



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 NUMBERS: E132446A¹ and E132448A^{2,3}

CLAIMANTS: J. Randall Pope
Lynn R. Pope⁴
Pope Ranches, Inc.
RLP Ranch, Ltd.
VCP Ranch, Ltd.
21660 Pope Road
Merrill, OR 97633

MEASURE 37 PROPERTY
IDENTIFICATION: Township 40S, Range 11E, Section 33
Tax lots 1200 and 1500
Township 41S, Range 11E
Section 3, Tax lot 500
Section 4, Tax lots 100 and 800
Klamath County

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

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 (section 4), 500 (section 3) and 800 (section 4) and claimant Randall Pope. E132446B refers to tax lot 200 (section 4) and claimant Lynn Pope. E132446C refers to tax lots 900 (section 4), 1000 (section 4), 1300 (section 4), 1400 (section 4) and 1500 (section 4) and claimant Lynn Pope. E132446D refers to tax lot 1200 (section 4) and claimant Pope Ranches, Inc. E132446E refers to tax lots 200 (section 9) and 300 (section 9) and claimant Lynn Pope. E132446F refers to tax lots 100 (section 18), 800 (section 7) and 900 (section 7) and claimant RLP Ranch Ltd. E132446G refers to tax lot 1100 (section 4) and claimant RLP Ranch Ltd.

² Claim E132448 has been split into three claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E132448A refers to tax lots 1200 (section 33) and 1500 (section 33) and claimant Randall Pope. E132448B refers to tax lots 201 (section 33), 300 (section 33), 1000 (section 28) and 1100 (section 33) and claimant Lynn Pope. E132448C refers to tax lot 4100 (section 00) and claimant VCP Ranch, Ltd.

³ Claims E132446A and E132448A have been combined into one claim because the properties are contiguous. Per OAR 660-041-0150 the Department of Land Conservation and Development will combine multiple claims into one claim if the Measure 37 claim property contains multiple contiguous lots or parcels that are in the same ownership.

⁴ Claimant Lynn Pope also submitted a claim for property not contiguous to the subject property which is identified as E132447.

The claimants, Randall Pope, Lynn Pope, Pope Ranches, Inc., RLP Ranch, Ltd. and VCP Ranch, Ltd., filed claims with the state under ORS 197.352 (2005) (Measure 37) on November 13, 2006, for property located off 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 claims 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 review under Section 6 in the election material. No waivers were issued for these claims. The Measure 37 claims filed with the state describe 153 home sites. Therefore, the claimants 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 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, Randall Pope, Lynn Pope, Pope Ranches, Inc., RLP Ranch, Ltd. and VCP Ranch, Ltd., filed Measure 37 claims, M132446 and M132448, 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 claims were filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Klamath 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 deeds submitted by the claimants, Randall Pope is the trustee of an irrevocable trust into which tax lot 800 of the Measure 37 property has been conveyed and, therefore, is an owner of tax lot 800 under Measure 49.

Klamath County has confirmed that claimant Randall Pope is the current owner of tax lot 800 of the Measure 37 claim property.

According to assessment information obtained by the department, Randall Pope has not established his ownership of tax lots 100, 500, 1200 and 1500 of the Measure 37 claim property for the purposes of Measure 49 because he is no longer an owner of that portion of the property.

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

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 Klamath County, outside the urban growth boundary and outside the city limits of the nearest city, Merrill.

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 - 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. 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. Those provisions also regulate the establishment of dwellings on new or existing lots or parcels and include the requirement that the property generate a minimum annual income from the sale of farm products.

The Measure 37 claim property consists of 153.59 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites claimant Randall Pope 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 three home sites for which claimant Randall Pope 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

Klamath County deed records indicate that claimant Randall Pope acquired the claim property on September 7, 2004, the date that he became the trustee of the irrevocable trust into which tax lot 800 has been conveyed.

The zoning of the Measure 37 claim property has not changed since the claimant acquired the property. On September 7, 2004, the Measure 37 claim property was subject to Klamath County's acknowledged Exclusive Farm Use - Cropland, Grazing (EFU-CG) zone. As it is today, in 2004 Klamath County's EFU-CG zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established and required a minimum annual income from the sale of farm products in accordance with Goal 3, as implemented by OAR 660-006-0050.

The claimant is not eligible for Measure 49 relief because the lawfully permitted uses of the claimant's property have not changed since the claimant acquired the property.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 14, 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. An agent for the claimant submitted a comment questioning the finding that the claimant's acquisition date is September 7, 2004. Although he acquired an interest in the property in his individual capacity on an earlier date he does not currently own the property in his individual capacity. The claimant currently owns the property as a trustee of an irrevocable trust. He first acquired his interest in the property as a trustee of an irrevocable trust on September 7, 2004.

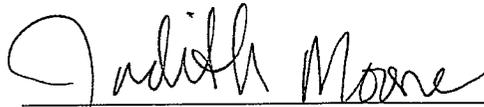
III. CONCLUSION

Based on the analysis above, claimant Randall Pope does not qualify for Measure 49 home site approvals because he no longer owns tax lots 100, 500, 1200 and 1500 of the Measure 37 claim property and the zoning and lawfully permitted uses have not changed since Randall Pope acquired tax lot 800 of the Measure 37 claim property.

Based on the analysis above, claimants Lynn Pope, Pope Ranches, Inc., RLP Ranch, Ltd. 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.

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.