

Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF SERVICE

For ~~H~~ 129659 WELLONS, I certify that I served the attached FINAL
ORDER on the claimant(s), agent(s), and county as listed on the document,
and the attached FINAL ORDER on;

(See Attached List)

by mailing a full, true and correct copy of the corresponding document to the
person(s) listed above, on the date set forth below.

DATED this 26th day of January 2010.

Name:

Wendy N. 1570
Measure 49 Correspondence Specialist

TOLL PETER
23373 JOHNSON RD
WEST LINN, OR 97068

WELLONS LAURA K.
5055 LAKEVIEW BLVD
LAKE OSWEGO, OR 97035

CLACKAMAS COUNTY PLANNING
150 BEAVERCREEK ROAD
OREGON CITY, OR 97045

H129659



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5318

<http://www.oregon.gov/LCD/MEASURE49>

January 26, 2010



To: Claimant

From: Richard Whitman, Director

Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number H129659

Claimant: *Laura Wellons*

Enclosed is the Department of Land Conservation and Development's (department) Preliminary Evaluation for the above-referenced Measure 49 election, based on the Supplemental Review of the Measure 37 claim.

This Preliminary Evaluation sets forth the department's preliminary analysis of the department's Supplemental Review of the claim under Measure 49 and is not a final decision. Oregon Administrative Rule 660-041-0090(3) requires the department to mail notice of the Preliminary Evaluation to the claimant, the claimant's authorized agent, the county with land use jurisdiction over the Measure 37 claim property, and to any owner who is an owner of record of real property located either within 250 feet of the Measure 37 claim property, if the Measure 37 claim property is not within a farm or forest zone, or within 750 feet of the Measure 37 claim property if it is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include any portion of the Measure 37 claim property or that has made a written request for a copy of the Preliminary Evaluation.

A claimant or the claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the Preliminary Evaluation no more than twenty-eight (28) days after the date of this Preliminary Evaluation. All materials and written responses must identify the claim number and be mailed or delivered to: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, OR 97301-2540, and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day. **Comments submitted electronically or by facsimile will not be accepted.**

The department will then mail a copy of all comments timely filed, if any are received, to you and your authorized agent. You or your authorized agent may then submit written comments in response to any comments submitted by a third party or county. Your response must be filed as provided in OAR 660-041-0100 within twenty-one (21) days after the date the department mailed any comments to you and your authorized agent. The department will review all responses submitted, and a final decision on the claim will be issued after such review. **Please note that if no third party or county comments are filed in response to the Preliminary Evaluation, the department will directly proceed to prepare and issue a final decision.**



**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:

H129659

CLAIMANT:

Laura K. Wellons
5055 Lakeview Boulevard
Lake Oswego, Oregon 97035

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 2S, Range 1E, Section 34A
Tax lot 900
Clackamas County

The claimant, Laura Wellons, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 13, 2006, for property located near West Linn 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 elected supplemental review of her 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. However, as initially adopted in 2007, claimants who did not file county Measure 37 claims were not eligible for Measure 49 relief. Accordingly, a Preliminary Evaluation dated September 11, 2008 indicated that the claimant was ineligible for relief under Measure 49 because she had failed to file a county Measure 37 claim. The Oregon State Legislative Assembly subsequently amended Measure 49, through the passage of HB 3225 (Chapter 855 (2009 Laws)). Under the amended statute, claimants who timely filed Measure 37 claims only with the State are eligible for Measure 49 relief. The claimant has elected to seek relief under Measure 49, as amended by HB 3225, and has tendered the required filing fee.¹

This Final Order and Home Site Authorization is the conclusion of the supplemental review of this claim.

¹ Under Measure 49, claims must be processed in the order in which the elections are received. Sections 9 and 20 of HB 3225 allow the DLCD Director to expedite review of Measure 49 claims based on a determination that a hardship exists. The Director has determined that a hardship exists, based on the claimant's contractual agreement to sell the subject Measure 37 claim property.

