MEMORANDUM

TO: Inga Williams, Planning Director Union County Planning Commission

FROM: Wyatt S. Baum, Attorney for Union County

DATE: September 2, 2026

RE: Appeal of Application No. 2026-0026 (Mast Replacement Dwelling) — Effect of Measure 49 Final Order, State Election No. E118711; Planning Commission Hearing of September 28, 2026

I. INTRODUCTION

This memorandum addresses the legal question presented by the appeal of Andrew and Marcella Mast ("Appellants") from the Planning Director's decision approving Application No. 2026-0026, a replacement dwelling application for property at 61459 Highway 237, Cove (Township 03S, Range 40E, Section 21, Tax Lot 200; the "Property"). The Planning Director approved the application but found that the historic 1900 dwelling and the 1964 single-wide mobile home connected to it by a breezeway together constitute a single, previously expanded dwelling for purposes of a Measure 49 Final Order applicable to the Property. Appellants do not challenge the approval itself. They ask the Commission to overturn that finding so that they may later seek to replace both structures as separate dwellings, relying principally on an April 2021 email from a former Associate Planner suggesting a different result.

As explained below, the Commission cannot grant the relief Appellants are seeking, approval, now or in the future, of four dwellings on a claim property for which the State of Oregon has authorized three, regardless of how the Commission resolves the factual dispute over the number of dwellings that existed on the Property historically. The governing Measure 49 Final Order sets the limit at three. Neither the Planning Director nor this Commission has authority to expand it.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Measure 49 Final Order

The Property is subject to a Final Order and Home Site Authorization issued by the Oregon Department of Land Conservation and Development ("DLCD") on September 30, 2009, under Section 6 of Ballot Measure 49 (State Election No. E118711, claimant Miriam Hill) (the "M49 Order"). Based on the record before it, DLCD found that "the Measure 37 claim property includes one lot or parcel and one dwelling," and on that basis authorized the claimant "to establish up to two additional lots or parcels and two additional dwellings." Three lots and three dwellings, total, on the Property. M49 Order at 4 (Section III).

The M49 Order caps that total regardless of the underlying facts. If DLCD's count of existing dwellings later proves inaccurate, the number of additional home sites is adjusted, the fixed ceiling of three is not: "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... actually in existence... 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." M49 Order at 5 (Section IV.4); see also id. at 1 (Section I.A) ("the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49").

Two of the three authorized lots were created in 2022, when Tax Lots 201 and 202 were partitioned from Tax Lot 200 under a post-Measure 49 minor partition. Both are now under separate ownership from the Property, and neither has been built on.

B. Application No. 2026-0026

Andrew and Marcella Mast, the current owners of the Property, applied to replace an existing dwelling under OAR 660-033-0130(8) and Article 2 of the Union County Zoning, Partition and Subdivision Ordinance ("UCZPSO"). The dwelling proposed for replacement is the combined structure consisting of the 1900 house and the 1964 single-wide mobile home connected to it by a breezeway; the mobile home was recorded as an addition to the real property in 2021 (Union County Clerk Document No. 20213547).

The 2025 Real Property Assessment Report lists both a dwelling built in 1900 and a mobile home built in 1964 on the Property. The Planning Director found that this current assessment characterization does not match the historical record developed in the Measure 37/Measure 49 proceeding, which consistently described one dwelling on the Property, and concluded that the mobile home is an expansion of the 1900 dwelling rather than a separate legal dwelling. On that basis, the Planning Director approved replacement of the combined structure as a single dwelling, preserving one existing home site and two additional, unbuilt home sites (Tax Lots 201 and 202), three total, consistent with the M49 Order. The Notice of Decision issued June 18, 2026, subject to standard conditions of approval (a four-year construction window, a recorded Farm/Forest Practices Covenant, removal or conversion of the replaced structure within three months of occupancy, a driveway condition, and submission of the certificate of occupancy).

C. The Appeal

Appellants filed a timely Application to Appeal, received by the Planning Department on July 16, 2026, within the 30-day local appeal period. The appeal does not seek reversal of the approval. It challenges specific findings in the staff report, that the Property historically had one dwelling and that the mobile home is an "expansion" rather than a second, separate dwelling, on the ground that those findings foreclose any future application to replace a second dwelling on the Property.

Central to the appeal is an April 28, 2021 email exchange between then-Associate Planner Stacy Warren and Randy McKinnis, a real estate agent, submitted by Appellants as part of the appeal record. In it, Ms. Warren stated that Scott Hartell, the county planning official who reviewed the matter, had decided that, if both structures could meet the county's replacement-dwelling criteria, "we will allow both of them to be replaced," and that the county "will also allow the M49 claim to be perfected, two additional parcels, each with a dwelling." Appellants state that this exchange "carried substantial weight" in their decision to purchase the Property, and ask the Commission to "restore" what they characterize as the Planning Department's 2021 position. The matter is scheduled for hearing before the Commission on September 28, 2026.

III. ANALYSIS

A. Measure 49 Caps Development on the Property at Three Home Sites. However the "One Dwelling or Two" Question Is Resolved

Appellants' central factual claim is that the Property has always had two dwellings, the 1900 house and the 1964 mobile home, rather than the single, expanded dwelling the Planning Director found. Even if the Commission agreed with Appellants on that historical question, it would not produce the result Appellants want.

Section 6 of Measure 49 caps the home site approvals DLCD may authorize for this claim at three. M49 Order at 1. The Order accounts for existing development by netting it against that fixed ceiling, not by adding new home sites on top of it: the number of additional lots and dwellings authorized equals three minus the dwellings already on the Property, and if the existing count later proves different than DLCD assumed, only the additional-dwelling figure is adjusted, the total of three is not. M49 Order at 5 (Section IV.4). The math works out the same way under either version of the facts:

1. If there was one existing dwelling *(DLCD's finding, and the Planning Director's)*, the Order authorizes two more, one existing plus two new home sites equals three total. That is the basis for the Property's 2022 partition into Tax Lots 200, 201, and 202.
2. If there were, as Appellants contend, two existing dwellings, the Order's own adjustment mechanism would have authorized only one additional home site, not two, two existing plus one new home site equals three total, the same limit.

There is no reading of the M49 Order, under either version of the facts, that produces four dwellings on this claim property. Reversing the Planning Director's "one dwelling" finding would not give Appellants a fourth dwelling; it would only reallocate which structures occupy the three home sites DLCD already authorized. The Commission accordingly does not need to resolve the historical dispute to deny the substantive relief Appellants are seeking, the Measure 49 ceiling controls either way.

B. Neither the County Nor a 2021 Staff Email Could Lawfully Enlarge a State Home Site Authorization

Appellants' appeal rests heavily on the 2021 Warren/McKinnis email. Read together, the two assurances it contains, that both existing structures could be replaced, and that the Measure 49 claim could still be "perfected" through two additional parcels, would produce four dwellings on the claim property, one more than Section 6 of Measure 49 permits. That combination could not bind the county, for two independent reasons.

