



**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:** E130888

**CLAIMANTS:** David G. and Wendy S. Philippi  
11090 N Umpqua Highway  
Roseburg, OR 97470

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 26S, Range 4W, Section 31  
Tax lot 202<sup>1,2</sup>  
Douglas County

The claimants, David and Wendy Philippi, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 20, 2006, for property located at 11090 N Umpqua Highway, near Roseburg, in Douglas 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.

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

**I. ANALYSIS OF CLAIM**

**A. Maximum Number of Home Sites for Which the Claimants 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

---

<sup>1</sup> The Measure 37 claim property consisted of tax lot 202. Tax lot 202 has since been partitioned into tax lots 202, 203 and 204. The claimants received county approval for this partition prior to filing their Measure 37 claim.

<sup>2</sup> The Measure 37 claim property consists of reconfigured tax lots 202, 203 and 204. The claimants did not elect supplemental review for the newly created tax lots 203 and 204. While a claim cannot be amended to remove claim property, analysis of the claimants' eligibility for relief on a portion of claim property may, in some cases, be immaterial. In this case, whether the claimants are eligible for relief on tax lots 203 and 204 is not relevant to the analysis of whether the claimants are eligible for relief on tax lot 202. Therefore, although tax lots 203 and 204 are part of the Measure 37 claim property, review of the claimants' eligibility for relief on tax lots 203 and 204 is omitted and all references to Measure 37 claim property refer only to the current, approximately 115.28-acre tax lot 202.

was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimants have requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes nine home sites. Therefore, the claimants 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 claimants 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 claimants, David and Wendy Philippi, filed a Measure 37 claim, M130888, with the state on November 20, 2006. The claimants filed a Measure 37 claim, M37-71, with Douglas County on October 13, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Douglas 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 claimants, David and Wendy Philippi are the owners of fee title to the property as shown in the Douglas County deed records and, therefore, are owners of the property under Measure 49.

Douglas County has confirmed that the claimants are the current owners 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 Douglas County, outside the urban growth boundary and outside the city limits of the nearest city, Roseburg.

**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 - Grazing (FG) by Douglas 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.

Reconfigured tax lot 202 consists of 115.28 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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**

Douglas County deed records indicate that the claimants acquired the property on October 2, 1985.

On October 2, 1985, the Measure 37 claim property was subject to Douglas County's acknowledged Exclusive Farm Use - Grazing (FG) zone. Douglas County's FG zone required 200 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 115.28 acres and is developed with a dwelling. Therefore, the claimants lawfully could not have established any additional home sites on their date of acquisition.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on December 4, 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 of Denial. Claimant David Philippi submitted a comment stating that a member of his family acquired the property at an earlier date, and that the department should rely on that earlier date as the claimants' date of acquisition. Section 6(6)(f) of Measure 49 requires that "on the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings authorized..." That a non-claimant family member may have owned the Measure 37 property at an earlier date does not affect a claimant's eligibility for relief under Measure 49.

The claimant also asserted that because the property was "held in trust for [him] beginning in 1971", that date should provide the basis for the lawfully permitted analysis. However, on that date the property was transferred into an irrevocable trust of which Glen and Loette Philippi were the trustees. Measure 49 defines "owner" in relevant part as, "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." Section 2(16)(c). Therefore, for purposes of

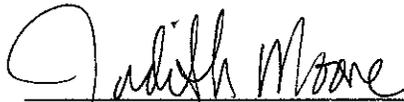
Measure 49, David Philippi did not acquire the property when it was transferred into an irrevocable trust in 1971.

### **III. CONCLUSION**

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish the lots, parcels or dwellings on the claimants' 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:



Judith Moore, Division Manager  
Dept. of Land Conservation and Development  
Dated this 27<sup>th</sup> day of February 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 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.