



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: E133537A¹

CLAIMANT: Buford D. Wingerd
4306 Braeburn Drive
Fairfax, VA 22032

MEASURE 37 PROPERTY
IDENTIFICATION: Township 35S, Range 6W, Section 4
Tax lot 201
Josephine County

The claimant, Buford Wingerd, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 2, 2006, for property located on Russell Road, near Merlin, in Josephine 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 Claimants May Qualify

Under Section 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimant has requested nine home site approvals in the election

¹ Claim E133537 has been split into two claims, E133537A and E133537B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E133537A addresses the claimant's eligibility for Measure 49 relief on tax lot 201 and claim E133537B addresses his relief on tax lot 200.

material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes ten home sites. The appraisal submitted by the claimant attempts to support the assertion that the value of nine home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimant may qualify for a maximum of nine home site approvals under Section 7 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 7 of Measure 49, the claimant must meet each of the following requirements:

1. Property not high-value farm, forest or groundwater restricted

The Measure 37 claim property must not be high-value farmland or high-value forestland, nor in a ground water restricted area, as defined in Section 2 of Measure 49.

Findings of Fact and Conclusions

The property is not high-value farmland or high-value forestland, and is not in a ground water restricted area.

2. 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, Buford Wingerd, filed a Measure 37 claim, M133537, with the state on December 2, 2006. The claimant filed a Measure 37 claim, 2006-068, with Josephine County on November 2, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Josephine County.

3. 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, Buford Wingerd is the owner of fee title to the property as shown in the Josephine County deed records and, therefore, is an owner of the property under Measure 49.

Josephine County has confirmed that the claimant is the current owner of the property.

4. 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.

5. 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 Josephine County, outside any urban growth boundary and outside any city limits, near the community of Merlin.

6. 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-2.5) by Josephine 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. Josephine County's RR-2.5 zone requires a minimum lot size of 2.5 acres.

The claimant's property consists of 9.55 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the nine home sites the claimant may qualify for under Section 7 of Measure 49.

7. 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 nine home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

8. 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 7 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

Josephine County deed records indicate that the claimant acquired the property on June 24, 1970.

On June 24, 1970, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least nine lots or parcels and at least nine dwellings. Therefore, the claimant lawfully could have established the nine home sites the claimant may qualify for under Section 7 of Measure 49.

9. The Enactment of One or More Land Use Regulations that are the Basis for this Claim, Caused a Reduction in the Fair Market Value of the Measure 37 Claim Property that is Equal to or Greater than the Fair Market Value of the Home Site Approvals Requested

Sections 7 and 8 of Measure 49 require that the reduction in the fair market value of the property be demonstrated through an appraisal that meets the following requirements:

- a) **The appraisal must be submitted within 180 days after the Measure 49 election is filed with the department.**

The claimant submitted his election on May 16, 2008. On October 22, 2008 claimant submitted an appraisal prepared by Garrett Pottmeyer, a Certified Residential Appraiser. Therefore, the appraisal was submitted within 180 days of the election filing.

b) The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.

The appraisal submitted by the claimant was prepared by Garrett Pottmeyer, a Certified Residential Appraiser under ORS Chapter 674. The Appraiser Certification and Licensure Board has adopted administrative rules to implement ORS Chapter 674. The administrative rules are found at Oregon Administrative Rules, Chapter 161 and describe the scope of the authority of a State-Certified Residential Appraiser. OAR 161-025-0005(1)(a) provides that “a State-Certified Residential Appraiser (SCRA) is authorized to appraise: all types of one- to four-family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one- to four-family residential purposes, and where the Highest and Best Use is for one- to four-family residential purposes.” OAR 161-025-0005(1)(b) authorizes a State-Certified Residential Appraiser to appraise “all other types of real property having a transaction value of less than \$250,000.” However, OAR 161-025-0005(2) prohibits a State-Certified Residential Appraiser from appraising subdivisions. OAR 161-002-0000 defines a “subdivision” as “either an act of subdividing land or an area or a tract of land subdivided to create four or more lots within a calendar year.” In the submitted appraisal, the appraiser identified the highest and best use of the property as that of a nine-lot subdivision and appraised the property as a “hypothetical” nine-lot subdivision. As a result, the appraisal was in violation of OAR 161-025-0005(2) as it was beyond the scope of authority of a State-Certified Residential Appraiser. Likewise, the transaction value for the “hypothetical” nine-lot subdivision as determined by the appraisal was \$990,000. As noted, OAR 161-025-0005(1)(b) limits the transaction value for all other types of real property to less than \$250,000. As a result, the appraisal was in violation of OAR 161-025-0005(1)(b) as it was beyond the scope of authority of a State-Certified Residential Appraiser. The appraisal cannot be used for the purpose of appraising the value of nine home sites under Section 7 of Measure 49, and, therefore, with respect to the Pottmeyer appraisal this requirement has not been met.

