



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

November 6, 2008

STATE ELECTION NUMBER: E129915

CLAIMANT: Vena Dilley
c/o Jerry Dilley
P.O. Box 1129
Fall Creek, Oregon 97438

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 18S Range 2W, Section 21
Tax lot 500
Lane County

**AGENT/
PRIMARY CONTACT INFORMATION:** Steve Cornacchia
Hershner Hunter, LLP
180 E. 11th Avenue
Eugene, Oregon 97401

I. ELECTION

The claimant, Vena Dilley, filed a claim under ORS 197.352 (2005) (Measure 37) on August 24, 2006 for property located at 85496 Evendale Road, near Pleasant Hill, in Lane 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 has 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 for qualified claimants.

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 because the claimant has not established her ownership of the Measure 37 claim property.

III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimant, Vena Dilley, filed a Measure 37 claim, M129915, with the state on August 24, 2006. The claimant filed a Measure 37 claim, PA06-6348, with Lane County on August 1, 2006. The state claim was filed prior to or on December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Lane County.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimant must establish each of the following:

(a) The Claimant is an Owner of the Property

Measure 49 defines “Owner” as: “(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.”

According to the information submitted by the claimant, Vena Dilley has not established her ownership of the property for the purposes of Measure 49. Claimant Vena Dilley acquired tax lot 500 on November 19, 1949, as reflected by a recorded warranty deed included with the claim. However, Vena Dilley conveyed fee title to Gerald and Darold Dilley on November 14, 1989, retaining for herself a life estate. Under Measure 49, a life estate holder is not an owner of property; thus Vena Dilley was no longer an owner of tax lot 500 after November 14, 1989.¹

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

¹ Information obtained by the department indicates that Vena Dilley passed away on March 14, 2008. Under Measure 49, if a claimant dies on or after December 6, 2007, entitlement to prosecute a claim passes to the person that acquires the claim property by devise or by operation of law. Because it appears that Vena Dilley was not an owner of the property on March 14, 2008, it does not appear that entitlement to prosecute the claim passed to anyone upon her death.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant Vena Dilley does not qualify for any Measure 49 home site approvals because the claimant has not established her ownership of the Measure 37 claim property and is not eligible for relief under Measure 49.

III. 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.