First, it was beyond the county's authority to grant. Measure 49 home site authorizations are issued by DLCD, not by county planning staff. The county administers the DLCD grants but has no delegated authority to expand it. A staff member's statement that the county would allow more development than a state final order authorizes does not, and could not, change what that final order authorizes. Equitable estoppel cannot be used to compel a governmental body to do what it had no authority to do in the first place, and both Oregon courts and the Land Use Board of Appeals have been reluctant to enforce informal staff representations against that backdrop. See *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014) (declining to apply equitable estoppel absent a clear source of authority for LUBA to grant equitable relief); *Wellet v. Douglas County*, 62 Or LUBA 372 (2010) (rejecting an estoppel argument premised on erroneous informal advice from county planning staff).

Second, even taken at face value, the 2021 email does not satisfy Oregon's test for equitable estoppel against a public body. A party invoking estoppel must show, among other elements, a false representation made with knowledge of the facts, made with the intent that it be relied on, and reasonable detrimental reliance. *Coos County v. State of Oregon*, 303 Or 173, 180-81, 734 P2d 1348 (1987). Ms. Warren's email was conditional, it applied only "if both dwellings can meet our replacement dwelling criteria," a determination that had not been made in 2021 and was not made until the Planning Director's 2026 review of this application. It was also an informal response to a real estate agent's pre-purchase inquiry, made outside of, and never tested through, any application process. An informal, conditional, pre-application communication of this kind is not the sort of considered governmental act on which estoppel can rest, particularly where giving it effect would require the county to exceed a fixed statutory and state-order ceiling.

C. The Planning Director's Treatment of the Combined Structure as One Dwelling Is Independently Well Supported

Apart from the Measure 49 ceiling discussed above, the record supports the Planning Director's finding that the combined structure functions as a single dwelling for replacement-dwelling purposes. The Measure 37/Measure 49 record compiled between 2005 and 2009, including DLCD's Preliminary Evaluation and Final Order, consistently describes "one lot or parcel and one dwelling" on the Property, a description based on "information from Union County" at the time. M49 Order at 4 (Section III). The 2025 Real Property Assessment Report on which Appellants rely reflects current tax-lot improvements, not the historical facts material to a claim adjudicated in 2009, and the manufactured home was itself recorded as an addition to the real property only in 2021, after the M49 Order issued, consistent with the Planning Director's finding that it is an expansion of the original dwelling rather than a second, independently established one. Staff Report § V (Findings, OAR 660-033-0130(8)(a), (d)).

IV. CONCLUSION

The Commission may resolve the "one dwelling or two" factual dispute as the record supports, but that resolution cannot change the outcome that matters here: Measure 49 authorizes a maximum of three home sites, three lots, three dwellings, on this claim property, and no combination of past or present administrative statements can lawfully authorize a fourth. The Planning Director's decision, which approves the replacement dwelling while keeping total development on the Property within the three home sites Measure 49 allows, is consistent with the Measure 49 Final Order and should be affirmed.

UNION COUNTY
Planning Department

Inga Williams
Planning Director

1001 4th Street, Suite C La Grande, OR 97850 • Phone (541) 963-1014 • www.UnionCountyOR.gov
IWilliams@Union-County.org • PTracy@Union-County.org • PHall@Union-County.org

APPLICATION TO APPEAL

Submission Date: 7/16/2026

Check the appeal that you are applying for:

[X] an Appeal to the Planning Commission from a decision of the Planning Department

[ ] an Appeal to the Board of Commissioners from a decision of the Planning Commission

Information on the application you are appealing:

File Number of the Application you are Appealing 2026-0026

The Purpose of that Application Replacement Dwelling

Date of Decision June 18, 2026

CONTACT INFORMATION for all appellants from a single address

Name(s)	Andrew Mast
Phone Number	[redacted]
Email Address	
Mailing Address	61459 Union/Cove Hwy 237 Cove, OR 97824

Appellants from different addresses may combine an appeal. Copy this application form as many times as needed and submit together with one Basis of Appeal attachment.

Basis of Appeal *(attach a narrative to this application form)*
Your appeal must be very specific about the decision or condition being appealed. Identify the chapter and section of all policies of the Union County Zoning, Partition, and Subdivision Ordinance (Code) that you believe were not properly administered or followed. Prove an explanation of the issues that you are basing the Appeal on.

I, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

Andrew J. Mast Signature		Marcella Mast Signature	
Andrew Mast Printed Name	7.16.26 Date	Marcella Mast Printed Name	7/16/2026 Date

The Planning Commission or Board of Commissioners shall consider the application record and accept new evidence and testimony (a de novo hearing). The hearing shall be conducted and a decision made according to Quasi-Judicial hearing procedures. The Planning Commission or Board of Commissioners may affirm, reverse or modify, in whole or in part, the orders, requirement, decision, determination, interpretation, or ruling appealed. The Planning Commission or Board of Commissioners shall transmit a copy of their decision to the appellant and all participating parties. Appeals of a Board of County Commissioners decision must be made to the Oregon State Land Use Board of Appeals.

RECEIVED

JUL 16 2026

UNION COUNTY
PLANNING DEPARTMENT

RE: MAST PROPERTY HWY 237 COVE, OR

Dear Planning Commission Members,

This will very likely be one of the most unusual appeals you have reviewed as Planning Commission Members. The subject of our appeal is not the decision made administratively by the Planning Director. She, in fact, approved our application for a replacement dwelling on our property. The basis for our appeal rests in the information created in the staff report that was then used as part of the decision process. Please refer to the Staff Report for Application #2026-0026 that we have included in our packet provided to you.

Starting with Summary item 3, notice the highlighted information shown in the property description that is written in a way that supports the claim by the Planning Director that the two existing dwellings have been converted to one dwelling. This information is highly inaccurate. There were two existing dwellings with two addresses when the property was purchased and they remain that way. This is important-not for this immediate application-but for any possible future replacement dwellings that may be applied for by the owners.

This same line of reasoning appears again in Section II- Background and Property Information. Notice in paragraph 4 near the bottom of Page 2 where the Measure 37 and Measure 49 decisions are referenced and again on the following paragraph where the claim by the property owners stating the existence of two homes on the property doesn't match with historic information shown in the previous owner's Measure 37 claim and Measure 49 final order. Although the 2025 Property Assessment Report does in fact show two existing homes on the property, the Planning Director chose to claim them to be one dwelling with one being an expansion of the other. The expansion and combining of the existing homes fits very will with the decision to approve the replacement application and by doing so, to deny the owners of any further possibility of legally replacing the second dwelling in the future, which is the basis for our appeal.

There appears to be several places within the Staff Report that shows the Director applied opinion rather than using current information contrary to that opinion. We also note that the single most important piece of information was completely left out of the Staff Report and was not referenced anywhere in the decision process. Please review the page of emails provided in this appeal packet between then Associate Planner Stacy Warren and Randy McKinnis of REMAX Real Estate in April 2021. These emails very clearly state the Planning Dept supported the existence of two dwellings and also approved the ability by this owner to replace both when and if they close to do so. This opinion carried substantial weight in the decision to move forward to purchase the property.

