



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 and Home Site Authorization on Reconsideration

STATE ELECTION NUMBER: E133471B^{1,2}

CLAIMANTS: Paul H. Reeder
Lana Reeder
10893 S Forest Ridge Lane
Oregon City, OR 97045

MEASURE 37 PROPERTY IDENTIFICATION: Township 3S, Range 1E, Section 2
Tax lots 2105 and 2106
Clackamas County

AGENT CONTACT INFORMATION: Michael Hammons
Prudential NWPD
20320 SE Highway 212
Damascus, OR 97089

The claimants, Paul Reeder and Lana Reeder, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 2, 2006, for property located near Oregon City, in Clackamas 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.

This Amended Final Order and Home Site Authorization on Reconsideration is the conclusion of the supplemental review of this claim.

¹On April 9, 2010, the department issued a final order for E133471, which was originally divided into eight claims. Information from Clackamas County indicates that the 12 tax lots that make up the Measure 37 property are four legal lots of record. Therefore, on reconsideration, the department has revised the division of E133471 into three claims. Claim E133471A includes one legal lot comprised of tax lots 2102, 2103 and 2104 and owners Lisa Reeder, Prime Cut Timber and Paul Reeder. Claim E133471B includes one legal lot comprised of tax lots 2105 and 2106 and owners Paul Reeder and Lana Reeder. Claim H133471C includes two legal lots comprised of tax lots 1704, 1705, 1794 (1 parcel), and tax lots 1701, 1702, 1791 and 1792 (1 parcel) and owners Prime Cut Timber and Lana Reeder..

² Claimants also have related claims, E133417, E133470 and E133472, for property that is not contiguous to tax lots 2105 and 2106.

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 two home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes eight home sites. Therefore, the claimants 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 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, Paul Reeder and Lana Reeder, filed a Measure 37 claim, M133471, with the state on December 2, 2006. The claimants filed a Measure 37 claim, ZC555-06, with Clackamas County on December 1, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Clackamas 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, Paul Reeder and Lana Reeder are the owners of fee title to the property as shown in the Clackamas County deed records and, therefore, are owners of the property under Measure 49.

Clackamas County has confirmed that the claimants are the current owners 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Oregon City.

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 Timber District (TBR) by Clackamas 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 33, 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.

The claimants’ property consists of 36.59 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the two 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 two 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

Clackamas County deed records indicate that Paul Reeder acquired the southern 9.15 acres of tax lot 2105 on December 29, 1988 and the remaining northern 9.18 acres of tax lot 2105 on September 23, 1998 and that Lana Reeder acquired 2.54 acres of tax lot 2106 on December 29, 1988 and the remaining 15.72 acres on March 1, 1989.

On December 29, 1988 and March 1, 1989 the southern 9.15 acres of tax lot 2105 and tax lot 2106 were subject to Clackamas County's acknowledged Transitional Timber (TT-20) zone. Clackamas County's TT-20 zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. Tax lot 2106 and the southern 9.15 acres of tax lot 2105 consist of 27.41 acres. Therefore, the claimants lawfully could have established one home site on that portion of the Measure 37 claim property on their dates of acquisition.

The zoning of the northern 9.18 acres of tax lots 2105 has not changed since the claimants acquired the property. As it is today, on September 23, 1998, the northern 9.18 acres of tax lot 2105 was zoned Timber District (TBR) by Clackamas County, in accordance with applicable

provisions of ORS 215 and OAR 660, division 6, because the property is “forest land” under Goal 4.

The claimants are not qualified for Measure 49 relief on the northern 9.15 acres of tax lot 2105 because the zoning and lawfully permitted uses of the property have not changed since the claimants acquired this portion of the Measure 37 property, and the requested development was not permitted at the time the claimants acquired this portion of the property.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 20, 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 and Home Site Authorization on Reconsideration.

Specifically, claimant Paul Reeder submitted comments to the department asserting that he acquired fee title to the entirety of tax lot 2105 on March 1, 1989. As evidence he resubmitted deed #89-10255 dated March 1, 1989. However, deed #89-10255, which describes tax lot 2105 is from Paul Reeder to Paul Reeder and so does not demonstrate that he acquired that tax lot on that date. Furthermore, another deed, #88-54507, indicates Lana Reeder acquired the north half of tax lot 2105 on December 29, 1988. Consistent with this, another December 29, 1988 deed, #88-54510 from Prime Cut Timber to Paul Reeder, indicates that he acquired only the south half of tax lot 2105 on December 29, 1988. Thus, the March 1, 1989 deed, #89-10255, submitted by the claimant does not establish his ownership over the north half of tax lot 2105; based on the deed records, only Lana Reeder held fee title to this portion of the property in 1989. Paul Reeder did not acquire an ownership interest in the north half of tax lot 2105 until Lana Reeder transferred this portion of the Measure 37 claim property to him on September 23, 1998 as reflected by deed #98-090133.

Information from Clackamas County indicates that tax lots 2105 and 2106 constitute one legal lot of record. The department will “divide a single Claim into two or more claims if the Measure 37 Claim Property contains multiple lots or parcels that are not in the same ownership.” (OAR 660-041-0150). Tax lots 2105 and 2106 do not constitute multiple lots or parcels. Therefore on reconsideration, tax lots 2105 and 2106 are the subject of a single claim.

III. CONCLUSION

Based on the analysis above the claimants are not qualified for Measure 49 relief on the northern 9.15 acres of tax lot 2105 because the zoning and lawfully permitted uses of the property have not changed since claimant Paul Reeder acquired this portion of the Measure 37 property.

Based on the analysis above, the claimants qualify for one home site on the southern 9.15 acres of tax lot 2105 and tax lot 2106. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous

property under the same ownership according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

Based on the documentation provided by the claimants and information from Clackamas County, the Measure 37 claim property includes one lot or parcel and no dwellings. There is no contiguous property under the same ownership. Therefore, the one home site approval the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish no additional lots or parcels and one dwelling on the southern 9.15 acres of the portion of the Measure 37 claim property consisting of tax lot 2105 and tax lot 2106. However, this relief applies only to Lana Reeder as to tax lot 2106 and only to Paul Reeder as to the southern portion of tax lot 2105.

IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimants qualify for one home site approval. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimants are authorized for no additional lots or parcels and one dwelling on the portion of the Measure 37 property consisting of tax lot 2106 and the southern 9.15 acres of tax lot 2105. However, this relief applies only to Lana Reeder as to tax lot 2106 and only to Paul Reeder as to the southern portion of tax lot 2105 and is subject to the following terms:

1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimants are eligible for Measure 49 relief. The establishment of a dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.
2. This home site authorization will not authorize the establishment of a dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are the subject of this order.
4. The number of dwellings a claimant may establish under this home site authorization is reduced by the number of dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing dwellings to be either greater than or less than the number of dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the

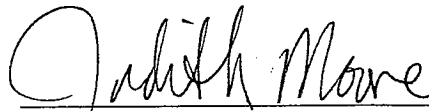
number of additional dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this amended final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.

5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.
6. A home site approval only authorizes the establishment of a new dwelling on the property on which the claimants are eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed.
7. The claimants may use a home site approval to convert a dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of dwellings existing on the property on which the claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing dwellings to convert to authorized home sites.
8. The claimants may not implement the relief described in this Measure 49 home site authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings.
10. Because the property is located in a forest zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.

11. If an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.
12. If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized dwellings within 10 years of the conveyance. A dwelling lawfully created based on a home site approval is a permitted use.
13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

IT IS HEREBY ORDERED that this Amended Final Order and Home Site Authorization 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 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 10th 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.