



**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:**

E133944

**CLAIMANTS:**

O'Jay Omlid  
36710 Keller Lane  
Springfield, OR 97478

Lee Omlid  
216 Nopal Street  
Florence, OR 97439

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 18S, Range 12W, Section 11  
Tax lot 2200  
Lane County

The claimants, O'Jay Omlid and Lee Omlid, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located near Taylor Road, near Florence, in Lane 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.

**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 supplemental review under Section 6. No waiver was issued for this claim. The Measure 37 claim filed with the state describes residential use. 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, O'Jay Omlid and Lee Omlid, filed a Measure 37 claim, M133944, with the state on December 4, 2006. The claimants filed a Measure 37 claim, PA05-6805, with Lane County on December 22, 2005. The state claim was filed on December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Lane 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, Lee Omlid is the settlor of a revocable trust into which he conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

According to the deeds submitted by the claimants, O'Jay Omlid is the owner of fee title to the property as shown in the Lane County deed records and, therefore, is an owner of the property under Measure 49.

Lane County has confirmed that the claimants are the current owners of the 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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Florence.

**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:**

Lane County deed records indicate that claimant Lee Omlid acquired the property on January 22, 2000, and claimant O'Jay Omlid acquired the property on August 17, 2006. Therefore, for purposes of Measure 49, the claimants' acquisition date is January 22, 2000.

On January 22, 2000, the Measure 37 claim property was subject to Lane County's acknowledged Impacted Forest (F2) zone and Clear Lake Water Protection (CLWP) zone. The property is currently subject to Lane County's acknowledged Impacted Forest (F2) zone and Clear Lake Water Protection (CLWP) zone. Therefore the zoning and lawfully permitted uses of the claimants' property have not changed since they acquired it.

Because this requirement has not been met, the claimants are 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 December 8, 2009. 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.

The claimants submitted a comment asserting that Erling Omlid is a claimant and that his acquisition date should provide the basis for the lawfully permitted analysis under section 6(6)(f) of Measure 49 because Erling Omlid was a claimant to the Measure 37 claim filed with Lane County on December 22, 2005. However, Erling Omlid was not a claimant to the Measure 37

claim filed with the state because he passed away on July 13, 2006 prior to the filing of the claim.

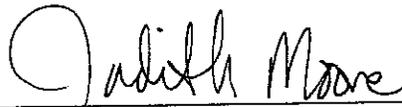
The claimants also cite House Bill 3546 (2007) to support their assertion that Erling Omlid's claim made at the county level on December 22, 2005 may be prosecuted by his heirs or devisees with the state. However, that provision only applied to claims filed on or after November 1, 2006.

### **III. CONCLUSION**

Based on the analysis above, the claimants are not eligible for any relief under Measure 49 because the zoning and lawfully permitted uses of the claimants' property have not changed since they acquired it.

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 22<sup>nd</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.