



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

March 25, 2010

STATE ELECTION NUMBERS: E132446G¹

CLAIMANTS: J. Randall Pope
Lynn R. Pope²
Pope Ranches, Inc.
RLP Ranch, Ltd.
VCP Ranch, Ltd.
21660 Pope Road
Merrill, OR 97633

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 41S, Range 11E, Section 4
Tax lot 1100
Klamath County

AGENT CONTACT INFORMATION: Michael L. Spencer
439 Pine Street
Klamath Falls, OR 97601

I. ELECTION

The claimants, Randall Pope, Lynn Pope, Pope Ranches, Inc., RLP Ranch, Ltd. and VCP Ranch, Ltd., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 13, 2006, for property located at 21765 Pope Road, near Merrill, in Klamath 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

¹ Claim E132446 has been split into seven claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E132446A refers to tax lots 100 (S4), 500 (S3) and 800 (S4) and claimant Randall Pope. E132446B refers to tax lot 200 (S4) and claimant Lynn Pope. E132446C refers to tax lots 900 (S4), 1000 (S4), 1300 (S4), 1400 (S4) and 1500 (S4) and claimant Lynn Pope. E132446D refers to tax lot 1200 (S4) and claimant Pope Ranches, Inc. E132446E refers to tax lots 200 (S9) and 300 (S9) and claimant Lynn Pope. E132446F refers to tax lots 100 (S18), 800 (S7) and 900 (S7) and claimant RLP Ranch, Ltd. E132446G refers to tax lot 1100 (S4) and claimant RLP Ranch, Ltd.

² The claimants also submitted claims for property not contiguous to the subject property which are identified as E132447 and E132448.

Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that claimant RLP Ranch, Ltd. is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites when it acquired the property.

Based on the department's preliminary analysis, it appears that claimants Randall Pope, Lynn Pope, Pope Ranches, Inc. and VCP Ranch, Ltd. are not eligible for any relief under Measure 49 because they have not established their ownership of the property for the purposes of Measure 49.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS 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 material; 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 review under Section 6 in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes one home site.³ Therefore, the claimants may qualify for a maximum of one home site approval under Section 6 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimants, Randall Pope, Lynn Pope, Pope Ranches, Inc., RLP Ranch, Ltd. and VCP Ranch, Ltd., filed a Measure 37 claim, M132446, with the state on November 13, 2006. The claimants filed a Measure 37 claim, M37 52-06, with Klamath County on November 17, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Klamath County.

³ The Measure 37 claim describes 1-acre parcels and tax lot 1100 consists of 1.08 acres, therefore for purposes of this claim the department has interpreted this as a request for one home site.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimants must establish each of the following:

(a) 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.”

According to the deed submitted by the claimants, RLP Ranch, Ltd. is the owner of fee title to the property as shown in the Klamath County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Randall Pope, Lynn Pope, Pope Ranches, Ltd. and VCP Ranch, Ltd. have not established their ownership of the property for the purposes of Measure 49.

(b) All Owners of the Property Have Consented in Writing to the Claim

It appears that claimant RLP Ranch, Ltd. is the sole owner of the property. Therefore, no additional consent is required.

(c) The Measure 37 Claim Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property is located in Klamath County, outside the urban growth boundary and outside the city limits of the nearest city, Merrill.

(d) One or More Land Use Regulations Prohibit Establishing the Dwelling

As stated in Sections III and IV(1)(a) above, claimant RLP Ranch, Ltd. may qualify for up to one home site approval.

The property is currently zoned Exclusive Farm Use – Cropland, Grazing (EFU-CG) by Klamath 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 (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of a dwelling in an EFU zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres in size in an EFU zone and generate a minimum annual income from the sale of farm products.

The combined effect of the standards for the establishment of a dwelling in an EFU zone is to prohibit the claimants from establishing a dwelling on the Measure 37 claim property.

(e) The Establishment of the 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.

Based on the documentation submitted by the claimants, it does not appear that the establishment of the one home site for which claimant RLP Ranch, Ltd. may qualify on the property would be prohibited by land use regulations described in ORS 195.305(3).

(f) On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of 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."

Klamath County deed records indicate that claimant RLP Ranch, Ltd. acquired the property on August 12, 1981.

Claimant RLP Ranch, Ltd. acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Land Conservation and Development Commission (the Commission) acknowledged Klamath County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. On August 12, 1981, the Measure 37 claim property was zoned Agriculture/Forestry (AF) by Klamath County. Klamath County's AF zone included a fixed minimum acreage standard of 20 acres. However, the Commission had not acknowledged that zone for compliance with the goals when the claimant acquired the property on August 12, 1981. Accordingly, the statewide planning goals, and in particular Goal 3, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimant acquired it.

On June 1, 1984, the Commission acknowledged the application of Klamath County's Exclusive Farm Use – Cropland, Grazing (EFU-CG) zone to the Measure 37 claim property. The Commission's acknowledgement of Klamath County's EFU-CG zone confirmed that zone's

compliance with Goal 3 and ORS chapter 215. Klamath County's acknowledged EFU-CG zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The Measure 37 claim property consists of 1.08 acres. Therefore, on the claimant's acquisition date, it could not have established a home site on the Measure 37 claim property 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. 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 that a claimant would have been lawfully permitted to establish. Those amendments provide, in relevant part, that eligibility for home site approval is subject to consistency with local land use regulations in effect when the claimant acquired the subject property.

The Measure 37 claim property was subject to Klamath County's AF zone on the claimant's date of acquisition. That zone included a fixed minimum acreage standard of 20 acres. The Measure 37 claim property consists of 1.08 acres. Therefore, based on the analysis under SB 1049 (2010), the claimant was not lawfully permitted to establish any home sites on the Measure 37 claim property on its date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, claimant RLP Ranch, Ltd. does not qualify for Measure 49 home site approval because the claimant was not lawfully permitted to establish the dwelling on the claimant's date of acquisition.

Based on the preliminary analysis, claimants Randall Pope, Lynn Pope, Pope Ranches, Inc. and VCP Ranch, Ltd. do not qualify for Measure 49 home site approvals because they have not established their ownership of the property for the purposes of Measure 49.

V. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimants and the claimants' agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimants and the claimants' agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimants and the claimants' authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.