We believe the prior opinion of the Planning Dept is still valid, regardless of whether the current Planning Director supports that decision or not. It seems that the right steps were taken in 2021 to assure the property could be developed as we intended and that the decision of the Union County Planning Dept was valid in 2021 and is still valid today.

Please support our appeal of the information included in this decision process and restore our ability to replace BOTH dwellings on our property, just as the previous Planning Dept decision did.

Thank You

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Planning Department

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Planning Director

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NOTICE OF DECISION
REPLACEMENT DWELLING
APPLICATION NO. 2026-0026

Based on information submitted by the applicant and the findings in the staff report, the Planning Director has determined that the applicant's proposal meets relevant standards and criteria, and, therefore, shall be granted approval subject to conditions listed in the staff report. This approval is valid for four years from the date of this decision.

Purpose of the Application	Replace an existing dwelling
Relevant Ordinance Criteria	Union County Zoning, Partition and Subdivision Ordinance (UCZPSO) Article 2; Oregon Administrative Rules (OAR) 660-033-0130(8)
Property Identification & Location	Township 03S, Range 40E, Section 21, Tax Lot 200; Situs address is 61459 Hwy 237, Cove
Property Owner & Applicant	Andrew and Marcella Mast
Zone Designation	Exclusive Farm Use (A-1)
Comprehensive Plan Designation	Exclusive Agriculture
Property Size	24.94

THIS DECISION MAY BE APPEALED TO THE PLANNING COMMISSION. The appeal must be filed by 12:00 P.M. on July 20, 2026 (the 30th calendar day after the date of the decision[1]). You may file an appeal at the Planning Department, 1001 Fourth Street, Suite C; La Grande, OR 97850, or you may email an appeal to IWilliams@Union-County.org An appeal form is available from the Planning Department upon request.

This decision will become final when the 30-day appeal period has elapsed. The staff report that includes the findings of fact relied upon in making this decision are available for review at the Planning Department. A copy will be provided at cost if printed. Digital copies are available free.

Inga K Williams
Planning Director

June 18, 2026
Date Signed

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:
ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER. The recipient of this notice is hereby responsible to promptly forward a copy of this notice to every person with a documented interest, including a renter or lessee.

[1] If the 30th day falls on a Friday or the weekend when county offices are closed, the deadline will be the following Monday at 12 P.M.

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Application No. 2026-0026

STAFF REPORT
REPLACEMENT DWELLING APPLICATION

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Property Size	24.94

I. SUMMARY

This application to replace an existing dwelling is **approved**. The following conditions of approval apply.

1) Approval to replace the dwelling remains valid for four years from the date of the Planning Director's decision. The approval shall be null and void at the conclusion of the four years if no building permit application has been issued or, if a building permit application has been issued, the replacement dwelling activities do not comply with the county's definition of Start of Construction, in quotes.

   "Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure."

2) Prior to requesting zoning approval for a building permit, the property owners shall sign and record in the deed records for the county a Farm/Forest Covenant binding the landowners, and the landowners' successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. This document is available from the Planning Department.

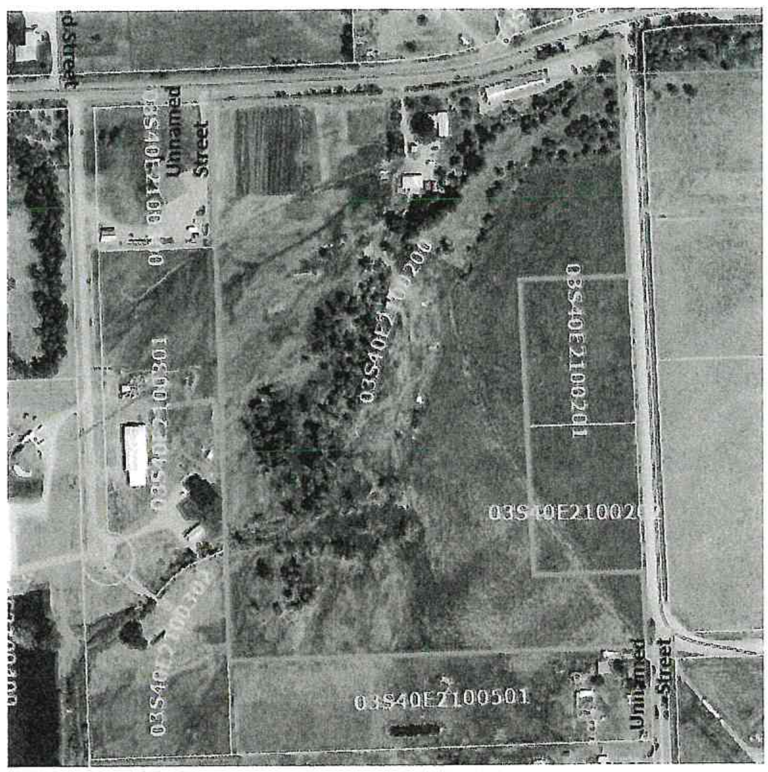
3) The dwelling to be replaced is represented by the combined 1900 dwelling and 1964 manufactured home. Within three months of the replacement dwelling being certified for

occupancy, if not sooner, the property owners shall provide proof to the Planning Department that the dwelling to be replaced has been demolished, removed, or converted to nonresidential use. If the applicants choose to convert to nonresidential use, the Planning Director shall be allowed to inspect and the director will approve or deny the conversion and require further conversion if necessary.

4) The property owners shall utilize the existing driveway to access their new dwelling. If the property owners want to create a new driveway, the old driveway will need to be decommissioned. Approval of a new driveway is through the Oregon Department of Transportation.

5) The property owners shall provide the Planning Department with a copy of the Certificate of Occupancy for the new dwelling within a week of the approval.

II. BACKGROUND AND PROPERTY INFORMATION



The subject parcel is Tax Lot 200 located in Township 03S, Range 40E, Range 21. The property address is 61459 Hwy 237, Cove. The parcel is approximately 25 acres and is zoned A-1 Exclusive Farm Use.

Tax Lot 200 was described in a deed recorded in Book 11 and Page 167, recorded in 1947. It was deemed to be a legally created parcel by Scott Hartell in the Findings of Fact for Application No. 2015-0004, which was a property line adjustment approved in 2015.

Tax Lots 201 and 202 are two acres each and were partitioned from Tax Lot 200 in 2022. The partition was allowed through a Post-Measure 49 Minor Partition approval. Both parcels are under separate ownership.

