



**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 NUMBERS: H132315, H132316 and H132318¹

CLAIMANT: Gordon C. Dromgoole²
19643 NW Goodrich Road
Yamhill, OR 97148

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2S, Range 4W
Section 33, Tax lot 100
Section 34, Tax lots 400 and 500
Yamhill County

The claimant, Gordon Dromgoole, filed claims with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 19643 NW Goodrich Road and 19381 Highway 47, near Yamhill, in Yamhill 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 his Measure 37 claims 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 enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant did not file a Measure 49 election within 90 days of the department mailing the election packet. Gordon Dromgoole was not entitled to Measure 49 relief on that basis.

However, 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 claimant, Gordon Dromgoole, from obtaining Measure 49 relief. The claimant elected to seek relief under Measure 49, as amended by HB 3225, and submitted the fee required by Section 18 of HB 3225 in order to have the claims reviewed.

¹ Claims H132315, H132316 and H132318 have been combined into one claim because the properties are contiguous. Per OAR 660-041-0150 the Department of Land Conservation and Development will combine multiple claims into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

² Carolyn Y. Dromgoole was also a Measure 37 claimant; however, she passed away since the filing of the Measure 37 claim.

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 eight home site approvals in the election material. No waiver was issued for these claims. The Measure 37 claims filed with the state describe 21 home sites.³ Therefore, the claimant 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 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 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 claimant, Gordon Dromgoole, filed Measure 37 claims M132315, M132316, and M132318, with the state on November 30, 2006. The claimant filed Measure 37 claims M37-184-06, M37-185-06 and M37-186-06, with Yamhill County on November 30, 2006. The state claims were filed prior to December 4, 2006.

The claimant filed timely Measure 37 claims with the state along with any additional claims or applications that the claimant had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

³ The Measure 37 claims described the property and requested relief for tax lot 100 (Section 33) and tax lots 400 and 500 (Section 34).

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 and land sale contracts submitted by the claimant, Gordon Dromgoole is the owner of fee title to the property as shown in the Yamhill County deed records 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 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 Yamhill County and the property is located outside any urban growth boundary and outside the city boundary of the nearest city, Yamhill.

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. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 155.67 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three 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 three 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

Yamhill County deed records indicate that the claimant acquired tax lot 100 (28.70 acres) on December 17, 1968, tax lot 400 (58.80 acres) on July 30, 1974 and tax lot 500 (68.17 acres) on October 9, 1979.

The claimant acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Yamhill County's comprehensive plan and land use regulations to be in

compliance with those goals pursuant to ORS 197.250 and 197.251. On October 9, 1979, the Measure 37 claim property was zoned Exclusive Farm Use (EF-40) by Yamhill County. Yamhill County's EF-40 zone included a fixed minimum acreage standard of 40 acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired the property on October 9, 1979. Accordingly, the statewide planning goals, and in particular Goal 3 and ORS chapter 215 applied directly to the Measure 37 claim property when the claimant acquired it.

On June 12, 1980, the Commission acknowledged the application of Yamhill County's Exclusive Farm Use (EF-40) zone to the Measure 37 claim property. The Commission's acknowledgement of Yamhill County's EF-40 zone confirmed that zone's compliance with Goal 3 and ORS chapter 215. Yamhill County's acknowledged EF-40 zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 155.67 acres. Therefore, on the claimant's acquisition date, they could have established three home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.⁴

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 subject to consistency with local land use regulations in effect when they acquired the Measure 37 claim property, claimants whose property consists of at least 40 acres were lawfully permitted to establish up to three home sites.

The Measure 37 claim property consists of 155.67 acres. Therefore, based on the analysis under SB 1049 (2010), the claimant was lawfully permitted to establish three home sites on the Measure 37 claim property on his date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on July 19, 2010. 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 and Home Site Authorization. Specifically, the claimant submitted a comment asserting that he had sold tax lot 500 to a new owner. However, based on the Yamhill County deed records it appears that the claimant is still the owner of the entire claim property. Additionally, Yamhill County submitted a comment stating that tax lot 400 contains only a temporary farm help dwelling, the approval for which expired on September 27, 2004. This final

⁴ Because the claimant was lawfully permitted to establish on the Measure 37 claim property the maximum number of home sites for which they may qualify based on the latest acquisition date, the department has omitted the lawfully permitted analyses based on the earlier acquisition dates.

order has been modified accordingly to state that the Measure 37 claim property currently contains only one permanent dwelling.

III. CONCLUSION

Based on the analysis above, the claimant qualifies 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 claimant and information from Yamhill County, the Measure 37 claim property includes three lots or parcels and one dwelling.⁵ There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish no additional lots or parcels and two additional 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 three 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 no additional lots or parcels and two additional dwellings 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 claimant is eligible for Measure 49 relief. The establishment of a dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the 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 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

⁵ Information received from Yamhill County for this claim indicates that there is one temporary dwelling currently located on the subject property. Temporary dwellings are not considered in determining the number of dwellings currently existing on the property. The claimant may choose to convert a temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief, to an authorized home site through the Measure 49 home site approval. Otherwise, the temporary dwelling is subject to the terms of local permit requirements under which it was approved, and is subject to removal at the end of term for which it is allowed.

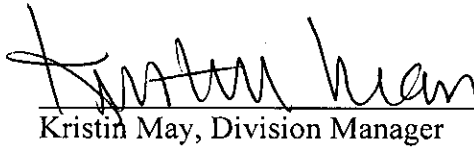
Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.

4. The number of dwellings a claimant may establish under this home site authorization is reduced by the number of 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 dwellings to be either greater than or less than the number of dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional 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 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.
7. The claimant may use a home site approval to convert a 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 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 dwellings to convert to authorized home sites.
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.
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. Because the property is located in an exclusive farm use zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.
12. 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 and 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 and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.
13. 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 dwellings within 10 years of the conveyance. A dwelling lawfully created based on a home site approval is a permitted use.
14. 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:



Kristin May, Division Manager
Dept. of Land Conservation and Development
Dated this 2nd day of September, 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.