



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Final Order and Home Site Authorization**

STATE ELECTION NUMBER: E130437

CLAIMANTS: John F. and Deborah J. Wilson
34201 Cedar Valley Road
Gold Beach, Oregon 97444

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 32S, Range 15W, Section 10
Tax lots 2001 and 2002¹
Curry County

The claimants, John and Deborah Wilson, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 26, 2006 for property located near the intersection of State Highway 101 and Sixes River Road, near Sixes, in Curry 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. This Final Order and Home Site Authorization 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. The Measure 37

¹ The Measure 37 claim property consists of tax lots 2000, 2001 and 2002. The claimants were denied relief on tax lot 2000 under Measure 37 because laws enacted or adopted since the claimants acquired tax lot 2000 in 2001 do not restrict the claimants' desired use of that tax lot relative to when the claimants acquired it. The claimants did not indicate that they would like the department to review their eligibility for relief under Measure 49 for tax lot 2000. Therefore, this Preliminary Evaluation addresses only the claimants' eligibility for relief for tax lots 2001 and 2002 and all references to Measure 37 claim property refer only to tax lots 2001 and 2002.

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, 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, John and Deborah Wilson, filed a Measure 37 claim, M130437, with the state on October 26, 2006. The claimants filed a Measure 37 claim, M37-0615, with Curry County on October 23, 2006. The state claim was filed prior to December 4, 2006. The claimants timely filed a Measure 37 claim with both the state and Curry 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 deeds submitted by the claimants, John and Deborah Wilson are the owners of fee title to the property as shown in the Curry County deed records and, therefore, are owners of the property under Measure 49. Curry County has confirmed that the claimants are the current owners of the property.

3. All Owners 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 Curry County, outside any urban growth boundary and outside of any city limits, near the community of Sixes.

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 Forest-Grazing (FG) by Curry County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, provide standards for the establishment of a dwelling in a mixed farm/forest zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres and generate a minimum annual income from the sale of farm or forest products.

The combined effect of the standards for the establishment of a dwelling in a mixed farm/forest zone is to prohibit the claimants from establishing a dwelling on each of tax lots 2001 and 2002.

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, the establishment of the two home sites for which the claimants may qualify on the property is not 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

Curry County deed records indicate that the claimants acquired tax lot 2001 (40 acres) and tax lot 2002 (80 acres) on February 9, 1979.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Curry County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned Forestry-Grazing (FG) by Curry County. However, because the Commission had not acknowledged that zone for compliance with the goals, when the claimants acquired the property on February 9, 1979, the statewide planning goals, and in particular Goals 3 and 4, and ORS ch. 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On May 6, 1987, the Commission acknowledged the application of Curry County's FG zone to tax lots 2001 and 2002. The Commission's acknowledgement of Curry County's FG zone confirmed that zone's compliance with Goals 3 and 4, and ORS chapter 215. Curry County's acknowledged FG zone did not require a specific minimum number of acres for the establishment of a dwelling on an established vacant lot or parcel. Therefore, the claimants lawfully could have established a home site on each of tax lots 2001 and 2002 on the claimants' date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on February 3, 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 qualify for up to two home sites. 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 Curry County, the Measure 37 claim property includes two lots or parcels and no dwellings. As demonstrated by the supplemental information submitted by the claimants and Curry County Assessor records, the claimants also own tax lots 2000 and 2100 (Township 32 South, Range 15 West, Section 10) which are contiguous to the Measure 37 claim property. The contiguous property under the same ownership includes two lots or parcels and one dwelling. Together, the Measure 37 claim property and the contiguous property in the same ownership include four lots or parcels and one dwelling. The number of dwellings the claimants are able to establish on the Measure 37 claim property pursuant to the two home site approvals is not reduced by the contiguous dwelling in the same ownership because it appears that if the claimants established two additional dwellings on the Measure 37 claim property, the total number of lots or parcels with a dwelling that would exist on the Measure 37 claim property and the contiguous property in the same ownership would add up to three, and therefore would not exceed three. Therefore, the two home site approvals the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish one dwelling on each of the following tax lots: 2001 and 2002 on the Measure 37 claim property.

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.

IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimants qualify for two home site approvals. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimants are authorized for one additional dwelling on each of tax lots 2001 and 2002 on the property on which the claimants are eligible for Measure 49 relief, 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. 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 dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the dwellings have not been disclosed to the department, then the number of additional dwellings a

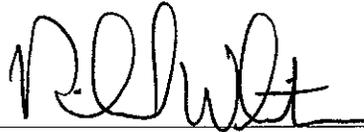
claimant may establish pursuant to this home site authorization must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

4. 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.
5. 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.
6. 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.
7. 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.
8. If the claimants transferred their 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.
9. Because the property is located in a mixed farm and forest zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.
10. 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.

11. 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 Final Order and Home Site Authorization 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:



Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this 31st day of March, 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.