



**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:**

H134452

**CLAIMANTS:**

Lloyd L. and Sally Ann R. Hall  
980 NW 4<sup>th</sup> Street  
Gresham, OR 97030

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 1S, Range 3E  
Section 35A, Tax lot 2800  
Section 35D, Tax lots 301, 402, 501, 591<sup>1</sup>  
and 601<sup>2</sup>  
Clackamas County

The claimants, Lloyd and Sally Ann Hall, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 22, 2007, for property located at 25730 SE Sunshine Valley Road and 11750 SE Zion Hill Drive, near Damascus, in Clackamas 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 Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.<sup>3</sup> However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant filed a Measure 37 claim with the state after December 4, 2006 but did not comply with the provisions of OAR 660-041-0020, then in effect. Lloyd and Sally Ann Hall were not entitled to relief on that basis.

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 Sally Ann Hall, from obtaining Measure 49 relief. The claimants elected to seek relief under Measure 49, as amended by HB

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<sup>1</sup> The Measure 37 claim property consisted of tax lots 2800, 301, 402, 501, 591 and 601. Tax lots 501 and 591 have since been reconfigured and remapped as 501. Tax lot 591 has been cancelled.

<sup>2</sup> In the Clackamas County Measure 37 report, the county states that the six tax lots comprising the Measure 37 claim property, tax lots 2800, 301, 402, 501, 591 and 601, are two legal parcels. Tax lot 601 is one legal parcel, and tax lots 301, 402, 501 and 591 are one legal parcel. In reliance on that report, this final order considers the Measure 37 claim property as two legal parcels.

<sup>3</sup> The claimants elected review under Section 7 of Measure 49. However, under HB 3225 the department may only review claim H134452 under Section 6 of Measure 49.

3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

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 ten home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes relief that could have resulted in 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, as amended by HB 3225, 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 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 Sally Ann Hall, filed a Measure 37 claim, M134452, with the state on October 22, 2007. The claimants filed a Measure 37 claim, ZC243-06, with Clackamas County on October 24, 2006. The state claim was filed after December 4, 2006 and the claimants also filed a county Measure 37 claim on or before 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 deeds submitted by the claimants, Lloyd and Sally Ann Hall are the owners of fee title to the property as shown in the Clackamas County deed records and, therefore, are owners of the property under Measure 49.

Clackamas County has confirmed that the claimants are the current owners 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 Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary**

Either the majority of the Measure 37 claim property must be located outside any urban growth boundary and outside the boundaries of any city or the Measure 37 Claim Property must be located within the boundaries of a city and entirely outside any urban growth boundary.

### **Findings of Fact and Conclusions:**

The Measure 37 claim property is located in Clackamas County and the property is located outside any urban growth boundary and outside the city boundary of the nearest city, Damascus.

## **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 Rural Residential Farm Forest (RRFF-5) by Clackamas County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local

comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Clackamas County's RRFF-5 zone requires a minimum lot size of five acres.

The claimants' property consists of 12.57 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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**

Clackamas County deed records indicate that the claimants acquired tax lots 2800 (0.44 acres), 301 (0.99 acres), 402 (2.00 acres), 501 (0.66 acres) and 591 (0.22 acres) on May 12, 1975, and tax lot 601 (8.26 acres) on November 8, 1977.<sup>4</sup>

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<sup>4</sup> Claimants include an unsigned, unrecorded assignment of contract with their claim. Unrecorded documents do not establish ownership for purposes of Measure 49.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Clackamas County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. On May 12, 1975 and on November 8, 1977, the Measure 37 claim property was zoned Rural Agriculture Residential (RA-1) by Clackamas County, which had a fixed minimum acreage standard of one acre. Because the Commission had not acknowledged Clackamas County's comprehensive plan and land use regulations for compliance with the goals, when the claimants acquired the property on May 12, 1975 and on November 8, 1977, the statewide planning goals, and in particular Goal 14, applied directly to the Measure 37 claim property.

On December 21, 1982, the Commission acknowledged the application of Clackamas County's Rural Residential Farm Forest (RRFF-5) zone to the Measure 37 claim property. The Commission's acknowledgement of Clackamas County's RRFF-5 zone confirmed that zone's compliance with Goal 14. Clackamas County's acknowledged RRFF-5 zone required five acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 12.57 acres, and is developed with two dwellings. Therefore, on the claimants' acquisition date, they could not have established any additional home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

However, because of uncertainty during the time period between adoption of the statewide planning goals in 1975 and each county's acknowledgment of its plan and land use regulations regarding the factual and legal requirements for establishing compliance with the statewide planning goals, the 2010 Legislative Assembly amended Measure 49. Senate Bill (SB) 1049 (2010) specifies the number of home sites considered lawfully permitted, for purposes of Measure 49, for property acquired during this period unless the record for the claim otherwise demonstrates the number of home sites that a claimant would have been lawfully permitted to establish. Those amendments provide, in relevant part, that claimants whose property was ultimately acknowledged as non-resource land pursuant to Goal 14 and whose property was, at acquisition, either not zoned by the county or subject to a county zone that included a fixed minimum acreage standard of two or fewer acres, are eligible for up to three home site approvals with a minimum acreage standard of two acres per home site.

The Measure 37 claim property consists of 12.57 acres. Therefore, based on the analysis under SB 1049 (2010), the claimants were lawfully permitted to establish three home sites on the Measure 37 claim property on their date of acquisition.

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

The department issued its Preliminary Evaluation for this claim on June 4, 2010. 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 three 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 information from Clackamas County, the Measure 37 claim property includes two lots or parcels and two dwellings. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish one additional lot or parcel and one additional dwelling on the Measure 37 claim property.

### IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimants qualify for three 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 lot or parcel and one additional dwelling 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 land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or 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 land division or 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. 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.
4. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and 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, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or

contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.

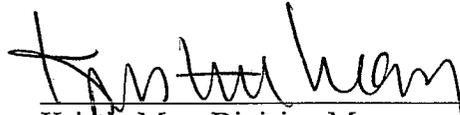
5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant 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.
6. A home site approval only authorizes the establishment of a new lot, parcel or 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 or on Measure 37 claim property on which the claimants are not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.
7. The claimants may use a home site approval to convert a lot, parcel or 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 lots, parcels or 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 lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.
8. The claimants may not implement the relief described in this Measure 49 home site authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. 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. The claimants may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property

on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.

10. If the property described in a claim is divided by an urban growth boundary, any new dwelling, lot or parcel established on the property pursuant to a home site approval must be located on the portion of the property outside the urban growth boundary.
11. 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/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/forest zone, but is less suitable for farm or forest use than the other Measure 37 claim properties.
12. If the claimants transferred 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 lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.
13. 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 obtains 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:



Kristin May, Division Manager  
Dept. of Land Conservation and Development  
Dated this 4th 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.