



**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:

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

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.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

I. ANALYSIS OF CLAIM

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

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

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.

Findings of Fact and Conclusions

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.

II. COMMENTS ON THE PRELIMINARY EVALUATION

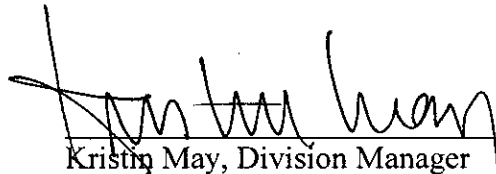
The department issued its Preliminary Evaluation for this claim on August 3, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the 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.

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 10th day of September, 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.