



**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: E131428

CLAIMANT: Kessen Living Trust
Janette Butolph, Trustee
4765 Mistletoe Road
Monmouth, Oregon 97361

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 8S, Range 5W
Section 21, Tax lot 100
Section 22, Tax lot 300
Polk County

The claimant, Janette Butolph, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 28, 2006, for property located on Mistletoe Road, near Dallas, 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 under either Section 6 or Section 7 of Measure 49. The claimant has elected supplemental review of her Measure 37 claim under Section 7, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 the Section 7 option, 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 or with the county if the claim is being processed by the county, within 180 days after the date the claimant files the election to obtain relief under Section 7 of Measure 49.

Findings of Fact and Conclusions

Claimant, Janette Butolph elected to proceed under the Section 7 option with the state on June 6, 2008. The claimant was required to submit an appraisal by December 3, 2008, within 180 days after the date she filed her election. 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, and, therefore, the remaining approval criteria will not be evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

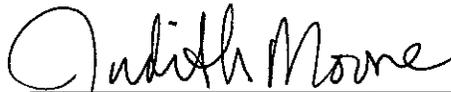
The department issued its Preliminary Evaluation for this claim on April 2, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice

III. CONCLUSION

Based on the analysis above, the claimant Janette Butolph does not qualify for any Measure 49 home site approvals. The claimant did not submit an appraisal within 180 days after the date she filed her election as required by section 8(5) 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 30th day of March, 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.