



**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:

E129621

CLAIMANTS:

Michael D. and Christine R. Alexander
57566 Parkersburg Road
Bandon, Oregon 97411

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 31S, Range 15W, Section 34
Tax lot 204
Curry County

The claimants, Michael and Christine Alexander, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 5, 2006, for property located at 93636 and 93640 County Shop Road, near Sixes, in Curry 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; the number stated by the claimant in the election materials; 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; or the number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimants have requested eight home site approvals in the election material. The appraisal submitted by the claimants attempts to support the assertion that the value of eight home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimants may qualify for a maximum of eight home site approvals under Section 7 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 7 of Measure 49, the claimants must meet each of the following requirements:

1. Property not high-value farm, forest or groundwater restricted

The Measure 37 claim property must not be high-value farmland or high-value forestland, nor in a ground water restricted area, as defined in Section 2 of Measure 49.

Findings of Fact and Conclusions

The department has not made a final determination as to whether the property is high-value farmland, high-value forestland or in a ground water restricted area. Because the claim is denied under other criteria a final determination on this point is not necessary.

2. 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, Michael and Christine Alexander, filed a Measure 37 claim, M129621, with the state on July 5, 2006. The claimants filed a Measure 37 claim, Order No. 12488, with Curry County on July 6, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Curry County.

3. 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, Michael and Christine Alexander are the owners of fee title to the property as shown in the Curry County deed records and, therefore, are owners of the property under Measure 49.

Curry County has confirmed that the claimants are the current owners of the property.

4. 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.

5. 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 Curry County, outside the urban growth boundary and outside any city limits near the community of Sixes.

6. 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 Forest Grazing (FG) by Curry County, in accordance with ORS chapter 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Applicable provisions of ORS chapter 215 and OAR 660 division 6, enacted or adopted pursuant to Goal 4, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

Based on Curry County Assessor’s data, the claimants’ property consists of 40 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the eight home sites the claimants are requesting under Section 7 of Measure 49.

7. 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 eight home sites that the claimants are requesting on the property is prohibited by land use regulations described in ORS 195.305(3).

8. 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 7 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

Curry County deed records indicate that the claimants acquired the property on June 25, 1990.

On June 25, 1990, the Measure 37 claim property was subject to Curry County's acknowledged Forest Grazing (FG) zone. Curry County's FG zone allowed one dwelling on a single parcel with conditional use approval and did not allow land divisions for the establishment of dwellings. The claimants' property consists of a single parcel. There are currently two dwellings located on the property. Therefore, the claimants lawfully could not have established any home sites on their date of acquisition.

The claimants submitted comments asserting that because processes under which the claimants could have attempted to obtain authorization for additional lots or parcels and dwellings existed on their acquisition date, the department should authorize lots, parcels or dwellings under Measure 49. Measure 49 allows a claimant to establish the number of lots, parcels and dwellings that would have been lawfully permitted at the time a claimant acquired the property. A use is not lawfully permitted when approval of the use on a claimant's acquisition date would have required a highly discretionary review process and the record for the claim does not include sufficient evidence that the claimant could have met the standards under such a review process.

Because the claimants were not lawfully permitted to establish the requested home sites on their date of acquisition, the remaining criteria that must be met to qualify for relief under Section 7 of Measure 49 were not evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

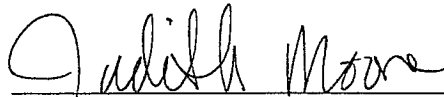
The department issued its Preliminary Evaluation for this claim on November 3, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimants' comment regarding the lawfully permitted uses of the property under the zoning in place on the claimants' acquisition date is addressed above. Additionally, the claimants commented regarding the sufficiency of their appraisal submitted. Because the claimants were not lawfully permitted to establish the requested home sites on their date of acquisition, the remaining criteria that must be met to qualify for relief under Section 7 of Measure 49 were not evaluated and a comprehensive review of the appraisal submitted was not completed.

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 19th 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.