



**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:** E132918E<sup>1</sup>

**CLAIMANT:** Fox Land Company, LLC  
16364 Fox Road SE  
Silverton, OR 97381

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 9S<sup>2</sup>  
Range 2W, Section 18, Tax lot 200  
Range 2W, Section 19, Tax lots 600 and 800  
Range 3W, Section 13, Tax lot 900  
Marion County

**AGENT CONTACT INFORMATION:** Donald M. Kelley  
Kelley & Kelley  
110 N Second Street  
Silverton, OR 97381

The claimant, Fox Land Company, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located on the 11,500 block of Summit Loop SE, near Turner, in Marion 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.

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<sup>1</sup> Claim E132918 has been divided into five claims because the claim includes multiple tax lots or parcels that are not in the same ownership and because the Measure 37 claim sought relief for two or more non-contiguous parcels. E132918A refers to tax lots 1000, 1100, 1200, 1400 (T7S R1E S31), tax lots 300 and 500 (T7S R1E S32C), tax lot 300 (T8S R1E S5), and tax lots 100, 200, 400, 700, and 1000 (T8S R1E S6) and claimant Fox Land Company, LLC. E132918B refers to tax lot 600 (T7S R1E S32C) and claimant S. Thomas Fox. E132918C refers to tax lots 500 and 900 (T8S R1W S23) and claimant Fox Land Company, LLC. E132918D refers to tax lots 600 and 800 (T9S R1W S9) and claimant Fox Land Company, LLC. E132918E refers to tax lot 200 (T9S R2W S18), tax lots 600 and 800 (T9S R2W S19), and tax lot 900 (T9S R3W S13) and claimant Fox Land Company, LLC.

<sup>2</sup> The claimant elected supplemental review for tax lots 300 and 400 (T9S R2W S18) and tax lots 700, 900, and 1000 (T9S R2W S19). However, these tax lots were not listed as claim property under the Measure 37 claim filed with the state and, therefore, the claimant is not eligible for relief on those tax lots under Measure 49.

## 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 supplemental review under Section 6 of Measure 49. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites.<sup>3</sup> 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, Fox Land Company, filed a Measure 37 claim, M132918, with the state on December 1, 2006. The claimant filed a Measure 37 claim, M06-353, with Marion County on December 1, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Marion 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."

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<sup>3</sup> The Measure 37 claim described the property and requested relief for the property before the claim was split (approximately 1800 acres).

**Findings of Fact and Conclusions:**

According to the deed submitted by the claimant, Fox Land Company is the owner of fee title to tax lots 200, 600, and 900 of the Measure 37 claim property as shown in the Marion County deed records and, therefore, is an owner of the property under Measure 49.

Marion County has confirmed that the claimant is the current owner of tax lots 200, 600, and 900 of the property.

According to the information submitted by the claimant, Fox Land Company is not an owner of tax lot 800 for the purposes of Measure 49. Because this requirement has not been met, the claimant is not entitled to any relief on tax lot 800 under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for that tax lot.

**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 Marion County, outside the urban growth boundary and outside the city limits of the nearest city, Turner.

**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 Special Agriculture (SA) by Marion 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 restrictions on establishing more than one dwelling on a single tract.

The claimant's property consists of 438.14 acres that make up a single tract. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant 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 claimant, it does not appear that the establishment of the three home sites for which the claimant 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**

The zoning of tax lots 200, 600, and 900 of the Measure 37 claim property has not changed since the claimant acquired the tax lots on May 1, 1997. As they are currently, on May 1, 1997, tax lots 200, 600, and 900 of the Measure 37 claim property were zoned Special Agriculture (SA) by Marion County in accordance with applicable provisions of ORS chapter 215 and OAR 660, division 33, because the property is agricultural land as defined by Goal 3.

The claimant is not qualified for Measure 49 relief on tax lots 200, 600, and 900 of the Measure 37 claim property because the zoning and lawfully permitted uses of the property have not changed since the claimant acquired that portion of the property.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on January 26, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

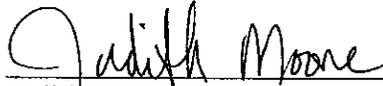
## **III. CONCLUSION**

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals on tax lots 200, 600 and 900 of the Measure 37 claim property because the zoning and lawfully permitted uses of the claimant's property have not changed since the claimant acquired it.

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals on tax lot 800 because the claimant is not an owner of the that tax lot 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 24<sup>th</sup> day of March 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 it 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.