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 two home site approvals in the election material. The Measure 37 waiver issued for this claim describes two 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, as amended by HB 3225, the claimant must meet each of the following requirements:

1. Timeliness of Claim

To qualify for a home site approval under Section 6 of Measure 49, as amended by HB 3225, 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 state Measure 37 claim was filed after December 4, 2006, the claim must also have either been filed in compliance with the provisions of OAR 660-041-0020 then in effect; or the claimant must have submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or the claimant must also have filed a Measure 37 claim with the county on or before December 4, 2006.

Findings of Fact and Conclusions

The claimant, Laura Wellons, filed a Measure 37 claim, M129659, with the state on July 13, 2006.

The claimant filed a state Measure 37 claim prior to December 4, 2006.

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, Laura Wellons is the owner of fee title to the property as shown in the Clackamas County deed records 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 Measure 37 Claim Property Is Located Entirely Outside the Boundaries of Any City and the Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary; or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary

The Measure 37 claim property must be located entirely outside the boundaries of any city and the majority of the Measure 37 claim property must be located outside any urban growth boundary; 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, outside the urban growth boundary and outside the city limits of the nearest city, West Linn.

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, which became effective October 4, 2000, prohibit the establishment of a lot or parcel less than 20 acres for property within a mile of the UGB for the Portland metropolitan area. Because the claimant's property is within one mile of the Portland metropolitan area UGB all new lots or parcels must be at least 20 acres in size.

The claimant's property consists of 10.40 acres. Therefore, state land use regulations prohibit 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.

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 claimant, it does not appear that the establishment of the two home sites for which the claimant 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

The claimant is the surviving spouse of Jason Wellons and acquired the property upon Jason Wellons' death. According to the Clackamas County deed records, Jason Wellons acquired the property on September 20, 2000 and married the claimant on August 14, 1983. Under Section 21(2) of Measure 49, if the claimant is the surviving spouse of a person who was an owner of the Measure 37 claim property, the claimant's acquisition date is the later of the date the claimant was married to the deceased spouse or the date the spouse acquired the property. Therefore, the claimant's acquisition date is September 20, 2000.

On September 20, 2000, the Measure 37 claim property was subject to Clackamas County's acknowledged Rural Residential Farm Forest (RRFF-5) zone. Clackamas County's RRFF-5 zone required five acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's acquisition date was prior to the enactment of the state law requirement that a lot or parcel within one mile of the UGB for the Portland metropolitan area

must be at least 20 acres. The claimant's property consists of 10.40 acres. Therefore, the claimant lawfully could have established the requested two home sites on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 16, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. The department received a comment in response to the Preliminary Evaluation. The comment has been taken into account by the department in the issuance of this Final Order and Home Site Authorization; however, the issues raised in the comment are more appropriately considered by Clackamas County at the time the claimant seeks land use approval based on the Home Site Authorization and are therefore not specifically addressed in this Final Order.

III. CONCLUSION

Based on the analysis above, the claimant qualifies 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 claimant and information from Clackamas County, the Measure 37 claim property includes one lot or parcel and no dwellings. There is no contiguous property under the same ownership. Therefore, the two home site approvals the claimant qualifies for under Section 6 of Measure 49, as amended by HB 3225, will authorize the claimant to establish one additional lot or parcel and up to two dwellings on the Measure 37 claim property.

IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for two home site approvals. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for one additional lot or parcel and two dwellings on the property on which the claimant is eligible for Measure 49 relief, as amended by HB 3225, subject to the following terms:

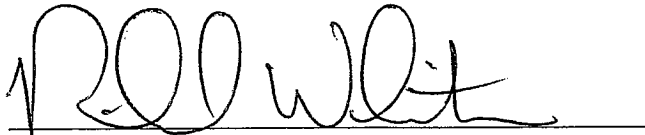
1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting 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. 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 claimant has developed the limit of twenty home sites under Measure 49, the claimant is 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 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.
6. 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.
7. The claimant may use a home site approval 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.

8. The claimant 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 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 property on which the claimant is eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
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/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.
11. If the claimant 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.
12. 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:

A handwritten signature in black ink, appearing to read 'R. Whitman', is written over a horizontal line.

Richard Whitman, Director

Dept. of Land Conservation and Development

Dated this 26th day of January 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.