



**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**

December 26, 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 CONTACT INFORMATION: Steve Cornacchia
Hershner Hunter, LLP
180 E. 11th Avenue
Eugene, Oregon 97401

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 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 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 claimant 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 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.

Findings of Fact and Conclusions

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 December 4, 2006. The claimant timely filed a Measure 37 claim with both the state and Lane County.

2. 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.”

Findings of Fact and Conclusions:

According to the information submitted by the claimant and Lane County, Vena Dilley is not an owner 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 claimant is not entitled to any relief under Measure 49, and, therefore, 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 Vena Dilley was not an owner of the property on March 14, 2008, entitlement to prosecute the claim did not pass to anyone upon her death.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on November 6, 2008. 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, Vena Dilley does not qualify for any Measure 49 home site approvals. The claimant has not established her ownership of the Measure 37 claim property and is not eligible for relief under 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:

_____/S/_____
Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this 26th day of December, 2008.

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.