



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Final Order and of Denial**

STATE ELECTION NUMBER:

E129551

CLAIMANT:

Florence Gross
P.O. Box 43
Falls City, Oregon 97344

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 8S, Range 6W
Section 16: tax lots 400, 501, 600 and 700
Section 16CC: tax lot 100¹
Section 16CD: tax lot 1100¹
Polk County

**AGENT/
PRIMARY CONTACT INFORMATION:**

Stephen Mannenbach
P.O. Box 220
Dallas, Oregon 97338

The claimant, Florence Gross, filed a claim under ORS 197.352 (2005) (Measure 37) on June 20, 2006, for property located at 703 Alan Street, near Falls City, in Polk 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 elected supplemental review of her 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. 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 The Measure 37 claim property consists of tax lots 400, 501, 600, 700, 100 and 1100. The claimant did not elect a supplemental review on tax lots 100 and 1100; however, a claim cannot be amended to remove claim property.

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, Florence Gross, filed a Measure 37 claim, M129551, with the state on June 20, 2006. The claimant filed a Measure 37 claim with Polk County on June 9, 2006. The state claim was filed prior to December 4, 2006. The claimant timely filed a Measure 37 claim with both the state and Polk County.

2. 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

A portion of the Measure 37 claim property, tax lots 100 and 1100, is located within the boundary of Falls City.

Because this requirement has not been met, the remaining approval criteria will not be evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on October 24, 2008. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties

In response to the Preliminary Evaluation, the claimant's attorney submitted a response arguing essentially that Measure 37 created a binding contract between the state and the claimant, and that Measure 49 is unconstitutional. The department disagrees with the claimant's analysis.

III. CONCLUSION

Based on the analysis above, the claimant, Florence Gross, does not qualify for any home site approvals under Section 6 of Measure 49 because a portion of the Measure 37 claim property is located within the boundary of Falls City.

IT IS HEREBY ORDERED that this Final Order and Home Site Authorization 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:

_____/S/_____
Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this ____ day of January, 2009.

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.