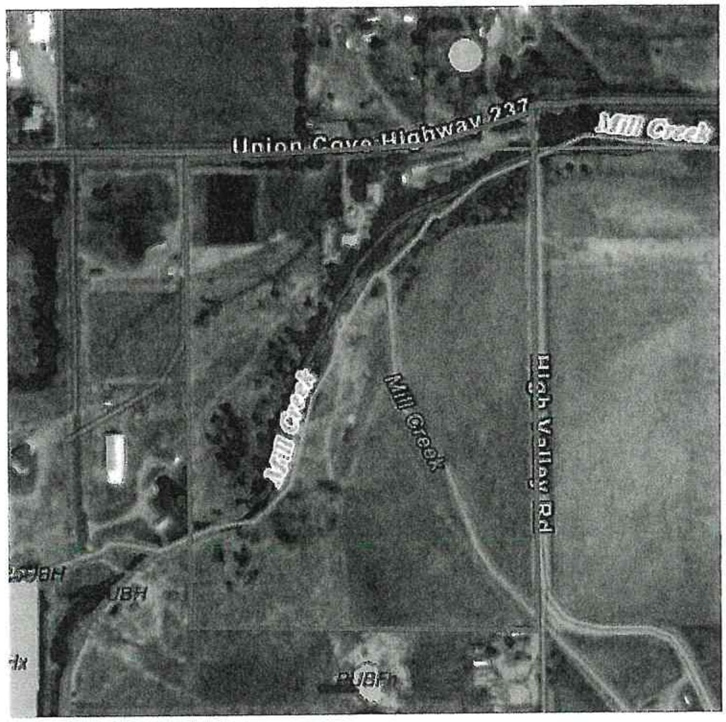
The Measure 49 Supplemental Review of Measure 37 Claim Final Order and Home Site Authorization[1] states on the bottom of Page 4 of 8, "Based on the documentation provided by the claimant and information from Union County, the Measure 37 claim property includes one lot or parcel and one dwelling." No contiguous property under the same ownership was identified. The Measure 49 approval authorized the claimant to establish up to two additional lots or parcels and two additional dwellings. A total of three dwellings and three parcels.

The applicants are claiming two dwellings on the subject parcel. The 2025 Real Property Assessment Report states that a dwelling built in 1900 and a mobile home single wide (built in 1964) are located on the subject parcel. This does not match with historic documentation provided

[1] State Election Number E118711, Claimant Miriam Hill

by the Measure 37 claimant and stated in the Measure 49 Final Order. The mobile home is therefore deemed an expansion of the 1900 dwelling, not a separate legal dwelling. Since the applicants have utilized the Measure 49 Final Order authorization and partitioned two parcels to allow for two additional dwellings, there can be only one dwelling on Tax Lot 200.

There is no flood plain on the property. There are designated wetlands on the property, as shown on the Statewide Wetlands Inventory map. The subject parcel is outlined in red.



The green line is deemed a freshwater forested/shrub wetland and the blue line is riverine wetland.

The applicants are locating the replacement dwelling south of the wetland and Mill Creek. The Department of State Lands will be notified when the applicants apply for zoning approval. The applicants will also be required to contact Cove RFPD about bridge load requirements and engineer the bridge to support fire apparatus live loads.

III. AGENCY COMMENTS

The Oregon Department of Transportation commented that they have no concerns as long as the applicants do not create a new driveway to access their new dwelling.

IV. PUBLIC TESTIMONY

No testimony was received by the time this report was finalized.

V. FINDINGS APPLYING CODE CRITERIA

All applications are subject to the requirements of the Union County Zoning, Partition and Subdivision Ordinance, Oregon Administrative Rules, and Oregon Revised Statutes. Sections in boldface type below denote relevant Ordinance, Oregon Administrative Rule, or State Statute sections. Sections in regular type denote staff analysis of the application.

OAR 660-033-0130(8)

(a) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the county finds to its satisfaction, based on substantial evidence that the dwelling to be altered, restored or replaced has, or formerly had:

A. Intact exterior walls and roof structure;
B. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
C. Interior wiring for interior lights; and
D. A heating system;

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Application No. 2026-0026

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II. BACKGROUND AND PROPERTY INFORMATION

The subject parcel is Tax Lot 200 located in Township 03S, Range 40E, Range 21. The property address is 61459 Hwy 237, Cove. The parcel is approximately 25 acres and is zoned A-1 Exclusive Farm Use.

Tax Lot 200 was described in a deed recorded in Book 11 and Page 167, recorded in 1947. It was deemed to be a legally created parcel by Scott Hartell in the Findings of Fact for Application No. 2015-0004, which was a property line adjustment approved in 2015.

Tax Lots 201 and 202 are two acres each and were partitioned from Tax Lot 200 in 2022. The partition was allowed through a Post-Measure 49 Minor Partition approval. Both parcels are under separate ownership.

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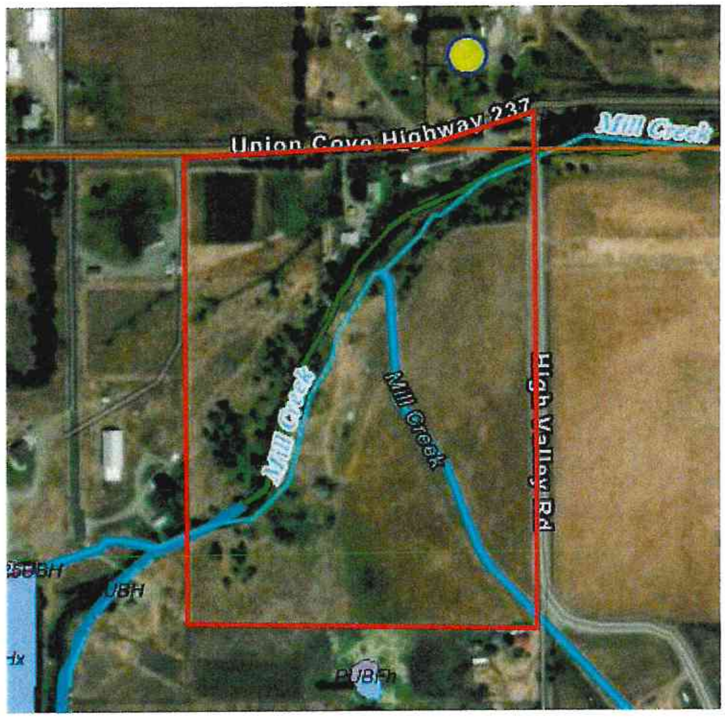

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- **A. Intact exterior walls and roof structure;**
- **B. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- **C. Interior wiring for interior lights; and**
- **D. A heating system;**

Findings: The dwelling to be replaced was built in 1900, and it has a manufactured home extension added around 2021. It is a lawfully established dwelling. The applicant has submitted photographs demonstrating the existing dwelling has intact exterior walls and roof structure, indoor plumbing (kitchen sink and full bathroom) connected to a functioning septic system, interior wiring for interior lights, and a heating system.

Conclusion: Criteria met.

OAR 660-033-0130(8)
(b) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (a).

Findings: The dwelling still possesses all the features listed under subsection (a).

Conclusion: Criterion met.

OAR 660-033-0130(8)
(c) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.

