



**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 NUMBERS:**

E132672 and E132673<sup>1</sup>

**CLAIMANTS:**

Walter R. and Sally N. Miller  
PO Box 12708  
Salem, OR 97309

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 9S, Range 1W, Section 31  
Tax lots 401 and 504  
Township 9S, Range 2W, Section 36  
Tax lots 600, 700 and 800  
Linn County

**AGENT CONTACT INFORMATION:**

John F. Birnie  
PO Box 12395  
Salem, OR 97309

The claimants, Walter and Sally Miller, filed claims with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located near Scio, in Linn 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 have 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 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 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

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<sup>1</sup> Claims E132672 and E132673 have been combined into one claim for review under Measure 49.

claimants have requested seven home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimants may qualify for a maximum of three home site approvals on tax lots 401 and 504 under Section 6 of Measure 49, and for a maximum of three home site approvals on tax lots 600, 700, and 800.

## **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, Walter and Sally Miller, filed Measure 37 claims, M132672 and M132673, with the state on December 1, 2006. The claimants filed Measure 37 claims, M37-281-06, M37-282-06 and M37-283-06 with Linn County on December 1, 2006. The state claims were filed prior to December 4, 2006.

The claimants timely filed Measure 37 claims with both the state and Linn 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 Linn County deed records, the claimants, Walter and Sally Miller have not established their ownership of the property for the purposes of Measure 49. It appears that the claimants have sold the Measure 37 claim property to Kirkland Estates, LLC and, therefore, are no longer owners of the property.

Because this requirement has not been met, the claimants are not entitled to any relief under Measure 49, and the remaining approval criteria are not evaluated.

**II. COMMENTS ON THE PRELIMINARY EVALUATION**

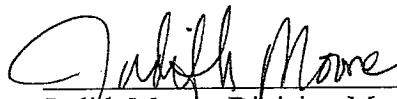
The department issued its Preliminary Evaluation for this claim on November 24, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial.

**III. CONCLUSION**

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals because the claimants are no longer owners of the Measure 37 claim 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:



Judith Moore, Division Manager  
Dept. of Land Conservation and Development  
Dated this 4<sup>th</sup> day of February 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 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.