



**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:**

H134407

**CLAIMANTS:**

Eugene J. and Irene A. Schmidt  
14280 SW Highway 18  
McMinnville, OR 97128

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 5S, Range 5W, Section 10  
Tax lot 1800  
Yamhill County

**AGENT CONTACT INFORMATION:**

Samuel R. Justice  
Haugeberg, Rueter, Gowell, Fredricks,  
Higgins, & McKeegan, P.C.  
PO Box 480  
McMinnville, OR 97128

The claimants, Eugene and Irene Schmidt, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on June 28, 2007, for property located on the west side of Oldsville Road, near McMinnville, in Yamhill 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 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. However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant filed a Measure 37 claim with the state after December 4, 2006 but did not comply with the provisions of OAR 660-041-0020, then in effect. Eugene and Irene Schmidt were not entitled to Measure 49 relief on that basis.

However, the Oregon State Legislative Assembly subsequently amended this Measure 49 requirement through the passage of House Bill 3225 (Chapter 855 (2009 Laws)) (HB 3225). As a result, this requirement no longer prevents the claimants, Eugene and Irene Schmidt, from obtaining Measure 49 relief. The claimants elected to seek relief under Measure 49, as amended by HB 3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

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 one home site approval in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes one home site. Therefore, the claimants may qualify for a maximum of one home site approval under Section 6 of Measure 49.

### B. Qualification Requirements

To qualify for a home site approval under Section 6 of Measure 49, as amended by HB 3225, 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 the state before Measure 49 became effective on December 6, 2007. If the claimant filed their state Measure 37 claim after December 4, 2006, the claimant must also have either (a) filed the claim in compliance with the provisions of OAR 660-041-0020 then in effect; (b) submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or (c) filed a Measure 37 claim with the county on or before December 4, 2006.

#### Findings of Fact and Conclusions

The claimants, Eugene and Irene Schmidt, filed a Measure 37 claim, M134407, with the state on June 28, 2007. The claimants filed a Measure 37 claim, M37-03-07, with Yamhill County on June 28, 2007. The state claim was filed after December 4, 2006 but the claimants did not submit a land use application or file a county Measure 37 claim until June 28, 2007.

The claimants did not file a timely Measure 37 claim with the state along with any additional claims or applications that the claimants had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

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 June 23, 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. Specifically, the claimants' attorney asserts that the department has

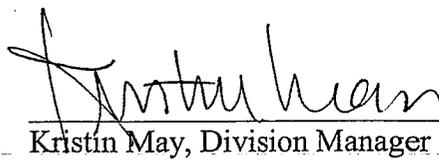
misconstrued Section 3(1)(b) of HB 3225, which requires that in order to be eligible for relief under that amendment to Measure 49, a claimant must have “submitted a land use application *before* June 28, 2007, that was a prerequisite to filing a valid claim for just compensation on or after December 4, 2006, and filed the claim with the state before December 6, 2007 (emphasis added).” The attorney argues that, to be consistent with the language of Measure 49, Section 5, “before” should be read to be a scrivener’s error and that instead the language of HB 3225 it should be read to mean “on or before” June 28, 2007. However, the language of HB 3225 is clear, and the department is not authorized to read into the statute a meaning that is inconsistent with that language. The attorney also argues the department should have applied the provisions of Senate Bill 1049, Section 6, under which a claimant may be eligible for one dwelling when the claimant did not timely file a Measure 37 claim with the state, provided the county provided a certified copy of the county claim to the department on or before June 30, 2010. According to the claimants’ attorney, Yamhill County did not provide a copy of the county claim by that deadline, but since the state had a copy of the county claim, the department should disregard that statutory requirement. In fact, it appears that the claimants did file a state claim, but failed to timely file a land use application that was a prerequisite to filing a valid Measure 37 claim after December 4, 2006. It is not clear how the relief available under SB 1049 applies in this instance. However, to the extent SB 1049 would apply, the department does not have the authority to disregard statutory requirements, as the claimants’ attorney requests.

### III. CONCLUSION

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals because the claimants did not did not timely file a Measure 37 claim with the state along with any additional claims or applications that the claimants had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

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:



Kristin May, Division Manager  
Dept. of Land Conservation and Development  
Dated this 1<sup>st</sup> day of August 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.