Findings: This is not a criterion for approval but a condition that must be met by the property owners.

Conclusion: Criteria met by condition.

OAR 660-033-0130(8)
(d) In addition to the provisions of subsection (a), the dwelling to be replaced meets one of the following conditions:

> **(A) If the value of the dwelling to be replaced was eliminated as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:**
>
> > **(i) Five years before the date of the destruction or demolition; or**
> >
> > **(ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or**
>
> **(B) The value of dwelling to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for purposes of ad valorem taxation since the later of:**
>
> > **(i) Five years before the date of the application; or**
> >
> > **(ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.**

Findings: Subsection (B) applies. The existing dwelling is not destroyed or demolished. The original dwelling has been in existence since 1900 and the mobile home extension since 2021[2]. The 1900 dwelling has been assessed as a dwelling for ad valorem tax purposes for substantially more than the previous five property tax years before this application was submitted.

Conclusion: Criteria met.

OAR 660-033-0130(8)
(e) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):

---

[2] Application for Recording Manufactured Home as Real Property No. 21-34535, Recorded by the County Clerk of Union County as document number 20213547

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.

(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.

(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel...

Findings: This is not a criterion for approval but a condition that must be met by the property owners. Subsection (C) does not apply.

Conclusion: Criteria met by condition of approval.

OAR 660-033-0130(8)(f)

(A) A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.

(B) The replacement dwelling may be sited on any part of the same lot or parcel.

(C) The replacement dwelling must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

Findings: The replacement dwelling will be sited on the same parcel as the existing dwelling. The replacement dwelling will be subject to applicable building, plumbing, and sanitation codes at the time of construction.

Conclusion: Criteria to be met upon submittal for zoning approval and building permit application.

UCZPSO 2.05.26.B – Single-Family Dwelling Deeds

The landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Findings: The Farm/Forest Practices Covenant must be signed and recorded prior to zoning approval for the building permit submittal.

Conclusion: Criterion met by condition of approval.

VI. PLANNING OFFICIAL AUTHORITY AND ACTION

UCZPSO 2.03 ADMINISTRATIVE USES The following uses may be established in an A-1 Zone subject to the review process identified in Section 24.02 (Planning Director Land Use Decision).

11. Alteration, restoration, or replacement of a lawfully established dwelling subject to Subsection 2.05.26.B and Section 2.11.

Section 2.11 of the UCZPSO mirrors but does not fully reflect the current version of OAR 660-033-0130(8). The OAR is the controlling authority for replacement dwellings in the A-1 Exclusive Farm Use zone. Findings below are made under OAR 660-033-0130(8). UCZPSO 2.05.26.B remains directly applicable and is addressed separately.

Stacy Warren

From: Stacy Warren <swarren@union-county.org>
Sent: Wednesday, April 28, 2021 1:39 PM
To: 'randym@eoni.com'
Subject: RE: Hill Property

You are right. Our records show that both homes have been there for a long time and according to Miriam Hill (Board of Commissioners testimony) there were two addresses at one time. It sounds like both houses may have been connected to the same septic system at one time, but it doesn't really make a difference if they are sharing a system or have their owns systems, as long as they are connected to one. We don't know if the state would have approved two additional parcels with two additional dwellings if they realized there were two existing dwellings on the subject parcel, but we are going honor that M49 decision and allow it.

Stacy Warren
Associate Planner
Union County Planning Department
1001 4th Street, Suite C
La Grande, OR 97850
541-963-1014

From: randym@eoni.com <randym@eoni.com>
Sent: Wednesday, April 28, 2021 1:27 PM
To: 'Stacy Warren' <swarren@union-county.org>
Subject: RE: Hill Property

Thank you Stacy! So just to clarify……… You are saying both homes could be replaced assuming they meet the replacement criteria. By replacing both homes on the same parcel, it will not impact the ability to create 2 additional parcels aside from the parcel that would then contain two new homes. Am I right on this?

Randy McKinnis
RE/MAX Real Estate Team
1214 ½ Adams Ave
La Grande, OR 97850
541-963-1000 office
541-786-0068

From: Stacy Warren <swarren@union-county.org>
Sent: Wednesday, April 28, 2021 1:13 PM
To: randym@eoni.com
Subject: Hill Property

Hi Randy-
Scott and I have reviewed the records and discussed your question as to whether both of the dwellings on the Hill property (3S, 40E, Sec. 21, TL 200) can be replaced and what that means for the approved M49 claim. Scott has made the decision that if both dwellings can meet our replacement dwelling criteria (intact walls & roof structure, indoor plumbing consisting of a kitchen sink, toilet & bathing facilities connected to a sanitary waste disposal system, interior wiring for interior lights, & a heating system) we will allow both of them to be replaced (replacement dwelling applications required). We will also allow the M49 claim to be perfected- two additional parcels, each with a dwelling.

Union County
2025 Real Property Assessment Report
Account 12258

Map	03S4021-00-00200	**Tax Status**	Assessable
Code - Tax ID	1507 - 12258	**Account Status**	Active
		Subtype	NORMAL
Legal Descr	Metes & Bounds - See legal report for full description		
Mailing	MAST, ANDREW J & MARCELLA E 61459 HWY 237 COVE OR 97824	**Deed Reference #**	See Record
		Sales Date/Price	See Record
		Appraiser	MIKE

		MA	**SA**	**NH**
Property Class	559			
RMV Class	459	02	00	000

Site	**Situs Address**	**City**
	61459 HWY 237	COUNTY

Value Summary

Code Area		**RMV**	**MAV**	**AV**		**RMV Exception**	**CPR %**
1507	**Land**	424,690			**Land**	0	
	Impr	106,000			**Impr**	0	
Code Area Total		530,690	50,450	65,409		0	
Grand Total		530,690	50,450	65,409		0	

Land Breakdown

Code Area	**ID #**	**RFPD**	**Ex**	**Plan Zone**	**Value Source**	**Trend %**	**Size**	**Land Class**	**Trended RMV**
1507	2	☑		UC-A1	Farm Site	113	1.00 AC	FHS	16,340
	4	☑		UC-A1	Farm Use Zoned	113	7.41 AC	4HI1	121,100
	3	☑		UC-A1	Farm Use Zoned	113	1.50 AC	4I1	24,510
	5	☑		UC-A1	Farm Use Zoned	113	0.50 AC	6D	8,180
	6	☑		UC-A1	Farm Use Zoned	113	4.00 AC	6I1	65,380
	7	☑		UC-A1	Farm Use Zoned	113	10.29 AC	7D	168,180
					Well & Septic - SA	100			21,000
					Code Area Total		24.70 AC		424,690

Improvement Breakdown

Code Area	**ID #**	**Year Built**	**Stat Class**	**Description**	**Trend %**	**Total Sqft**	**Ex%**	**MS Acct**	**Trended RMV**
1507	1	1964	441	MS Single wide	126	520		E-904948	9,160
	2	1964	318	GP SHED	126	144			1,080
	3	1964	327	LOFT BARN	126	1,196			14,230
	4	1989	323	HAY COVER	126	1,188			7,040
	5	2023	300	Farm Bldg	126	4,896			44,780
	21	1900	111	CLASS 1 RESIDENCE	126	388			29,710
				Code Area Total		8,332			106,000

Exemptions / Special Assessments / Notations

Notations

- SPECIALLY ASSESSED ADDED 2001
  SA - SPECIALLY ASSESSED: REF#: 12258, SEQ#: 1, BEG DATE: 19760101 / END DATE: 0

Comments *EFU FARM USE-POTENTIAL ADD TAX

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

September 30, 2009

To: Claimant

From: Richard Whitman, Director

Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E118711

Claimant: Miriam Hill

Enclosed is the Department of Land Conservation and Development's (department) Final Order and Home Site Authorization for the above-referenced Measure 49 election, based on the Supplemental Review of the claimant's Measure 37 claim.

