



**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:

E134051B¹

CLAIMANTS:

Signa, Inc.
c/o John A. Rankin
26715 SW Baker Road
Sherwood, OR 97140

Dwight L. Crook
14441 NW Killin Road
Banks, OR 97106

Rose Crook
PO Box 263
Seymour, TX 76380

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 2N, Range 4W, Section 27
Tax lots 800 and 1000
Washington County

AGENT CONTACT INFORMATION:

John A. Rankin
26715 SW Baker Road
Sherwood, OR 97140

The claimants, Signa, Inc. and Dwight and Rose Crook, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 14441 NW Killin Road, 46780/46 NW Graham Road, near Banks, in Washington 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 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 E134051 has been divided into two claims because the claim includes two tax lots or parcels that are not in the same ownership. E134051A refers to tax lot 801 and claimants Dwight and Rose Crook. E134051B refers to tax lots 800 and 1000 and claimant Signa, Inc.

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 six 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. 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, Signa, Inc. and Dwight and Rose Crook, filed a Measure 37 claim, M134051, with the state on December 4, 2006. The claimants filed a Measure 37 claim, 37CL0865, with Washington County on December 4, 2006. The state claim was filed on December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Washington 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 claimant, Signa, Inc. is the owner of fee title to the property as shown in the Washington County deed records and, therefore, is an owner of the property under Measure 49.²

Washington County has confirmed that claimant Signa, Inc. is the current owners of the property.

According to the information obtained from the title company, Dwight and Rose Crook have not established their ownership of the property for the purposes of Measure 49 because they no longer own the Measure 37 claim 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 Washington County, outside the urban growth boundary and outside the city limits of the nearest city, Banks.

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 (EFU) by Washington 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

² Signa, Inc. is a foreign corporation that had its authority to transact business in Oregon administratively revoked on January 7, 2005.

acres in size in an EFU zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 104.79 acres. Therefore, state land use regulations prohibit claimant Signa, Inc 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 claimant Signa, Inc. 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

Washington County deed records indicate that claimant Signa, Inc. acquired the property on May 5, 1998.

On May 5, 1998, the Measure 37 claim property was subject to Washington County's acknowledged Exclusive Farm Use (EFU) zone. Washington County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 104.79 acres and is developed with two dwellings. Therefore, the claimant lawfully could not have established any additional home sites on its date of acquisition. In addition, the zoning of the Measure 37 claim property has not changed since the claimant acquired the property. Therefore, the claimant is not eligible for relief under Measure 49.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 8, 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.

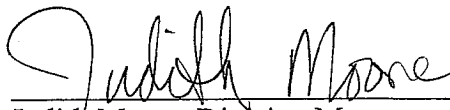
III. CONCLUSION

Based on the analysis above, claimant Signa, Inc. does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimant's date of acquisition. In addition, claimant Signa, Inc is not eligible for any relief under Measure 49 because the lawfully permitted use of the claimant's property has not changed since the claimant acquired the property.

Based on the analysis above, claimants Dwight and Rose Crook 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. They no longer own 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 7th 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.