



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: E122072

CLAIMANTS: Jack J. and Janice A. Colleknon
6070 Highway 101 South
Tillamook, OR 97141

MEASURE 37 PROPERTY IDENTIFICATION: Township 2S, Range 9W, Section 7D
Tax lots 100 and 200¹
Tillamook County

The claimants, Jack and Janice Colleknon, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on August 26, 2005, for property located at 6070 Highway 101 South, 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.

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 was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimants have requested two home site approvals in the election material. The Measure 37 waiver issued for this claim describes two home sites. Therefore, the claimants may qualify for a maximum of two home site approvals under Section 6 of Measure 49.

¹ The Measure 37 claim property consisted of tax lots 100 and 200. Tax lots 100 and 200 have since been partitioned into tax lots 100, 101 and 102.

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, Jack and Janice Colleknon, filed a Measure 37 claim, M122072, with the state on August 26, 2005. The claimants filed a Measure 37 claim, M-05-10, with Tillamook County on August 25, 2005. 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 deed submitted by the claimants, Jack and Janice Colleknon are the owners of the Measure 37 claim property as shown in the Tillamook County deed records and, therefore, are owners of the Measure 37 claim property under Measure 49 as configured at the time the Measure 37 claim was filed.

According to the deed information obtained from Tillamook County the claimants are no longer the owners of reconfigured tax lot 101 of the Measure 37 claim 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 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 exclusive farm use by Tillamook County. State land use regulation, including applicable provisions of ORS chapter 215 and OAR 660, division 33, generally prohibit the establishment of a dwelling on a lot or parcel less than 80 acres in size in an exclusive farm use zone.

The Measure 37 claim property consists of 19.93 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the two 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 two 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

Tillamook County deed records indicate that the claimants acquired tax lot 100 of the Measure 37 claim property as it was originally configured on August 12, 1980.

Tillamook County deed records indicate that claimant Jack Colleknon acquired tax lot 200 of the Measure 37 claim property as it was originally configured on July 21, 1977, and claimant Janice Colleknon acquired tax lot 200 of the property as it was originally configured on October 19, 1989. Therefore, for purposes of Measure 49, the claimants' acquisition date of tax lot 200 as it was originally configured is July 21, 1977.

The claimants acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Tillamook County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned Exclusive Farm Zone (F-1) by Tillamook County. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on July 21, 1977, and August 12, 1980. Accordingly, the statewide planning goals, and in particular Goal 3 and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On January 16, 1983, the Commission acknowledged the application of Tillamook County's Farm (F-1) zone to the Measure 37 claim property. The Commission's acknowledgement of Tillamook County's F-1 zone confirmed that zone's compliance with Goal 3 and ORS chapter 215. Tillamook County's acknowledged F-1 zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 19.93 acres and is developed with two dwellings. Therefore, on the claimants' acquisition dates, they could not have established any additional home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations.

However, because of uncertainty during the time period between adoption of the statewide planning goals in 1975 and each county's acknowledgment of its plan and land use regulations regarding the factual and legal requirements for establishing compliance with the goals, the 2010 Legislative Assembly amended Measure 49. Senate Bill (SB)1049 (2010) specifies the number of home sites considered lawfully permitted for purposes of Measure 49 for property acquired during this period, unless the record for the claim otherwise demonstrates the number of home sites a claimant would have been lawfully permitted to establish, including existing development. Those amendments provide, in relevant part, that subject to consistency with local land use regulations in effect when they acquired the Measure 37 claim property, claimants whose property consists of less than 20 acres were lawfully permitted to establish one home site, including existing development.

The Measure 37 claim property consists of 19.93 acres and is developed with two dwellings. Therefore, based on the analysis under SB 1049 (2010), the claimants were not lawfully permitted to establish any additional home sites on the Measure 37 claim property on their date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

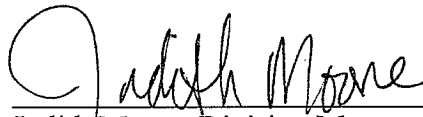
The department issued its Preliminary Evaluation for this claim on March 11, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the analysis above, the claimants, Jack and Janice Colleknon, do not qualify for Measure 49 home site approvals because the claimants were not lawfully permitted to establish any additional lots, parcels or dwellings on the claimants' dates 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 26th 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.