This Final Order and Home Site Authorization sets forth the department's decision on the claim under Measure 49 and is final. No further action will be taken on this matter.

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:	E118711
CLAIMANT:	Miriam Hill[1] 704 20th Street La Grande, OR 97850
MEASURE 37 PROPERTY IDENTIFICATION:	Township 3S, Range 40E, Section 21 Tax lot 200 Union County

The claimant, Miriam Hill, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 5, 2005, for property located at 61459 Highway 237, near Cove, in Union 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 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.

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. The Measure 37 waiver issued for this claim describes seven home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

[1] Ralph Hill was also a Measure 37 claimant; however, he passed away since the filing of the Measure 37 claim.

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, Miriam Hill, filed a Measure 37 claim, M118711, with the state on July 5, 2005. The claimant filed a Measure 37 claim with Union County on December 28, 2004. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Union 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, Miriam Hill is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

Union 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 Union County, outside the urban growth boundary and outside the city limits of the nearest city, Cove.

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 (A-1) by Union 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. In addition, counties may adopt larger minimum lot or parcel sizes. Union County's EFU A-1 zone requires a minimum of 160 acres for the establishment of a dwelling on a lot or parcel.

* The claimant's property consists of 28.53 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

Union County deed records indicate that the claimant acquired the property on April 13, 1964.

On April 13, 1964, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least three lots or parcels and at least three dwellings. Therefore, the claimant lawfully could have established the three home sites the claimant qualifies for under Section 6 of Measure 49.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on July 13, 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 and Home Site Authorization.

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 Union County, the Measure 37 claim property includes one lot or parcel and one dwelling. 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 up to two 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 two additional lots or parcels and two additional dwellings 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. 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. Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.

11. Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, 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.

12. 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.

13. 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:

Judith Moore

Judith Moore, Measure 49 Division Manager
Dept. of Land Conservation and Development
Dated this 30TH day of September 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.

UNION COUNTY
Planning Department

HANLEY JENKINS, II, PLANNING DIRECTOR

1001 4TH STREET, SUITE C • LA GRANDE, OREGON 97850 • PHONE (541) 963-1014 • FAX (541) 963-1039 • TTY: 1-800-735-1232

July 22, 2009

Preliminary Evaluation Measure 49 Claim
635 Capitol Street, Suite 150
Salem, OR 97301-2540

RE: Miriam Hill- M49 E118711

Dear Reviewer:

We have reviewed the above described Measure 49 claim and agree the claimant has an opportunity to create a maximum of three parcels- two parcels with new dwellings and a third parcel with the existing dwelling on property currently described as Twp. 3S, Range 40 EWM, Section 21, Tax Lot 200.

Once the claimant has received final DLCD Measure 49 Claim approval, she may pursue a new partition application with the County to effectuate her approval.

Sincerely,

Hanley Jenkins, II
Planning Director

cc: Miriam Hill

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

July 13, 2009

To: Claimant

From: Richard Whitman, Director

Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E118711

Claimant: Miriam Hill

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 claimant's 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
Preliminary Evaluation

July 13, 2009

STATE ELECTION NUMBER:	E118711
CLAIMANT:	Miriam Hill[1] 704 20th Street La Grande, OR 97850
MEASURE 37 PROPERTY IDENTIFICATION:	Township 3S, Range 40E, Section 21 Tax lot 200 Union County

I. ELECTION

The claimant, Miriam Hill, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 5, 2005, for property located at 61459 Highway 237, near Cove, in Union 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 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.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is qualified for up to three home site approvals on the Measure 37 claim property. The claimant's property, including both the Measure 37 claim property and all contiguous property in the same ownership, currently appears to consist of one lot or parcel, which is developed with one dwelling. After taking into account the number of lots, parcels and dwellings currently located on the Measure 37 claim property and the contiguous property under the same ownership, it appears that the home site approvals will allow the claimant to establish two additional lots or parcels and two additional dwellings on the Measure 37 claim property.

[1] Ralph Hill was also a Measure 37 claimant; however, he passed away since the filing of the Measure 37 claim.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS 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. The Measure 37 waiver issued for this claim describes seven home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimant, Miriam Hill, filed a Measure 37 claim, M118711, with the state on July 5, 2005. The claimant filed a Measure 37 claim with Union County on December 28, 2004. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Union County.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimant must establish each of the following:

(a) 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."

According to the deed submitted by the claimant, Miriam Hill is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

(b) All Owners of the Property Have Consented in Writing to the Claim

It appears that the claimant is the sole owner of the property. Therefore, no additional consent is required.

(c) The Measure 37 Claim Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property is located in Union County, outside the urban growth boundary and outside the city limits of the nearest city, Cove.

(d) One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

As stated in Section III above, the claimant may qualify for up to three home site approvals.

The property is currently zoned Exclusive Farm Use (A-1) by Union 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. In addition, counties may adopt larger minimum lot or parcel sizes. Union County's EFU A-1 zone requires a minimum of 160 acres for the establishment of a dwelling on a lot or parcel.

The claimant's property consists of 28.53 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.

(e) 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.

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 would be prohibited by land use regulations described in ORS 195.305(3).

(f) 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."

Union County deed records indicate that the claimant acquired the property on April 13, 1964.

On April 13, 1964, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least three lots or parcels and at least three dwellings. Therefore, the claimant lawfully could have established the three home sites the claimant may qualify for under Section 6 of Measure 49.

2. Preliminary Conclusion

Based on the preliminary analysis, it appears that the claimant, Miriam Hill, qualifies for up to three home site approvals under Section 6 of Measure 49.

V. NUMBER OF LOTS, PARCELS OR DWELLINGS ON OR CONTAINED WITHIN THE PROPERTY

The number of lots, parcels or dwellings that a claimant is authorized to 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. However, 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 and information from Union County, the Measure 37 claim property appears to currently include one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant appears to qualify for under Section 6 of Measure 49 will allow the claimant to establish up to two additional lots or parcels and two additional dwellings on the Measure 37 claim property. Each dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property.

