



**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:** E122891

**CLAIMANT:** Arnold Klann  
6336 SW Meridian Way  
Tualatin, OR 97062

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 2S, Range 1E, Section 31C  
Tax lots 300, 301 and 302  
Clackamas County

**AGENT CONTACT INFORMATION:** Andrew H. Stamp PC  
Kruse Mercantile Professional Offices  
4248 Galewood Street, Suite 16  
Lake Oswego, OR 97035

The claimant, Arnold Klann, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on October 21, 2005, for property located at 6336 SW Meridian Way, near Tualatin, 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 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 specific relief requested under Measure 49 is division of a two-acre home site from tax lot 301 of the Measure 37 property. However, Measure 49 directs the department to authorize an otherwise prohibited number of home sites and does not provide for more specific relief. The claimant has

requested one additional home site in the election material. The Measure 37 waiver issued for this claim describes fifteen home sites. Therefore, the claimant 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 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, Arnold Klann, filed a Measure 37 claim, M122891, with the state on October 21, 2005. The claimant filed a Measure 37 claim, ZC013-06, with Clackamas County on March 17, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Clackamas 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, Arnold Klann is the settlor of a revocable trust into which he conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

Clackamas 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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, Tualatin.

**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 5 acres.

The claimant's property consists of 15.85 acres. Therefore, no state law prohibits the claimant from establishing on the Measure 37 claim property the two home sites the claimant may qualify for under Section 6 of Measure 49.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49 and, therefore, 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 21, 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. Specifically, the claimant's attorney submitted a comment asserting that the department misinterpreted the claimant's relief request and that the claimant is entitled to relief under Section 6(3) of Measure 49. A claimant may qualify for one home site under Section 6(3) only if a claimant does not qualify for relief under Section 6(2), but otherwise

qualifies for relief under Section 6 of Measure 49. In this case, the claimant does not *otherwise qualify for relief* under Section 6 because he is not currently prohibited from establishing the number of home sites requested as required by Section 6(6)(d) of Measure 49. The claimant here requested one additional home site for a total of two home sites. However, regardless of whether the claimant requested one or two home sites, he is not qualified for relief under Section 6 because he is not prohibited from establishing either one or two home sites on the Measure 37 claim property under current law.

### III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because no land use regulation prohibits the claimant from establishing the requested lots, parcels or dwellings.

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 17<sup>th</sup> day of December 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.