Webster Briggs, filed a Measure 37 claim, M132163, with the state on November 30, 2006. The claimant filed a Measure 37 claim, M37-228, with Douglas County prior to September 7, 2007. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Douglas 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 information submitted by the claimant, Webster Briggs has not established his ownership of the Measure 37 claim property for the purposes of Measure 49. Claimant Webster Briggs acquired an interest in the Measure 37 claim property on January 5, 1997. However, on March 10, 2009, the claimant conveyed all his interest the Measure 37 claim property to Briggs Management LLC, as reflected by a recorded bargain and sale deed obtained by the department. Webster Briggs is no longer an owner of the Measure 37 claim property.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated.

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

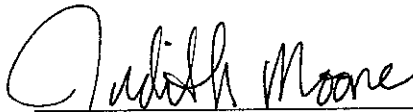
The department issued its Preliminary Evaluation for this claim on February 3, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant is no longer an owner of the Measure 37 claim 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 14th day of April, 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 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.