VI. PRELIMINARY STATEMENT OF PROPOSED LIMITATIONS AND CONDITIONS ON THE NUMBER AND SCOPE OF HOME SITE APPROVALS

The department has identified the following limitations and conditions that may affect the number or scope of the home site approvals that the claimant would otherwise be entitled to under Section 6 of Measure 49. This list may not be comprehensive and does not preclude the possibility that other considerations, not yet identified by the department, may affect the establishment of a land division or dwelling authorized by a home site approval.

1. The establishment of a land division or dwelling based on a Measure 49 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. A 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.

4. The number of lots, parcels or dwellings a claimant may establish under a Measure 49 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 preliminary evaluation 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 Measure 49 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 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 a 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 future 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 a 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 any Measure 49 Home Site Authorization for the property will be 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 a home site approval, is sited on a separate lot or parcel.

10. Because the property is located in an exclusive farm use zone, the home site authorization will not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction in one of these zones, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.

11. Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site approvals 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.

12. Once the department issues a final home site authorization, a home site approval granted under that authorization will run with the property and will transfer with the property. A home site approval will not expire, except that if a claimant who received a 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 the 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.

VII. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimant and the claimant's agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimant and the claimant's agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimant and the claimant's authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 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.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.

UNION CO

Planning Dep

1001 4TH STREET, SUITE C • LA GRANDE, OREGON 97850 • PHONE (54

DIRECTOR

35-1232

Randy Makinnes 3-24-08

3S40 21 300

Hill, 1

Have they received a DLCD letter? Randy will call back

January 17, 2008

Miriam Hill
704 20th Street
La Grande, OR 97850

RE: Measure 37 Claims & Measure

Dear Mrs. Hill,

This letter is to provide you with the current status of Ballot Measure 37 claims, legal notice (enclosed) from the Oregon Department of Land Conservation & Development (DLCD) concerning 2007 Ballot Measure 49, and identify your possible opportunities under Measure 49.

You are receiving this letter because you submitted to the County a Measure 37 claim before June 28, 2007. The county received fifty-eight Measure 37 claims (several claims were given extensions and they were not processed before June 28, 2007). Most processed County Measure 37 claims were approved, however several Measure 37 claims were denied by the County Board of Commissioners or withdrawn by the applicant.

The Measure 37 claims that were approved by the County and State of Oregon were allowed to proceed with County land use and/or land division applications. Where a claimant received County land use and/or land division approval and the claimant fully implemented the land use (such as completing dwelling construction or manufactured dwelling placement and all connections) and recorded a final plat in the County Clerk's Office prior to December 6, 2007, the Measure 37 claim and associated land use and/or land division approvals were completed and no further action is necessary.

For all other Measure 37 claims filed with the County and State of Oregon prior to June 28, 2007, claimants may be eligible to pursue a Measure 49 claim.

The enclosed DLCD notice explains that the Oregonian voters approved and enacted 2007 Ballot Measure 49 that became effective on December 6, 2007. Measure 37 claims are no longer effective after December 6, 2007 but they may be replaced by an authorization under Measure 49. The DLCD will be sending you a Measure 49 packet which asks you to choose whether and how you wish to pursue a Measure 49 claim. If you do not respond within 90 days of receiving the DLCD letter you will lose your opportunity to convert your Measure 37 claim to a Measure 49 claim.

DLCD will begin sending Measure 49 packets in the next few days. However, because there are almost 7,000 State filed Measure 37 claims, DLCD expects to take up to 3 months to mail packets to all Measure 37 claimants.

Generally, Measure 49 provides three ways to convert a valid Measure 37 claim that will be processed by DLCD. Each Measure 37 claimant who responds to the DLCD Measure 49 packet within 90 days will need to select one of these Measure 49 opportunities. A brief description of these three Measure 49 opportunities are described as follows:

1. **Common Law Vesting**

   Where a Measure 37 claimant has received both a County and State Measure 37 waiver, County land use and/or land division final approval and completed enough structural construction to meet the Oregon courts interpretation of common law vesting.

2. **Express Lane**

   Qualifying, valid Measure 37 claimants who filed with both the County and State before June 28, 2007 may reapply under Measure 49 for up to three parcels with one dwelling each if the claimants could have created two or three parcels with dwellings at the time they acquired their property.

3. **Conditional**

   Qualifying, valid Measure 37 claimants who filed with both the County and State before June 28, 2007 may reapply under Measure 49 for 4 to 10 lots with one dwelling each on predominantly non-high value farmland or non-high value forestland properties where certified land appraisals can demonstrate land values at the time of acquisition are equivalent to the value of the number of proposed lots between 4 and 10.

I apologize for the length of this letter. Most importantly, please do not forget to respond to the Measure 49 packet material if you believe they are applicable to you. We are willing to try to answer any questions you may have as you review your options.

Sincerely,

Hanley Jenkins II

Hanley Jenkins, II
Planning Director

HJ:sw

May 8, 2007

RECEIVED
MAY 0 2007
UNION COUNTY
PLANNING DEPARTMENT

Mr. Scott Hartell
Associate Planner – GIS Coordinator
Union County Planning Department
1001 4th Street, Suit C
La Grande OR 97850

Re: Renewal of "land use" approval

Dear Mr. Hartell:

I understand that my "land use" approval under Measure 37 must be renewed yearly. Therefore, this letter is formally requesting the renewal of that approval for another year or for whatever length of time is allowable. The original approval letter was dated May 24, 2005, and was addressed to Ralph and Miriam Hill. (Ralph is now deceased.)

Sincerely,

Miriam C. Hill

Miriam C. Hill

RECEIVED
OCT 25 2006
UNION COUNTY
PLANNING DEPARTMENT

October 25, 2006

Mr. Scott Hartell
Associate Planner - GIS Coordinator
Union County Planning Department
1001 4th Street, Suite C
La Grande, Oregon 97850

Re: Renewal of "land use" approval

Dear Mr. Hartell:

From my conversation with you today, I understand that my "land use" approval (letter dated May 24, 2005) must be periodically renewed. Therefore, this letter is formally requesting the renewal of that approval for another year, or for whatever length of time allowable.

The original approval letter (dated May 24, 2005) was addressed to Ralph and Miriam Hill. All future correspondence should be addressed to Miriam only. Ralph died in August of 2005.

Sincerely,

Miriam C. Hill

Miriam C. Hill

UNION COUNTY

Planning Department

HANLEY JENKINS, II, PLANNING DIRECTOR

1001 4TH STREET, SUITE C • LA GRANDE, OREGON 97850 • PHONE (541) 963-1014 • FAX (541) 963-1039 • TTY: 1-800-735-1232

October 30, 2006

Ralph & Miriam Hill
704 20th Street
La Grande, OR 97850

RE: Extension Request

Dear Mr. & Mrs. Hill:

This office has reviewed your request for an extension of your Measure 37 Claim Tentative Plan approved by the Union County Planning Commission on May 24, 2005. Your request has been approved because the circumstances, rules and regulation remain the same as at the time of your original request.

