



**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:

E124669¹

CLAIMANT:

Ketchum Ranch, Inc.
6282 Chenowith Road
The Dalles, OR 97058

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 1N, Range 12E
Sections 2, 3 and 10, Tax lot 100
Section 2, Tax lot 200
Section 3, Tax lots 300 and 400
Township 2N, Range 12 E
Section 34, Tax lot 3900
Section 35, Tax lot 4000
Wasco County

AGENT CONTACT INFORMATION:

Steven B. Anderson
Cascade Planning Associates
571 NW Spring Street
White Salmon, WA 98672

The claimant, Ketchum Ranch, Inc., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on March 29, 2006, for property located near The Dalles, in Wasco 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 claimant has elected supplemental review of its 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.

¹ The claimant's agent asserts in the election materials that the road crossing the M37 claim property, Chenowith Road, divides tax lot 3900 into two distinct non-contiguous parcels, each entitled to a Measure 49 election. However, information obtained from Wasco County indicates that Chenowith Road is not an intervening ownership that divides the subject property.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites for Which the Claimant 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 claimant has requested six home site approvals in the election material. The Measure 37 waiver issued for this claim describes 190 home sites. Therefore, the claimant 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 claimant 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 claimant, Ketchum Ranch, Inc., filed a Measure 37 claim, M124669, with the state on March 29, 2006. The claimant filed a Measure 37 claim, M37-05-104, with Wasco County on December 19, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Wasco 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 claimant, Ketchum Ranch, Inc. is the owner of fee title to the property as shown in the Wasco County deed records and, therefore, is an owner of the property under Measure 49.

Wasco County has confirmed that the claimant is the current owner 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 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 Wasco County, outside the urban growth boundary and outside the city limits of the nearest city, The Dalles.

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 eastern 76.24 acres of tax lot 4000 of the Measure 37 claim property is currently zoned Exclusive Farm Use (A-1) by Wasco 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. In addition, counties may adopt minimum lot or parcel sizes greater than 80 acres. Wasco County's A-1 zone requires a minimum of 160 acres for the establishment of a dwelling on a lot or parcel.

Therefore, state land use regulations prohibit the claimant from establishing on the eastern 76.24 acres of the Measure 37 claim property the home sites the claimant may qualify for under Section 6 of Measure 49.

Tax lots 200, 300, 400, the western portion of tax lot 100 and the western portion of tax lot 4000 of the Measure 37 claim property are currently zoned Forest (F-2) by Wasco 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include restrictions on establishing more than one dwelling on a single tract.

Tax lots 200, 300, 400, the western portion of tax lot 100, and the western portion of tax lot 4000 consist of 1306.60 acres that make up a single tract. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the home sites the claimant may qualify for under Section 6 of Measure 49.

The eastern portion of tax lot 100 of the Measure 37 claim property is currently zoned Farm Forest (FF-10) by Wasco 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 the size established in the County rural residential zone in existence on October 4, 2000, if the zone in existence on that date had a minimum lot size of two or more acres. Wasco County's FF-10 zone requires a minimum lot size of 10 acres.

The eastern portion of tax lot 100 consists of 246.58. Therefore, no state law prohibits the claimant from establishing on the Measure 37 claim property the three home sites the claimants may qualify for under Section 6 of Measure 49.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated

II. COMMENTS ON THE PRELIMINARY EVALUATION

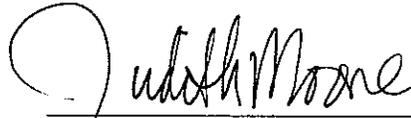
The department issued its Preliminary Evaluation for this claim on January 19, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial.

III. CONCLUSION

Based on the analysis above, the claimant is not eligible for any relief under Measure 49 because no land use regulation prohibits the claimant from establishing the requested lots, parcels or dwellings.

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 27th 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.