



**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:** E130413<sup>1</sup>

**CLAIMANTS:** Oldenstadt, LLC  
c/o Dennis L. Oldenstadt  
24725 SW Mountain Road  
West Linn, OR 97068

Dennis L. and Jacqueline Oldenstadt  
24725 SW Mountain Road  
West Linn, Oregon 97068

Allan and Donna Smith  
24825 SW Mountain Road  
West Linn, Oregon 97068

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 3S, Range IE  
Section 5B, Tax lot 300  
Section 5A, Tax lot 800  
Clackamas County

**AGENT CONTACT INFORMATION:** John A. Rankin  
John A. Rankin, LLC  
26715 SW Baker Road  
Sherwood, OR 97140

The claimants, Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, filed claims with the state under ORS 197.352 (2005) (Measure 37) on July 27, 2005 and October 25, 2006, for property located at 24601 and 24725 SW Mountain Road, near West Linn, in Clackamas 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

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<sup>1</sup> The claimants also filed claim M121599 for the same property. Measure 49 Section 6(5) provides:

“If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.”

This Final Order of Denial addresses M130413 because no waiver was issued under Measure 37 for either claim and it is the most recent claim filed with the state.

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.

## **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 three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 46 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, Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, filed Measure 37 claims, M121599 and M130413, with the state on July 27, 2005 and October 25, 2006, respectively. The claimants filed a Measure 37 claim, ZC176-05, with Clackamas County on June 21, 2005. The state claims were filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Clackamas 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 and information from Clackamas County, Oldenstadt, LLC is the owner of fee title to the property as shown in the Clackamas County deed records and, therefore, is an owner of the property under Measure 49. Clackamas County has confirmed that the claimant is the current owner of the property.

According to the information submitted by the claimants, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith have not established their ownership of the property for the purposes of Measure 49. Claimant Dennis Oldenstadt asserts acquisition of an ownership interest in tax lots 300 and 800 on April 28, 1948, and claimants Jacqueline Oldenstadt and Allan and Donna Smith assert acquisition of an ownership interest in tax lots 300 and 800 on February 21, 1969. However, according to information from Clackamas County, the claimants transferred all of their individual interest in the subject property to the Oldenstadt Family Limited Partnership on June 23, 1997. The Oldenstadt Family Limited Partnership subsequently transferred the subject property to claimant Oldenstadt, LLC, as reflected by a bargain and sale deed included with the claim. An LLC is a distinct and separate entity from its members. Therefore, claimants Dennis and Jacqueline Oldenstadt and Allan and Donna Smith no longer own the Measure 37 claim property for the purposes of Measure 49.

Because this requirement has not been met with respect to Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, they are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will only be evaluated for claimant Oldenstadt, LLC.

**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 Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, West Linn.

## **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 Clackamas 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 and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant’s property consists of 92.84 acres. Therefore, state land use regulations prohibit claimant Oldenstadt, LLC 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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**

Clackamas County deed records indicate that claimant Oldenstadt, LLC acquired the property on August 20, 1999.

On August 20, 1999, the Measure 37 claim property was subject to Clackamas County's acknowledged Exclusive Farm Use (EFU) zone. Clackamas County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants' property consists of 92.84 acres, and is developed with two dwellings. Therefore, the claimant lawfully could not have established any additional home sites on its date of acquisition.

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

The department issued its Preliminary Evaluation for this claim on December 17, 2009. 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.

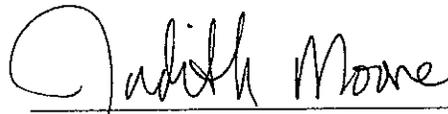
## **III. CONCLUSION**

Based on the analysis above, claimant Oldenstadt, LLC does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on its date of acquisition.

Based on the preliminary analysis, claimants Dennis and Jacqueline Oldenstadt and Allan and Donna Smith do not qualify for Measure 49 home site approvals because they have not established their ownership of the Measure 37 claim 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 16<sup>TH</sup> day of February 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.