By letter dated May 3, 2010 and received by the department on May 6, 2010, the claimant submitted a document purporting to be an “Addendum to the Appraisal Report” of Garrett Pottmeyer. The alleged addendum attempted to comply with the requirements of Sections 7 and 8 of Measure 49 by assigning values for the Measure 37 property at the relevant dates. Because the values identified in the alleged addendum revised the values identified in the Pottmeyer appraisal, USPAP considers the alleged addendum to be a new appraisal and, as a result, is subject to all certification requirements imposed by USPAP. Claimant’s appraiser, Garrett Pottmeyer, has confirmed to the department that he did not participate in the preparation of the “Addendum to the Appraisal Report” filed with the department on May 6, 2010. Under Section 7(7) of Measure 49 the assignment of values and other tasks performed in the alleged addendum are tasks that are required to

be part of the "Measure 49 appraisal." Furthermore, Measure 49 requires that the Measure 49 appraisal be performed by a person certified under ORS chapter 674 or a person registered under ORS chapter 308. The "Addendum to the Appraisal Report" filed with the department on May 6, 2010 was not signed by a state-certified general appraiser and therefore fails to comply with USPAP. Absent a signed certification by an appraiser certified under ORS chapter 674 or a person registered under ORS chapter 308, the addendum fails to comply with Measure 49, Section 7(7)(b). Therefore, with respect to the alleged addendum, this requirement has not been met.

c) The appraisal must comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

An appraisal review commissioned by DLCD has determined that the appraisal performed by Garrett Pottmeyer does not meet the threshold requirements for Uniform Standards of Professional Appraisal Practice (USPAP) compliance. There are several reasons for this conclusion. First, the Pottmeyer appraisal failed to identify the purpose and function of the report relative to the Measure 49 claim. Second, Mr. Pottmeyer's method of determining the value of the entire Measure 37 property for each time period valuations lacks any meaningful analysis and fails to meet the criteria outlined in Standards 1 and 2 of USPAP. For each relevant time period, Mr. Pottmeyer used the individual lot values to determine a value for the entire property. For example, for the value of the Measure 37 property in 1972 (one year before the land use regulation), Mr. Pottmeyer developed the value estimate of \$3,000 for a 1-acre parcel using the sales comparison approach. To determine the value of the entire 9.55-acre tract, Mr. Pottmeyer merely multiplied the value of a hypothetical 1-acre parcel by ten to conclude that the value of the entire Measure 37 property as of June 29, 1972 was \$30,000. The methodology made no allowance for development costs, holding costs, marketing costs, or developer's profit. Third, the comparables utilized by Mr. Pottmeyer under the sales comparison approach for the 1972 value were not credible. This conclusion was developed using two comparables, one of 1.77-acres and the other of 2.53-acres. Proper application of the sales comparison approach would have required use of properties having similar development potential, the value of which would then be adjusted relative to the characteristics of the Measure 37 property. In the Pottmeyer appraisal the "comparables" utilized were not comparable to the 9.55-acre Measure 37 property and do not lead to a credible result. Fourth, the reported loss in fair market value was not adjusted as required in subsection 9(f), below. Fifth, the Pottmeyer appraisal's determination of the present fair market value of the nine home sites contained insufficient information and analysis to support the land value conclusions. Based on the foregoing, the valuations contained in the Pottmeyer appraisal are not credible in relation to the assignment, lack any meaningful analysis and as a result fail to meet the criteria outlined in Standards 1 and 2 of USPAP. Finally, as determined above, the appraisal was outside of the scope of a Certified Residential Appraiser and as a result violates USPAP. Therefore, with respect to the Pottmeyer appraisal this requirement has not been met

