



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

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

November 18, 2010

**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

**I. ELECTION**

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.

**II. SUMMARY OF PRELIMINARY EVALUATION**

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49, as amended by SB 1049 because the claimant would not have been lawfully permitted to establish a dwelling on the county Measure 37 claim property on the date he acquired the property.

### **III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR DWELLING APPROVAL**

#### **1. Preliminary Analysis**

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must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.

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

In addition to timely filing a county claim, to qualify for a dwelling approval under SB 1049, the claimant must also 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 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.

#### **(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 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**

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.

#### **(d) One or More Land Use Regulations Prohibit Establishing the Dwelling**

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 combined 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.

**(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 dwelling 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 One Additional Dwelling on the Property**

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."

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 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 dwelling on his date of acquisition, he is not entitled to relief under Measure 49, as amended by SB 1049.

## **2. Preliminary 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 dwelling on the claimant's date of acquisition.

### **IV. 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.**