DIVISION 41

MEASURE 49

Existing Claim Rules
(Measure 37 Claims, Including Supplemental Review Under Ballot Measure 49)

660-041-0000

Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0150 is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver was required in addition to a waiver from a city or county. Finally, these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-0160, as well as to the Supplemental Review of Measure 37 Claims under OAR 660-041-0080 to 660-041-0160.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and before December 6, 2007, and that are based on one or more DLCD Regulations and that are not described in section 3 of Chapter 855, Oregon Laws 2009.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0070 apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-0080 to 660-041-0160 apply to the Supplemental Review of a Claim by DLCD.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0010

Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0160:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed with the State of Oregon before December 6, 2007. If the claim was filed with the State of Oregon after June 28, 2007, it qualifies as a Claim only if a corresponding Claim for the measure 37 Claim Property was filed prior to that date with the city or county with land use jurisdiction over the Measure 37 Claim Property.

(3) "Claimant" means a person who submitted a Claim.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCD" means the Department of Land Conservation and Development.

(6) "DLCD Measure 37 Waiver" means a decision by LCDC or DLCD that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(7) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

(8) "Elected" means signed and filed the form provided by DLCD with a box checked.

(9) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

(11) "LCDC" means the Land Conservation and Development Commission.

(12) "Measure 37 Claim Property" means the private real property described in a Measure 37 Claim.

(13) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Measure 37 Claim Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land

use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.

(14) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more Land Use Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(15) "Measure 49" means Chapter 424, Oregon Laws 2007.

(16) "Measure 49 Authorization" means a final order and authorization issued by the department under Measure 49 that authorizes a claimant to seek local approval of one or more home sites.

(17) "Supplemental Information" means information needed by DLCD, under section 8(3) of Measure 49, to proceed with the Supplemental Review of a Claim.

(18) "Supplemental Review" means review by DLCD of a Claim under either section 6 or section 7 of Measure 49.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 1-2009, f. & cert. ef. 4-2-09

660-041-0020

Contents of a Measure 37 Claim Based on a DLCD Regulation

(1) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was received by DAS after December 4, 2006 and was based on one or more Existing DLCD Regulations, then the Claim must:

(a) Demonstrate that a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied one or more city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and

(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 included the Measure 37 Claim Property and that requested 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.

(2) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was based on one or more New DLCD Regulations, then the Claim must:

(a) Have been received by DAS within two years of:

(A) The effective date of the New DLCD Regulation; or

(B) Within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulations were approval criteria, whichever was later; and

(b) If the Claim was submitted more than two years after the effective date of the New DLCD Regulation, the Claim must include a copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Measure 37 Claim Property and that requested authorization for the specific use that the Claim was based on, in which the city, county, or Metro determined that the New DLCD Regulation or city or county or Metro Land Use Regulation that implemented the New DLCD Regulation were approval criteria for the decision.

(3) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulation, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulation.

(4) A DLDC Regulation was applied as an approval criterion for purposes of this rule and ORS 197.352(5) (2005) when a city, county or Metro made a final written decision on a Land Use Application, or when an Agency took final written action on an application to that Agency, and that final written decision or final written action denied the application or conditioned the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

(5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that were based on one or more DLCD Regulations, and that are not described in section 3 of Chapter 855, Oregon Laws 2009.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0030

Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office at least ten (10) calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the notice must be sent ten (10) days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject Land Use Application; and,

(e) The name of the present owner of the Measure 37 Claim Property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office within ten (10) calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0040

When a DLCD Measure 37 Waiver Was Required

Before a Claimant could lawfully use Measure 37 Claim Property for a use under a Measure 37 Waiver, the Claimant must have obtained a DLCD Measure 37 Waiver for that use of the Measure 37 Claim Property in all cases where that use was restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Measure 37 Claim Property includes:

(1) Land zoned for farm use under Goal 3;

(2) Land zoned for forest use under Goal 4; or

(3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Measure 37 Claim Property was an urban use under Goal 14, or that use included the establishment or extension of a sewer or water system restricted under Goal 11.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0060

Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

Any authorization for a Claimant to use Measure 37 Claim Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use of Measure 37 Claim Property that was authorized under ORS 197.352 (2005). A Claimant may complete a use of Measure 37 Claim Property that was begun prior to December 6, 2007, only if the Claimant had a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure 37 Waiver.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0070

State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

After December 5, 2007, when a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Measure 37 Claim Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020. This rule does not apply to a use that was lawfully established or vested based on a DLCD Measure 37 Waiver on December 6, 2007.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0080

Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49 and Fee under Chapter 855, Oregon Laws 2009.

