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: E133384

CLAIMANT: Myrtle View Farm, LLC

MEASURE 37 PROPERTY IDENTIFICATION:
Township 29S, Range 12W
Section 5, Tax lot 400
Section 8, Tax lot 200
Coos County

AGENT CONTACT INFORMATION:
Nancy M. Stump
93724 Lampa Lane
Myrtle Point, OR 97458

The claimant, Myrtle View Farm, LLC, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 2, 2006, for property located at 93523 Lampa Lane, near Myrtle Point, in Coos 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 its 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 50 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, Myrtle View Farm, LLC, filed a Measure 37 claim, M133384, with the state on December 2, 2006. The claimant filed a Measure 37 claim, DJC 2006-55, with Coos County prior to March 21, 2007. The state claim was filed prior to December 4, 2006.

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

Coos 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 Coos County, outside the urban growth boundary and outside the city limits of the nearest city, Myrtle Point.

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 400 is currently zoned Exclusive Farm Use (EFU) by Coos 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract.

Tax lot 200 is currently zoned Forest (F) by Coos 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract.

The claimant’s property consists of 250.91 acres that make up a single tract. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three 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 three 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

Coos County deed records indicate that the claimant acquired the property on May 10, 2006.

On May 10, 2006, tax lot 400 was subject to Coos County’s acknowledged Exclusive Farm Use
(EIFU) zone and tax lot 200 was subject to Coos County’s acknowledged Forest (F) zone. Coos
County’s EIFU zone and Forest zone each required 80 acres for the creation of a new lot or parcel
on which a dwelling could be established. The claimant was not lawfully permitted to establish
more than one dwelling on a tract on its date of acquisition. The claimant’s property consists of
250.91 acres and is developed with two dwellings. Therefore, the claimant lawfully could not
have established any additional home sites on its date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 3, 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 zoning and lawfully permitted uses of the claimants’ property have not changed
since they acquired it. The claimant was not lawfully permitted to establish the additional 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:

[Signature]
Judith Moore, Division Manager
Dept. of Land Conservation and Development
Dated this 26th day of January 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 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.