



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

August 3, 2010

STATE ELECTION NUMBER: H133753¹

CLAIMANT: Jess Fitzhugh
PO Box 549
Brookings, OR 97415

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 40S, Range 13W, Section 00
Tax lots 5800 and 5801
Curry County

I. ELECTION

The claimant, Jess Fitzhugh, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on June 30, 2008, for property located on Old County Road, near Brookings, in Curry 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 his Measure 37 claim under Section 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 did not file a Measure 49 election within 90 days of the department mailing the election packet. Jess Fitzhugh was 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 claimant, claimant Jess Fitzhugh, from obtaining Measure 49 relief. The claimant 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.

¹ The claimant also has submitted a claim for property not contiguous to the subject property which is identified as H133754.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49, as amended by HB 3225, because the claimant failed to submit a Measure 49 appraisal that meets the requirements of Section 7(7) of Measure 49, and establishes the reduction in the fair market value of the property as required by Section 7(6) of Measure 49, within 180 days of the date of the letter notifying the claimant of the amendments to Measure 49 that allow for supplemental review of his claim.

III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 7 of Measure 49, as amended by HB 3225, a claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7(6) of Measure 49. The appraisal must be filed with the department within 180 days of the date of the letter notifying the claimant of the amendments to Measure 49 that allow for supplemental review of the claimant's claim.

The department mailed the claimant a notification letter on October 27, 2009. The claimant was required to submit an appraisal by April 25, 2010, 180 days of the date the department mailed the claimant the notification letter. No appraisal has been received by the department.

Because this requirement has not been met, the claimant is not entitled to any relief under Section 7 of Measure 49, as amended by HB 3225, and, therefore, the remaining approval criteria will not be evaluated.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant does not qualify for Measure 49 home site approvals because the claimant did not submit an appraisal within 180 days of the date of the letter notifying the claimant of the amendments to Measure 49 that allow for supplemental review of his claim.

IV. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimant and the claimant's agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimant and the claimant's agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimant and the claimant's authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.