



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

December 15, 2008

STATE ELECTION NUMBER: E130692B¹

CLAIMANT: Maxine DeVilbiss
1765B South Ragosa Circle
Palmer, Alaska 99645

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 9S, Range 3W, Section 28D
Tax lots 1200, 1300, 1400 and 1600

Township 9S, Range 3W, Section 33
Tax lot 300
Marion County

PRIMARY CONTACT INFORMATION: Ray DeVilbiss
6505 North Wolverine Road
Palmer, Alaska 99645

I. ELECTION

The claimant, Maxine DeVilbiss, filed a claim under ORS 197.352 (2005) (Measure 37) on November 13, 2006, for property located, near Jefferson, in Marion County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed a Measure 37 claim to elect supplemental review of their claim under either Section 6 or Section 7 of Measure 49. The claimant has elected supplemental review of her Measure 37 claim under Section 6, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to 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 is no longer an owner of the Measure 37 claim property.

¹ Measure 37 claim E130692 has been split into two claims, E130692A and E130692B, because the Measure 37 claim sought relief for non-contiguous parcels. Claim E130692A addresses the claimant's eligibility for Measure 49 relief for tax lots 400 and 700. Claim E130692B addresses the claimant's eligibility for Measure 49 relief for tax lots 300, 1200, 1300, 1400 and 1600.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANT MAY QUALIFY

Under Section 6 of Measure 49, the number of home site approvals issued by the department cannot exceed the lesser of the following: three; the number stated by the claimant in the election materials; or the number described in a Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes four home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6.

IV. 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, Maxine DeVilbiss, filed a Measure 37 claim, M130692, with the state on November 13, 2006. The claimant filed a Measure 37 claim, M06-51, with Marion County on July 10, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Marion 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 information obtained by the department, claimant Maxine DeVilbiss has not established her ownership of the property for the purposes of Measure 49. Information received from Marion County combined with title information obtained by the department show that the claimant sold the Measure 37 property on April 22, 2008.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, Maxine DeVilbiss, does not qualify for any Measure 49 home site approvals because the claimant is no longer an owner of the Measure 37 claim property.

V. 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.