



**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: E132918D¹

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

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 9S, Range 2W, Section 9
Tax lots 600 and 800
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 west of Duckflat Road SE and south of Cook Road 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.

¹ 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. 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. E132918D refers to tax lots 600 and 800 (T9S R1W S9) and claimant Fox Land Company. 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.

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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites.² 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, M06-352, with Marion County on December 4, 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."

² 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 information submitted by the claimant, Fox Land Company is not an owner of the property for the purposes of Measure 49. The claimant conveyed its interest in tax lots 600 and 800 to Mid-Valley Hay, LLC on October 22, 2008, as reflected by a recorded deed included with the claim.

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 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, Fox Land Company does not qualify for Measure 49 home site approvals because the claimant no longer owns the Measure 37 claim property.

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 24th 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.