



**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:** E134242

**CLAIMANT:** Edward and Kathleen Kemper  
9360 Northwest Roy Road  
Forest Grove, Oregon 97116

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 1 North, Range 3 West,  
Section 8, tax lot 1300  
Washington County

**PRIMARY CONTACT INFORMATION:** David J. Hunnicutt  
PO Box 230637  
Tigard, Oregon 97281

The claimants, Edward and Kathleen Kemper, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 5, 2006 for property located at 9360 Northwest Roy Road, near Forest Grove, in Washington 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<sup>1</sup> 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 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

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<sup>1</sup> The claimants changed their election from Section 7 to Section 6 on December 1, 2008.

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.

OAR 660-041-0020 required, in relevant part that Measure 37 claims based on existing DLCD regulations and filed after December 4, 2006:

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.

### **Findings of Fact and Conclusions**

The claimants, Edward and Kathleen Kemper, filed a Measure 37 claim, M134242, with the state on December 5, 2006.

At the time of filing their Measure 37 claim, the claimants did not include a final written decision denying their proposed use based on an existing land use regulation of DLCD, another agency or a county.

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 November 5, 2008. 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.

In a letter dated December 1, 2008, the claimants' primary contact questioned the department's determination that the claimants' Measure 37 claim had been subject to the requirements of OAR 660-041-0020 that applied to claims filed after December 4, 2006. The claimants submitted a certified mail receipt dated December 4, 2006 as evidence of the date they filed their Measure 37 claim. OAR 125-145-0030, in effect in 2006, set forth the applicable standards for submitting a Measure 37 claim. That rule provided in relevant part:

“(3) A Claim is made under section 4 of Measure 37 on the date a Claim is received by the Department.” (Emphasis added.)

Although the claimants provided evidence that they mailed their claim on December 4, 2006, the rule recited above establishes that a Measure 37 was not made until it was received by the Department. In fact, the claimant’s Measure 37 claim was not received by the Department, as required in OAR 125-145-0040(3), until after December 4, 2006. Therefore, on the date that the claim was “made under section 4 of Measure 37” it was subject to the requirements set forth in OAR 660-041-0020, then in effect.

### **III. CONCLUSION**

Based on the analysis above, the claimants, Edward and Kathleen Kemper do not qualify for any Section 6 of Measure 49 home site approvals. At the time of filing, the claimants’ Measure 37 claim did not comply with the requirements of OAR 660-041-0020 then in effect.

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:

\_\_\_\_\_/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.