



**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: E131259G¹

CLAIMANTS: Robert A. and Joan Christie

**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
PO Box 230637
Tigard, OR 97281

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

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

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.

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 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.

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, 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.

The claimants timely filed a Measure 37 claim with both the state and Tillamook 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 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. Tillamook County has confirmed that the claimant is the current owner of the property.

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

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 Tillamook County, outside the urban growth boundary and outside the city limits of the nearest city, Tillamook.

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 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.

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 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

Tillamook County deed records indicate that the claimant, Robert Christie acquired tax lot 600 (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 claimant's property consists of 0.17 acres (7405 square feet). Therefore, the claimant lawfully could not have established any home sites on his date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 16, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

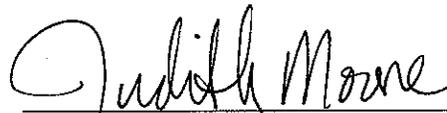
III. CONCLUSION

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

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 30th day of March 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.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

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<http://www.oregon.gov/LCD/MEASURE49>

March 30, 2010



To: Claimants

From: Richard Whitman, Director

Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E131259G

Claimants: Robert A. and Joan Christie

Enclosed is the Department of Land Conservation and Development's (department) Final Order and Home Site Authorization for the above-referenced Measure 49 election, based on the Supplemental Review of the Measure 37 claim.

This Final Order and Home Site Authorization sets forth the department's decision on the claim under Measure 49 and is final. No further action will be taken on this matter.