



**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:**

E132249

**CLAIMANTS:**

Joseph C. Schmidlkofer Jr.  
Juanita M. Schmidlkofer  
4840 NW Marsh Road  
Forest Grove, OR 97116

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 1N, Range 3W, Section 21  
Tax lots 800 and 900  
Washington County

The claimants, Joseph and Juanita Schmidlkofer, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 4840 NW Marsh Road, near Forest Grove, in Washington 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 specific relief requested under both Measure 37 and Measure 49 appears to be a property line adjustment between the two lots or parcels subject to the claim. However, Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for the more specific relief requested here. Therefore, the claimants are not eligible for any relief under Section 6 of Measure 49.

Because the claimants have requested relief that is not available under Measure 49, the remaining approval criteria will not be evaluated.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

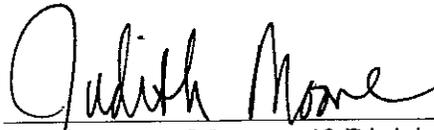
The department issued its Preliminary Evaluation for this claim on July 28, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, the claimants do not qualify for any relief under Measure 49 because Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for the more specific relief requested here.

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, Measure 49 Division Manager  
Dept. of Land Conservation and Development  
Dated this 16<sup>th</sup> day of September 2009.

#### 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.