Therefore, your Tentative Plan approval is extended until May 24, 2007. If you have further questions please call or come in.

Sincerely,

Scott Hartell

Scott Hartell
Associate Planner

Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Costal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

May 15, 2006

Hanley Jenkins II, Planning Director
Union County Planning Department
1001 4th Street, Suite C
La Grande, OR 97850

Re: Ballot Measure 37 (ORS 197.352) Claim Number M118711

Claimants: Ralph and Miriam Hill

Dear Mr. Jenkins:

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

Thank you for your courtesies.

Yours very truly,

- 28.53ac. in EFU/A-1
- Purchased 4-5-64
- Create 7 parcels

Lane

LANE SHETTERLY
Director

Enclosure

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Ralph and Miriam Hill, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M118711

Claimants: Ralph and Miriam Hill (the Claimants)

Property: Township 3S, Range 40E, Section 21, Tax lot 200, Union County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Ralph and Miriam Hill's division of the 28.53-acre property into seven parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 5, 1964.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 5, 1964.

3. 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, the order will not authorize the use of the property unless the claimants first obtain 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.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly

Lane Shetterly, Director
DLCD
Dated this 15th day of May, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 15th day of May, 2006.

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 under ORS 183.484: 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 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352[1], the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

[1] By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

May 15, 2006

STATE CLAIM NUMBER:	M118711
NAMES OF CLAIMANTS:	Ralph and Miriam Hill
MAILING ADDRESS:	704 20th Street La Grande, Oregon 97850
IDENTIFICATION OF PROPERTY:	Township 3S, Range 40E, Section 21 Tax lot 200 Union County
DATE RECEIVED BY DAS:	July 5, 2005
180-DAY DEADLINE:	May 20, 2006[1]

I. SUMMARY OF CLAIM

The claimants, Ralph and Miriam Hill, seek compensation in the amount of $401,440 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 28.53-acre property into seven parcels and to develop a dwelling on each parcel. The subject property is located east of Highway 237 and south of High Valley Road, near Cove, in Union County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Ralph and Miriam Hill's division of the 28.53-acre property into seven parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that

[1] This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

use was permitted when they acquired the property on April 5, 1964. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 29, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, four written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on July 5, 2005, for processing under OAR 125, division 145. The claim identifies the county's A-1 Exclusive Farm Use (EFU) zone as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claimants, Ralph and Miriam Hill, acquired the subject property on April 5, 1964, as reflected by a deed included with the claim. The Union County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Ralph and Miriam Hill, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of April 5, 1964.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the subject 28.53-acre property into seven parcels and to develop a dwelling on each parcel, which is not allowed under the property's current zoning.

The claim is based generally on Union County's current A-1 EFU zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.[2] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

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[2] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

ORS 215.780(1)(b) establishes a 160-acre minimum size for the creation of new lots or parcels in EFU zones that are designated rangeland and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants acquired the subject property on April 5, 1964, prior to the adoption of the statewide planning goals and their implementing statutes and rules.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1964 and do not allow the desired division or residential development of the property. These laws restrict the use of the property relative to the uses allowed when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $401,440 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the estimated difference between the current value of the property, as documented by a current tax statement included with the claim, and the value of the property if the desired development were allowed, as estimated by a local realtor.

Conclusions

As explained in Section V.(1) of this report, the claimants are Ralph and Miriam Hill who acquired the subject property on April 5, 1964. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be $401,440.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Union County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development were in effect when the claimants acquired the subject property in 1964. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified.

Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' ability to divide the 28.53-acre property into seven parcels and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by $401,440. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Ralph and Miriam Hill to use the subject property for a use permitted at the time they acquired the property on April 5, 1964.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Ralph and Miriam Hill's division of the 28.53-acre property into seven parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 5, 1964.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 5, 1964.

3. 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, the order will not authorize the use of the property unless the claimants first obtain 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.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 26, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Costal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

April 26, 2006

Hanley Jenkins II, Planning Director
Union County Planning Department
1001 4th Street, Suite C
La Grande, OR 97850

Re: Ballot Measure 37 (ORS 197.352) Claim Number M118711

Claimants: Ralph and Miriam Hill

Dear Mr. Jenkins:

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than ten calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the tenth day or actually delivered to DAS by the close of business on the tenth day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.

Thank you for your courtesies.

Yours very truly,

Lane

LANE SHETTERLY
Director

Enclosure

lps:/sw/Mm118711hill042606

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation

April 26, 2006

STATE CLAIM NUMBER:	M118711
NAMES OF CLAIMANTS:	Ralph and Miriam Hill
MAILING ADDRESS:	704 20th Street La Grande, Oregon 97850
IDENTIFICATION OF PROPERTY:	Township 3S, Range 40E, Section 21 Tax lot 200 Union County
DATE RECEIVED BY DAS:	July 5, 2005
180-DAY DEADLINE:	May 20, 2006[1]

I. SUMMARY OF CLAIM

The claimants, Ralph and Miriam Hill, seek compensation in the amount of $401,440 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 28.53-acre property into seven parcels and to develop a dwelling on each parcel. The subject property is located east of Highway 237 and south of High Valley Road, near Cove, in Union County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Ralph and Miriam Hill's division of the 28.53-acre property into seven parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the

[1] This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

extent that use was permitted when they acquired the property on April 5, 1964. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 29, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, four written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on July 5, 2005, for processing under OAR 125, division 145. The claim identifies the county's A-1 Exclusive Farm Use (EFU) zone as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claimants, Ralph and Miriam Hill, acquired the subject property on April 5, 1964, as reflected by a deed included with the claim. The Union County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Ralph and Miriam Hill, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of April 5, 1964.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the subject 28.53-acre property into seven parcels and to develop a dwelling on each parcel, which is not allowed under the property's current zoning.

The claim is based generally on Union County's current A-1 EFU zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.[2] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

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[2] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

ORS 215.780(1)(b) establishes a 160-acre minimum size for the creation of new lots or parcels in EFU zones that are designated rangeland and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants acquired the subject property on April 5, 1964, prior to the adoption of the statewide planning goals and their implementing statutes and rules.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1964 and do not allow the desired division or residential development of the property. These laws restrict the use of the property relative to the uses allowed when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $401,440 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the estimated difference between the current value of the property, as documented by a current tax statement included with the claim, and the value of the property if the desired development were allowed, as estimated by a local realtor.

Conclusions

As explained in Section V.(1) of this report, the claimants are Ralph and Miriam Hill who acquired the subject property on April 5, 1964. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be $401,440.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Union County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development were in effect when the claimants acquired the subject property in 1964. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified.

Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' ability to divide the 28.53-acre property into seven parcels and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by $401,440. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Ralph and Miriam Hill to use the subject property for a use permitted at the time they acquired the property on April 5, 1964.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Ralph and Miriam Hill's division of the 28.53-acre property into seven parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 5, 1964.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 5, 1964.

3. 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, the order will not authorize the use of the property unless the claimants first obtain 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.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.