



OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT

ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW  
OF MEASURE 37 CLAIM  
Final Order of Denial

STATE ELECTION NUMBER: D135004

CLAIMANT: Carl D. Christy  
209 Locke Lane  
Phoenix, OR 97535

MEASURE 37 PROPERTY  
IDENTIFICATION: Township 35S, Range 2W, Section 28  
Tax lot 112  
Jackson County

The claimant, Carl Christy, filed a claim with Jackson County under ORS 197.352 (2005) (Measure 37) on December 2, 2004, for property located at 12777 Perry Road, near Central Point, in Jackson County. The claimant did not file a state Measure 37 claim. ORS 195.300 to ORS 195.336 (Measure 49), as amended by Senate Bill 1049 (SB 1049) entitles claimants who filed Measure 37 claims only with the county in which the claim property is located to elect supplemental state review of their claims; and allows the Department of Land Conservation and Development (the department) to authorize one dwelling approval to qualified claimants and, if the property does not include a vacant parcel for the dwelling, a parcel on which to site the dwelling.

The claimant has elected supplemental review of his Jackson County Measure 37 claim under SB 1049, and has submitted the \$2500 fee required by Section 7(2) of SB 1049 for that review.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

### I. ANALYSIS OF CLAIM

#### A. Maximum Relief for Which the Claimant May Qualify

Under Measure 49, as amended by SB 1049, the department may authorize one dwelling approval and, if the property does not include a vacant parcel for that dwelling, a parcel on which to site the dwelling.

## **B. Qualification Requirements**

To qualify for a dwelling approval under Section 6 of Measure 49, as amended by SB 1049, the claimant must meet each of the following requirements:

### **1. Timeliness of Claim**

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must have provided a certified copy of the claim to the department no later than June 30, 2010.

### **Findings of Fact and Conclusions**

The claimant, Carl Christy, filed a Measure 37 claim, M37 2004-00003, with Jackson County on December 2, 2004. Jackson County provided a certified copy of that claim to the department on June 25, 2010.

The claimant filed a timely Measure 37 claim with Jackson County in order to be eligible for supplemental review under SB 1049.

### **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 recorded contract and deeds submitted to the department by the claimant, Carl Christy is the owner of fee title to the property as shown in the Jackson County deed records and, therefore, is an owner of the property under Measure 49.

Jackson County has confirmed that the claimant is the current owner of the property.

### **3. All Owners of the Property Have Consented in Writing to the Claim**

All owners of the property must consent to the claim in writing.

### **Findings of Fact and Conclusions:**

All owners of the property have consented to the claim in writing.

**4. The Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary**

Either the majority of the Measure 37 claim property must be located outside any urban growth boundary and outside the boundaries of any city or the Measure 37 claim property must be located within the boundaries of a city and entirely outside any urban growth boundary.

**Findings of Fact and Conclusions:**

The Measure 37 claim property is located in Jackson County, outside any urban growth boundary and outside the city boundary of the nearest city, Central Point.

**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 (EFU) by Jackson County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels. The effect of the EFU standards is to prohibit the claimant from establishing a dwelling on the Measure 37 claim property.

The claimant's property consists of five undeveloped acres in one parcel. Therefore, state land use regulations prohibit the claimant from establishing a dwelling on the Measure 37 claim property.

**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 dwelling 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

Jackson County deed records indicate that the claimant acquired the property on May 13, 1986.

On May 13, 1986, the Measure 37 claim property was subject to Jackson County's acknowledged Exclusive Farm Use (EFU) zone. Jackson County's EFU zone required 80 irrigated acres or 160 non-irrigated acres for the creation of a new lot or parcel on which a farm dwelling could be established, and required 20 acres for the development of a dwelling on an existing vacant lot or parcel. The claimant's undeveloped property consists of five acres and, therefore, does not meet the minimum requirements for the establishment of a dwelling that were in effect when he acquired the property. Because the claimant could not have lawfully established a farm dwelling on his date of acquisition, he is not entitled to relief under Measure 49, as amended by SB 1049.

In 1986, as it does today, the County's EFU zone also allowed for the establishment of a non-farm dwelling provided certain criteria were satisfied. As applicable to this claim, those criteria, now codified in ORS 215.284 and OAR 660-033-0130, have not substantively changed since the claimant acquired the property. Measure 49 provides relief only in situations where land use regulations enacted or adopted after the claimant acquired the property restrict a claimant's use of the property relative to what was permitted when the claimant acquired the property. Because the non-farm dwelling standards have not substantively changed, Measure 49 does not provide any basis for relief from the non-farm dwelling standards. In other words, if the claimant applied to the county today for approval of a non-farm dwelling, the claimant's application would be subject to substantively the same criteria for approval as were in effect in 1986.<sup>1</sup>

---

<sup>1</sup> There are a limited number of exceptional situations where the non-farm dwelling standards have been modified such that particular claimants are precluded from establishing a non-farm dwelling today, relative to when they acquired their claim property. There is no indication in the record of this claim that the non-farm dwelling standards have changed such that the claimant could have satisfied the criteria in 1986, but cannot today. However, if there have been substantive changes to the non-farm dwelling standards of which the department is not aware and the claimant can establish that he did satisfy all the legal standards in effect in 1986 but *because of specific changes in the law* he is precluded from establishing such a dwelling today, the claimant would be entitled to relief on reconsideration. However, absent evidence of such substantive changes in the law, as codified in the county's land use ordinance, Measure 49 does not provide any basis for relief from the non-farm dwelling standards now in effect.

## II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 18, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimant submitted comments and supporting materials asserting that he would have been lawfully permitted to establish a non-farm dwelling when he acquired the property in 1986. As explained above, ORS 215.284 and OAR 660-033-0130 provide the criteria for the establishment of a non-farm-related dwelling in an EFU zone. Non-farm dwellings are subject to criteria that have not substantively changed since the claimant acquired the Measure 37 claim property. The question of whether the claimant could have qualified for or could currently qualify for a non-farm dwelling is independent of the issue relevant to the Measure 49 inquiry, which is statutorily limited to whether a claimant was lawfully permitted to establish one or more home sites on the claimant's acquisition date and, due to regulations established subsequent to that acquisition, is currently prohibited from establishing that use.

## III. CONCLUSION

Based on the preliminary analysis, the claimant, Carl Christy, does not qualify for relief Measure 49, as amended by SB 1049, because the claimant was not lawfully permitted to establish a farm dwelling on the claimant's date of acquisition.

IT IS HEREBY ORDERED that this Final Order of Denial is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Richard Whitman, Director  
Dept. of Land Conservation and Development  
Dated this 31<sup>st</sup> day of January 2011.

#### **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.