



**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**

November 14, 2008

**STATE ELECTION NUMBER:** E121867

**CLAIMANT:** Ralph C. Schoof  
7269 Highway 47  
Carlton, Oregon 97111

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 3 South, Range 4 West,  
Section 33, tax lot 500  
Yamhill County

The claimant, Ralph C. Schoof, filed a claim under ORS 197.352 (2005) (Measure 37) on August 12, 2005, for property located, southwest of the intersection of Highway 47 and Pekkola Road, near Carlton, in Yamhill County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed a Measure 37 claim to elect supplemental review of their claim. The claimant 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 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 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. However, the Measure 37 waiver issued for this claim describes one home site. Therefore, the claimant may qualify for a maximum of one home site approval under Section 6 of Measure 49.

**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, Ralph C. Schoof, filed a Measure 37 claim, M121867, with the state on August 12, 2005. The claimant filed a Measure 37 claim, M37-100-05, with Yamhill County, on July 22, 2005. The state claim was filed prior to December 4, 2006. The claimant timely filed a Measure 37 claim with both the state and Yamhill 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, Ralph C. Schoof, is the owner of fee title to the property and, therefore, is an owner of the property under Measure 49. Yamhill County has confirmed that the claimant is the current owner 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 Yamhill County, outside the urban growth boundary and outside the city limits of the nearest city, Carlton.

**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 Exclusive Farm Use (EF-80) by Yamhill 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 (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of a dwellings in an EFU zone. Those standards include a requirement that the property generate a minimum annual income from the sale of farm products.

The combined effect of the standards for the establishment of a dwelling in an EFU zone is to prohibit the claimant from establishing a dwelling on the Measure 37 property.

**II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on August 29, 2008. 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 claimant qualifies for up to one home site. 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. If a claimant otherwise qualifies for relief under Section 6 of Measure 49, the claimant will be able to establish at least one additional lot, parcel or dwelling, regardless of the number of lots, parcels or dwellings currently in existence.

Based on the documentation provided by the claimant, the Measure 37 claim property includes one lot or parcel and no dwelling. As demonstrated by the supplemental information submitted by the claimant, the claimant also owns tax lot 300 (Township 3S, Range 4W, Section 34), which is contiguous to the Measure 37 claim property. The contiguous property under the same ownership includes one parcel and two dwellings. Together, the Measure 37 claim property and the contiguous property in the same ownership include two lots or parcels and two dwellings. The number of lots, parcels, and dwellings currently in existence on the Measure 37 property and the contiguous property under the same ownership is greater than the number of home sites the

claimant qualifies for under Section 6. Because the claimant otherwise qualifies for relief under Section 6, the one home site approval the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish one dwelling 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 a claimant has developed the limit of twenty home sites under Measure 49 the claimant is no longer eligible for the home site approval that is the subject of this order.

#### **IV. HOME SITE AUTHORIZATION**

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for one home site. As a result, the claimant is authorized to establish one dwelling on the property on which the claimant is 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 claimant is 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. 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 lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or 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 claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is 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 lot, parcel or dwelling on the property on which the claimant is 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 claimant is 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.
6. The claimant may use a home site approval that does not authorize a new lot parcel or dwelling to convert a lot, parcel or dwelling currently located on the property on which the claimant is 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 claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant 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.
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. The claimant 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 Measure 37 claim property, pursuant to this home site authorization, is sited on a separate lot or parcel.
8. If the claimant transferred his 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.
9. 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.

10. 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 claimant 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:

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Cora R. Parker, Deputy Director  
Dept. of Land Conservation and Development  
Dated this 14th day of November, 2008.

**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.