



OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT

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

STATE ELECTION NUMBER: E118508¹

CLAIMANT: Charles Gordon Shown
9040 NE 31st
Terrebonne, OR 97760

MEASURE 37 PROPERTY
IDENTIFICATION: Township 10S, Range 14E
Section 32, Tax lot 700
Section 32CB, Tax lot 100²
Jefferson County

AGENT CONTACT INFORMATION: Edward P. Fitch
Bryant Emerson and Fitch LLP
PO Box 457
Redmond, OR 97756

The claimant, Charles Shown, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 24, 2005, for property located near Madras, in Jefferson 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 his 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 Amended Final Order of Denial is the conclusion of the supplemental review of this claim.

¹ On November 23, 2009, the department issued a final order for claim E118508 based on a March 20, 2008, County Vesting Determination. Claimant subsequently provided evidence that the March 20, 2008 Vesting Determination was not a final vesting decision. Therefore, this amended final order supersedes the November 23, 2009, final order issued by the department.

² The Measure 37 claim property consisted of tax lots 700 and 100. Tax lot 700 has since been partitioned into tax lots 1100, 1200, 1300, 1400, 1500, 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000 and 3100. Tax lot 100 has since been partitioned into tax lots 100, 200, 300, 3200, 3300, 3400, 3500, 3600, 3700 and 3800.

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 residential uses. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 6 of Measure 49, 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, Charles Shown, filed a Measure 37 claim, M118508, with the state on May 24, 2005. The claimant filed a Measure 37 claim, 05-M37-20, with Jefferson County on May 18, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Jefferson 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 information submitted during the Preliminary Evaluation comment period, Charles Shown conveyed his interest in the claim property to Bitterbrush Investors LLC on January 16, 2008 and is no longer an owner of the property for the purposes of Measure 49.

Because the claimant has not met this requirement, the remaining approval criteria will not be evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 8, 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 Amended Final Order of Denial. The claimant's agent submitted a comment asserting that the claimant maintains an ownership interest in the property as the beneficiary under a trust deed. 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." A beneficiary under a trust deed is not considered an owner for purposes of Measure 49.

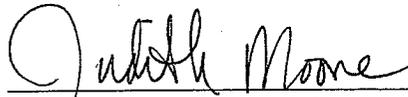
The claimant's attorney additionally asserts that because the claimant owned the property on December 6, 2007, the effective date of Measure 49, that the claimant's subsequent conveyance of the property does not impact his Measure 49 relief. The department disagrees with this assertion. Section 6(6) of Measure 49 states: "to qualify for a home site approval under this section the claimant must establish that: (a) The claimant is an owner of the property." The language of Measure 49 requires that a claimant must currently own the Measure 37 claim property in order to qualify for relief under Measure 49. As stated above, because the claimant no longer owns the Measure 37 claim property, the claimant is not eligible for relief under Measure 49.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for any Measure 49 home site approvals because the claimant is not an owner of the Measure 37 claim property as defined by Measure 49.

IT IS HEREBY ORDERED that this Amended 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:



Judith Moore, Division Manager
Dept. of Land Conservation and Development
Dated this 9th day of April 2010

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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