



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: E121834<sup>1</sup>

CLAIMANT: Joe Hall<sup>2</sup>  
1151 SE Dover Lane  
Madras, OR 97741

MEASURE 37 PROPERTY  
IDENTIFICATION: Township 11S, Range 14E, Section 19  
Tax lot 1200  
Jefferson County

The claimant, Joe Hall, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 11, 2005, for property located at 1151 SE Dover Lane, near Madras, in Jefferson 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 his 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. The Measure 37 waiver issued for this claim describes 16 home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

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<sup>1</sup> The preliminary evaluation for tax lot 1200 (T11S R14E S19) was issued under the claim number E121835. However, based on the Measure 37 claim materials, the correct claim number for tax lot 1200 is E121834.

<sup>2</sup> Hattie Hall was also a claimant on the Measure 37 claim; however, she has passed away since the filing of the claim.

## **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, Joe Hall, filed a Measure 37 claim, M121835, with the state on August 11, 2005. The claimant filed a Measure 37 claim, 05-M37-36, with Jefferson County on August 10, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Jefferson 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, Joe Hall is the settlor of a revocable trust into which the Measure 37 claim property was conveyed and, therefore, is an owner of the property under Measure 49.

Jefferson 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 Jefferson County, outside the urban growth boundary and outside the city limits of the nearest city, Madras.

**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 Range Land (RL) by Jefferson 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 160 acres in size in an EFU zone that is designated rangeland, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 33.05 acres. 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**

Jefferson County deed records indicate that the claimant acquired the property on October 20, 2004.<sup>3</sup>

The zoning of tax lot 1200 has not changed since the claimant acquired the property. As it is today, on March 27, 2006, the Measure 37 claim property was zoned Range Land (RL) in accordance with the applicable provisions of ORS chapter 215 and OAR 660, division 33. Therefore, the claimant lawfully could not have established any home sites on his date of acquisition.

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

The department issued its Preliminary Evaluation for this claim on December 29, 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. An agent for the claimant submitted comments asserting that Joe Hall is entitled to an acquisition date of April 19, 1963. The agent indicates that Foothill Ranches is "not a partnership organized under the business entity [sic] laws of the state" and that the assets of Foothill Ranches are those of Joe Hall. Compliance with and organization under the business entity laws of the state is not necessary for the formation of a partnership and the record reflects that Foothill Ranches is a partnership. For example, the October 21, 2004 deed for the property identifies each of the five parties as acting both individually and on behalf of an entity known as "Foothill Ranches." Similarly, the March 27, 2006 deed conveying the property to Joe Hall, Trustee of the Joe Hall Living Trust indicates that under agreement, the property is held

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<sup>3</sup> Although the claimant originally acquired an ownership interest in the Measure 37 claim property on April 19, 1963, he subsequently conveyed the property to Foothill Ranches, a general partnership. He then re-acquired the property from Foothill Ranches on March 27, 2006. A partnership is a separate and distinct legal entity from its partners. Regarding reacquisition of claim property, Measure 49 section 21(3) provides: "If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property." Therefore, the claimant did not acquire an ownership interest for purposes of Measure 49 until he reacquired an interest as an individual.

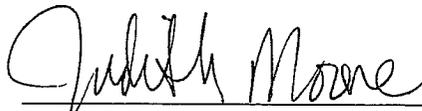
“for the benefit of Foothill Ranches, an Oregon general partnership.” Additionally, the Secretary of State registration materials submitted with the comments indicate that Joe Hall is not the only registrant or party of interest with regard to the entity known as Foothill Ranches. Based on the information in the record, Foothill Ranches is a partnership, the assets of which are not the assets of the individual Joe Hall.

### **III. CONCLUSION**

Based on the analysis above, the claimant is not qualified for Measure 49 relief on the Measure 37 claim property because the zoning and lawfully permitted uses of the property have not changed since the claimant acquired the 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 28<sup>th</sup> day of April 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.