



**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:**

E133647

**CLAIMANTS:**

Richard J. and Barbara A. Everest  
PO Box 295  
Langlois, OR 97450

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 30S, Range 15W  
Section 13, Tax lot 300  
Section 14, Tax lot 100  
Coos County

The claimants, Richard and Barbara Everest, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located near Langlois, 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 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 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 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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimants 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 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, Richard and Barbara Everest, filed a Measure 37 claim, M133647, with the state on December 4, 2006. The claimants filed a Measure 37 claim, DJC-2006 #152, with Coos County on November 30, 2006. The state claim was filed on December 4, 2006.

The claimants 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 information submitted by the claimants, Richard and Barbara Everest have not established their ownership of the property for the purposes of Measure 49. As reflected by the Coos County deed records, on August 26, 1999, the claimants transferred the property to Quiet Valley Farms, LLC, an Oregon limited liability company. An LLC is a separate and distinct entity from its members, and therefore the claimants are not owners of the Measure 37 claim property.

Because this requirement has not been met, the claimants are 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 December 3, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding

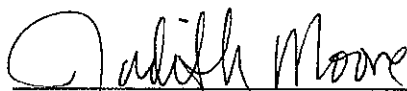
properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, the claimants submitted a comment disputing the finding that they are not owners of the Measure 37 claim property. While Richard and Barbara Everest did own the property at an earlier date, they transferred their entire interest in the property to Quiet Valley Farms, LLC in 1999 according to Coos County deed records. Quiet Valley Farms, LLC is a separate and distinct legal entity. Because the sole owner of the Measure 37 claim property is Quiet Valley Farms, LLC the claimants are not owners of the Measure 37 claim property.

### **III. CONCLUSION**

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals because they are not owners 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:



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Judith Moore, Division Manager  
Dept. of Land Conservation and Development  
Dated this 27<sup>th</sup> day of February 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.