



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

December 16, 2009

STATE ELECTION NUMBER: E131259G¹

CLAIMANTS: Robert A. and Joan Christie
5775 Brickyard Road
Tillamook, OR 97141

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2S, Range 9W, Section 10A
Tax lot 600
Tillamook County

AGENT CONTACT INFORMATION: Ross Day
Oregonians In Action Legal Center
2007 State Street
Salem, OR 97301

I. ELECTION

The claimants, Robert and Joan Christie, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 24, 2006, for property located near Tillamook, in Tillamook County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed Measure 37 claims to elect supplemental review of their claims. The claimants have elected supplemental review of their Measure 37 claim under Section 6 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.²

¹ Claim E131259 has been divided into seven claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E131259A refers to tax lots 400, 407 and 408 and claimants Robert and Joan Christie. E131259B refers to tax lot 401 and claimant Joan Christie. E131259C refers to tax lots 402 and 404 and claimant Robert Christie. E131259D refers to tax lot 403 and claimants Robert and Joan Christie. E131259E refers to tax lot 405 and claimant and Joan Christie. E131259F refers to tax lot 406 and claimants Robert and Joan Christie. E131259G refers to tax lot 600 and claimant Robert Christie.

² The claimants initially elected to have their claim reviewed under Section 7 of Measure 49, but amended their election to request review under Section 6.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant, Robert Christie, is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any home sites when he acquired the property.

Based on the department's preliminary analysis, it appears that the claimant, Joan Christie, is not eligible for any relief under Measure 49 because the claimant has not established her ownership.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS MAY QUALIFY

Under Section 6 of Measure 49, the number of home site approvals issued 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 claimants have requested supplemental review under Section 6. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimants may qualify for a maximum of three home site approvals 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 claimants, Robert and Joan Christie, filed a Measure 37 claim, M131259, with the state on November 24, 2006. The claimants filed a Measure 37 claim, M-06-22, with Tillamook County on November 22, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Tillamook 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 claimants 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 deeds submitted by the claimants, Robert Christie is the owner of fee title to the property as shown in the Tillamook County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Joan Christie has not established her ownership of the property for the purposes of Measure 49.

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

It appears that the claimant, Robert Christie 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 Tillamook County, outside the urban growth boundary and outside the city limits of the nearest city, Tillamook.

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

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

The property is currently zoned Rural Residential (RR) by Tillamook County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than two acres in a rural residential zone established before October 4, 2000, in which the County specified a minimum lot or parcel size of less than two acres.

The claimant's property consists of 0.17 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."

Tillamook County deed records indicate that the claimant, Robert Christie acquired tax lot (0.17 acres) on November 4, 1972.

On November 4, 1972, the Measure 37 claim property was subject to Tillamook County's Medium Density Residential (R-1) zone. Tillamook County's R-1 zone required a minimum lot size of 7500 square feet for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 0.17 acres. Therefore, the claimant lawfully could not have established any home sites on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Robert Christie, does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimant's date of acquisition.

Based on the preliminary analysis, the claimant, Joan Christie, does not qualify for Measure 49 home site approvals because the claimant has not established her ownership of the property.

V. 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 claimants and the claimants' 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 claimants and the claimants' 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 claimants and the claimants' 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.