



**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:

H121661

CLAIMANTS:

Lloyd L. and Agnes M. Miller¹
36124 Cold Springs Road
Lebanon, OR 97355

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 11S, Range 2W, Section 11BB
Tax lot 1800
Linn County

PRIMARY CONTACT INFORMATION:

Duane D. Miller
36124B Cold Springs Road
Lebanon, OR 97355

The claimants, Lloyd and Agnes Miller, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 1, 2005, for property located at 36124 Cold Springs Road, near Lebanon, in Linn 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 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. However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant did not file a Measure 49 election within 90 days of the department mailing the election packet. Lloyd and Agnes Miller were not entitled to Measure 49 relief on that basis.

However, the Oregon State Legislative Assembly subsequently amended this Measure 49 requirement through the passage of House Bill 3225 (Chapter 855 (2009 Laws)) (HB 3225). As a result, this requirement no longer prevents the claimants, Lloyd and Agnes Miller, from obtaining Measure 49 relief. The claimants elected to seek relief under Measure 49, as amended by HB 3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

¹ Duane D. Miller is listed as a claimant on the election form, but he was not a claimant under Measure 37 and, therefore, is not eligible for relief under Measure 49.

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. The Measure 37 waiver issued for this claim describes two 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, as amended by HB 3225, the claimants must meet the following requirement:

1. Timeliness of Claim

A claimant must have filed a Measure 37 claim for the property with the state before Measure 49 became effective on December 6, 2007. If the claimant filed their state Measure 37 claim after December 4, 2006, the claimant must also have either (a) filed the claim in compliance with the provisions of OAR 660-041-0020 then in effect; (b) submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or (c) filed a Measure 37 claim with the county on or before December 4, 2006.

Findings of Fact and Conclusions

The claimants, Lloyd and Agnes Miller, filed a Measure 37 claim, M121661, with the state on August 1, 2005. The claimants filed a Measure 37 claim, M37-112-05, with Linn County on July 29, 2005. The state claim was filed prior to December 4, 2006.

The claimants filed a timely Measure 37 claim with the state along with any additional claims or applications that the claimants had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

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, Lloyd and Agnes Miller have not established ownership of the property for the purposes of Measure 49. Claimants Lloyd and Agnes Miller acquired tax lot 1800 on May 29, 1975, as reflected by a recorded warranty deed included with the claim. However, Lloyd and Agnes Miller conveyed fee title to Duane D. Miller on December 9, 1998, retaining a life estate for themselves. A life estate holder does not hold fee title and, therefore under Measure 49, is not an owner of property. Therefore, for Measure 49 purposes, Lloyd and Agnes Miller were no longer owners of tax lot 1800 after December 9, 1998.

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

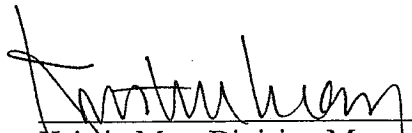
The department issued its Preliminary Evaluation for this claim on June 21, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, the claimants' son submitted comments, asserting that when the claimants conveyed the property to their son, in addition to reserving a life estate, "the claimants maintained a 33 1/3% ownership of the property." However, the December 9, 1998 deed provided by the claimants, through which they conveyed the property to their son, does not reflect that they retained any fee title interest in the property. Rather, it specifies that the grantors (the claimants) were retaining only a lifetime estate in the property. The claimants' son also questions the change in the analysis between the department's Measure 37 waiver, which found the claimants had an ownership interest in the Measure 37 claim property, and the finding under Measure 49 that the claimants do not meet the definition of "owner" for purposes of that statute. The difference in the conclusions results from the difference in the statutory definitions. Under Measure 37, any claimant with an "ownership interest" was considered to be eligible for relief under that statute. In contrast, Measure 49, which amended Measure 37, defines the owner of property as the "owner of fee title." Because a life estate holder does not hold fee title, a holder of a life estate is not an "owner" as that term is defined under Measure 49.

III. CONCLUSION

Based on the analysis above, the claimants do not qualify for any Measure 49 home site approvals because the claimants no longer own 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:



Kristin May, Division Manager
Dept. of Land Conservation and Development
Dated this 13th day of August 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.