The alleged "Addendum to the Appraisal Report" filed with the department on May 6, 2010 likewise does not meet the threshold requirements for Uniform Standards of Professional Appraisal Practice (USPAP) compliance. There are several reasons for this conclusion. First, as noted above the alleged addendum is not signed by a state-certified general appraiser and therefore fails to comply with USPAP. Second, the alleged addendum uses the same faulty methodology employed by the Pottmeyer appraisal to determine the value of the entire Measure 37 property for each time period. Although the addendum asserts that the summation method of arriving at a value for the entire Measure 37 property is hypothetical only and therefore adequate, this assertion is without merit. In fact, Measure 49 explicitly requires an actual appraisal, conducted to USPAP standards,

of the "Measure 37 claim property" for both one year before and one year after a land use regulation was enacted and this was not done. Third, although the alleged addendum attempts to adjust the 1972 value by the cost to construct a road to serve the lots created, no attempt was made to adjust the value for additional development costs, holding costs, marketing costs, or developer's profit. As a result, the alleged addendum greatly overstates the value of the entire Measure 37 property in 1972. Therefore, with respect to the alleged addendum, this requirement has not been met.

d) The appraisal must expressly determine the highest and best use of the property at the time the land use regulation was enacted and the highest and best use must be determined to be residential use.

In the Pottmeyer appraisal section titled "Highest and Best Use Analysis" Mr. Pottmeyer states that "The analysis of the subject property when the land use regulations were being developed shows that the legal, physical and economic forces impacting the highest and best use of the subject property pointed toward development, partitioning and sale of the subject property into many home sites..." and "For the reasons given above, it is clear that in 1972 and today, the Highest and Best Use of the subject property was and is Rural Residential." However, Mr. Pottmeyer was not licensed to evaluate property for which the highest and best use involved any segregation of land. Therefore, this requirement has not been met.

e) The appraisal must show the fair market value of the property one year before and one year after the enactment of the regulation(s) the claimant asserts have resulted in a reduction of the fair market value of the Measure 37 claim property.

The claimant asserts that the enactment of Josephine County's Forest Resource zone reduced the fair market value of the Measure 37 claim property. This zone was enacted on June 29, 1973 and established a 10-acre minimum lot size. On February 10, 1987, the property was rezoned by Josephine County to Woodlot Resource (WR) and established a 20-acre minimum lot size. On February 3, 1993, the property was rezoned to and is currently zoned Rural Residential (RR-2.5) by Josephine County. The current zone allows a minimum lot size of 2.5 acres. The Pottmeyer appraisal attempts to establish the value of the entire Measure 37 property one year before and one year after the 1973 land use regulation went into effect. However, the Pottmeyer appraisal fails to meet the criteria outlined in Standards 1 and 2 of USPAP. There are a couple of reasons for this conclusion. First, for the reasons noted above, Mr. Pottmeyer's analysis of the value of the Measure 37 property one year before and one year after the land use regulation went into effect in 1973 is not credible because it (1) makes no allowance for costs of development, holding, marketing or developer profit; and (2) utilized "comparable" properties in the sales comparison approach that were not comparable to the subject property. Second, the Pottmeyer appraisal failed to establish the effect of the 1993 enactment of the land use regulation that changed the zoning from Woodland Resource with a 20-acre minimum lot size to Rural Residential with a 2.5-acre minimum lot size. Therefore, with respect to the Pottmeyer appraisal this requirement has not been met

The alleged "Addendum to the Appraisal Report" filed with the department on May 6, 2010 fails to meet the criteria outlined in Standards 1 and 2 of USPAP for the same reasons. Therefore, with respect to the alleged addendum, this requirement has not been met.

f) As required by Section 7 (6) and (7) the reduction in the fair market value of the Measure 37 property determined by the appraisal is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

