



**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:

D135012

CLAIMANTS:

Janice M. and Valdomar J. Swanson
375 Old Greensprings Highway
Ashland, OR 97520

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 39S, Range 2E
Section 29, Tax lot 1100
Section 32, Tax lot 200¹
Jackson County

The claimants, Janice and Valdomar Swanson, filed a claim with Jackson County under ORS 197.352 (2005) (Measure 37) on July 18, 2006, for property located at 375 Old Greensprings Highway, near Ashland, in Jackson County. The claimants did not file a state Measure 37 claim. ORS 195.300 to ORS 195.336 (Measure 49), as amended by Senate Bill 1049 (SB 1049) entitles claimants who filed Measure 37 claims only with the county in which the claim property is located to elect supplemental state review of their claims; and allows the Department of Land Conservation and Development (the department) to authorize one dwelling approval to qualified claimants and, if the property does not include a vacant parcel for that dwelling, a parcel on which to site the dwelling.

The claimants have elected supplemental review of their Jackson County Measure 37 claim under SB 1049, and have submitted the \$2500 fee required by Section 7(2) of SB 1049 for that review.

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

I. ANALYSIS OF CLAIM

A. Maximum Relief for Which the Claimants May Qualify

Under Measure 49, as amended by SB 1049, the department may authorize one dwelling approval and, if the property does not include a vacant parcel for that dwelling, a parcel on which to site the dwelling.

¹ In a Lawful Lot Research (1999-48-PA) summary/analysis, the county states that the two tax lots comprising the Measure 37 claim property, tax lots 1100 and 200, are one legal parcel. In reliance on that report, this Final Order considers the Measure 37 claim property as one legal parcel.

B. Qualification Requirements

To qualify for a dwelling approval under Section 6 of Measure 49, as amended by SB 1049, the claimants must meet each of the following requirements:

1. Timeliness of Claim

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must have provided a certified copy of the claim to the department no later than June 30, 2010.

Findings of Fact and Conclusions

The claimants, Janice and Valdomar Swanson, filed a Measure 37 claim with Jackson County on July 18, 2006. Jackson County provided a certified copy of that claim to the department on June 25, 2010.

The claimants filed a timely Measure 37 claim with Jackson County in order to be eligible for supplemental review under SB 1049.

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 obtained by the department, the claimants, Janice and Valdomar Swanson, are the settlors of a revocable trust into which they conveyed the Measure 37 claim property and, therefore, are owners of the property under Measure 49.

Jackson 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 Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary

Either the majority of the Measure 37 claim property must be located outside any urban growth boundary and outside the boundaries of any city or the Measure 37 claim property must be located within the boundaries of a city and entirely outside any urban growth boundary.

Findings of Fact and Conclusions:

The Measure 37 claim property is located in Jackson County, outside any urban growth boundary and outside the city boundary of the nearest city, Ashland.

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:

A portion of tax lot 1100 of the Measure 37 claim property is currently zoned Exclusive Farm Use (EFU) by Jackson 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.

Tax lot 200 and a portion of tax lot 1100 of the Measure 37 claim property are currently zoned Open Space Reserve (OSR) by Jackson 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.

The claimants’ property consists of 17.14 acres in one parcel and is developed with one dwelling. Therefore, state land use regulations prohibit the claimants from establishing one additional dwelling on the Measure 37 claim property.

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 dwelling 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

Jackson County deed records indicate that the claimants acquired the property on July 7, 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 Jackson County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. On July 7, 1977, tax lot 1100 of the Measure 37 claim property was zoned Exclusive Farm (EF) and tax lot 200 of the Measure 37 claim property was zoned Open Space Development-5 (OSD-5) by Jackson County. Jackson County's EF zone did not include a fixed minimum acreage standard, and Jackson County's OSD-5 zone required a minimum of five acres for the establishment of a new lot or parcel and allowed a dwelling on an existing lot or parcel. However, the Commission had not acknowledged those zones for compliance with the goals when the claimants acquired the property on July 7, 1977. Accordingly, the statewide planning goals, and in particular Goals 3 and 4, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On May 16, 1983, the Commission acknowledged the application of Jackson County's Exclusive Farm Use (EFU) zone to a portion of tax lot 1100 of the Measure 37 claim property and Jackson County's Open Space Reserve (OSR) zone to tax lot 200 and a portion of tax lot 1100 of the Measure 37 claim property. The Commission's acknowledgement of Jackson County's EFU and OSR zones confirmed those zones' compliance with Goals 3 and 4 and ORS chapter 215. Jackson County's acknowledged EFU zone required 80 irrigated acres or 160 non-irrigated acres for the creation of a new lot or parcel on which a dwelling could be established, and Jackson

County's OSR zone required 20 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 17.14 acres. Therefore, on the claimants' acquisition date, they could not have established any additional parcels on which a dwelling could be established 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 statewide planning goals, the 2010 Legislative Assembly amended Measure 49. 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 that a claimant would have been lawfully permitted to establish. 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 17.14 acres and is developed with one lot or parcel and one dwelling. Therefore, based on the analysis under SB 1049 (2010), it appears that the claimants were not lawfully permitted to establish any additional dwellings on the Measure 37 claim property on their date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

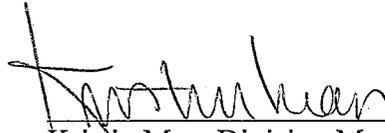
The department issued its Preliminary Evaluation for this claim on November 16, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimants submitted a comment disputing the denial of their claim. The property was zoned for resource use when the claimants acquired it and still is today. The claimants dispute this designation but Measure 49 requires that the zoning of the property on the acquisition date allowed the requested use. The statewide planning goals applied to the property when the claimants acquired it. The claimants ask, "What do Goals 3 and 4 have to do with our tax lot zoned OSD-5?" The OSD-5 zone is a Goal 4 zone. As stated above, the legislature adopted Senate Bill 1049 to specifically address claims where the claimants acquired their property after the adoption of the statewide planning goals but before the county's comprehensive plan and land use regulations were acknowledged. The legislature determined that properties of less than 20 acres would qualify for one home site. Because this property is less than 20 acres and is already developed the claimants do not qualify for a home site.

III. CONCLUSION

Based on the analysis above, the claimants do not qualify for relief under Section 6 of Measure 49, as amended by SB 1049, because the claimants were not lawfully permitted to establish any additional 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:



Kristin May, Division Manager
Dept. of Land Conservation and Development
Dated this 29th day of January, 2011.

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.