The Pottmeyer appraisal attempts to determine whether the reduction in the fair market value of the Measure 37 property is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. The Mr. Pottmeyer's analysis of this requirement is not credible for several reasons. First, as noted above, the analysis of the value of the Measure 37 property prior to the enactment of the land use regulation is not credible and fails to meet the criteria outlined in Standards 1 and 2 of USPAP because it (1) made no allowance for costs of development, holding, marketing or developer profit; and (2) multiplied the fair market value of a 1-acre parcel by 10 to determine the fair market value of the whole. Second, the sales comparison analysis utilized "comparable" properties that are not comparable to the subject property. Third, the appraisal failed to consider the increase in value due to the enactment of a 2.5-acre minimum lot size from 1993 through 2008. Instead, the appraisal assumes a continued loss, based on the development potential of only one parcel, from 1993 through 2008. Because of the errors noted above, the Pottmeyer appraisal exaggerates the reduction in value caused by the land use regulation. Fourth, although the appraisal adjusted the alleged loss in value by calculating interest thereon using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, the appraisal failed to adjust the reduction in fair market value by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimants have paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Finally, the Pottmeyer appraisal contains insufficient information relative to the value conclusion of the

hypothetical 9 lot subdivision as of May 9, 2008. Therefore, with respect to the Pottmeyer appraisal this requirement has not been met.

The alleged "Addendum to the Appraisal Report" filed with the department on May 6, 2010 attempts to determine whether the reduction in the fair market value of the Measure 37 property is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. The addendum's analysis of this requirement is not credible for several reasons. First, as noted above the alleged addendum is not signed by a state-certified general appraiser and therefore fails to comply with USPAP. Second, the alleged addendum uses the same faulty methodology employed by the Pottmeyer appraisal to determine the value of the entire Measure 37 property for each time period. Third, although the alleged addendum attempts to adjust the 1972 value by the cost to construct a road to serve the lots created, no attempt was made to adjust the value for additional development costs, holding costs, marketing costs, or developer's profit. As a result of the foregoing, the alleged addendum greatly overstates the reduction in the fair market value caused by the enactment of the 1973 land use regulation. Finally, like the Pottmeyer appraisal, the alleged addendum fails to consider the increase in value due to the enactment of a 2.5-acre minimum lot size from 1993 through 2008.

Therefore, with respect to the alleged addendum, this requirement has not been met.

g) The appraisal must show the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49.

The Pottmeyer appraisal attempts to determine the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49. The Pottmeyer appraisal attempted to establish the present fair market value of the lots, parcels or dwellings that could potentially be established using the Discounted Cash Flow Analysis. The appraisal review commissioned by DLCD has determined that the appraisal performed by Garrett Pottmeyer does not meet the threshold requirements for Uniform Standards of Professional Appraisal Practice (USPAP) compliance and the requirements of this section. There are two reasons for this conclusion. First, Mr. Pottmeyer provided no support for his estimation of the development costs for each lot. Second, Mr. Pottmeyer's cash flow analysis contains insufficient information to verify the final value conclusion. Therefore, with respect to the Pottmeyer appraisal this requirement has not been met.

The alleged "Addendum to the Appraisal Report" filed with the department on May 6, 2010 attempts to determine the present fair market value of each lot, parcel or dwelling that the claimant is seeking under section 7(2) of Measure 49. The addendum's conclusions are not credible because the addendum is not signed by a state-certified general appraiser and therefore fails to comply with USPAP. Therefore, with respect to the alleged addendum, this requirement has not been met.

h) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim *caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals* that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

As discussed in subsections (b) through (g) above, the appraisal and the alleged addendum submitted by the claimant taken together fail to establish the prerequisites necessary to demonstrate that the enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals. Therefore, this requirement has not been met.

II. COMMENTS ON THE PRELIMINARY EVALUATION

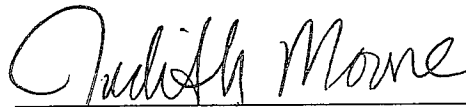
The department issued its Preliminary Evaluation for this claim on March 4, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received from the claimant and third parties have been taken into account and addressed by the department in the issuance of this Final Order of Denial.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals. The appraisal and alleged addendum submitted by the claimant cannot be used for the purpose of appraising the value of nine home sites, a nine-lot subdivision, under Section 7 of Measure 49, because the appraiser's Certified Residential Appraiser License does not allow the appraisal of subdivisions and the addendum is not signed by a licensed appraiser. Furthermore, the appraisal submitted does not follow the requirements of Section 7 of Measure 49.

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 30th day of June 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.