(1) If the record for the Claim does not include the information needed for DLCD to proceed with the Supplemental Review of the Claim, DLCD will request Supplemental Information from a Claimant or the Claimant's authorized agent.

(2) If the Claim is described in sections 2 through 5a or Section 13 of Chapter 855, Oregon Laws 2009 a Claimant or Claimant's authorized agent must submit a $175 fee to DLCD. DLCD will request the fee from a Claimant or the Claimant's authorized agent.

(3) Supplemental Information or a $175 fee requested by DLCD must be filed with DLCD within fifty-six (56) days of the date the request is sent and must be filed in the manner described in OAR 660-041-0100.

(4) For good cause shown, DLCD may extend the period for filing Supplemental Information or a $175 fee beyond fifty-six (56) days.

(5) If DLCD fails to issue a final order on a Claim described in sections 2 through 5a, or Section 13 of Chapter 855, Oregon Laws 2009 by December 31, 2010, DLCD shall refund any $175 fee submitted for that Claim.

(6) For purposes of this division, "Supplemental Review" means review by DLCD of a Claim under either section 6 or section 7 of Measure 49, and when applicable, sections 2 through 5a or Section 13 of Chapter 855, Oregon Laws 2009.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0090

Procedures for Supplemental Review of Measure 37 Claims under Measure 49

(1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure 49, DLCD will review the Claim, as supplemented by the Election and the Supplemental Information, and prepare a Preliminary Evaluation of the relief that the Claimant may be entitled to. The Preliminary Evaluation will be based on and include an initial preliminary assessment of the number of lots, parcels and dwellings, if any, the Claimant lawfully was permitted to establish on the date the Claimant acquired the Measure 37 Claim Property.

(2) Prior to the issuance of the Preliminary Evaluation, DLCD will mail written notice of the Supplemental Review and a copy of any materials submitted by the Claimant to the county with land use jurisdiction over the Measure 37 Claim Property, and will provide that county an opportunity to submit written comment on the Supplemental Review. DLCD will consider all comments from the county in its preparation of the Preliminary Evaluation.

(3) DLCD will mail Notice of the Preliminary Evaluation to the Claimant, the Claimant's authorized agent, the county with land use jurisdiction over the Measure 37 Claim Property, and to any person who is an owner of record of real property located either within 250 feet of the Measure 37 Claim Property, if the Measure 37 Claim Property is not within a farm or forest zone, or within 750 feet of the Measure 37 Claim Property if it is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include any portion of the Measure 37 Claim Property or that has made a written request for a copy of the Preliminary Evaluation.

(4) Any person may submit written comments, evidence or information in response to the Preliminary Evaluation as provided in OAR 660-041-0100 within twenty-eight (28) days of the date the Preliminary Evaluation is mailed under section (3) of this rule.

(5) DLCD will mail copies of any comments, evidence and information concerning the Preliminary Evaluation that are timely received under section (4) of this rule to the Claimant and the Claimant's authorized agent.

(6) The Claimant and the Claimant's authorized agent may file written comments, evidence or information in response to any materials filed by a third party or county. To be considered by DLCD, the response must filed as provided in OAR 660-041-0100 within twenty-one (21) days after the date DLCD mailed the comments, evidence and information to the Claimant and the Claimant's authorized agent as provided under section (5) of this rule.

(7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either will deny the authorization of home sites or will approve the specific number of home sites under section 6 or section 7 of Measure 49 to which the Claimant is entitled. If approved, the Final Decision will authorize the county with land use jurisdiction over the Measure 37 Claim Property to approve a permit to allow the number of home sites approved.

(8) Following issuance of the Final Decision, the owner of the Measure 37 Claim Property may file an application with the county with land use jurisdiction over the Measure 37 Claim Property for a permit to establish home sites authorized under the Final Decision.

(9) For good cause shown, DLCD may extend any time period under this rule.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0100

Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim under Measure 49

(1) A Claimant may file the form electing how the Claimant wishes to proceed under sections 5 to 11 of Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) only after receiving the notice and form from DLCD.

(2) All information filed with DLCD regarding the Supplemental Review of a Claim must be filed at: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540

(3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or electronically.

(4) The date information is filed is the date the information is received by DLCD, or the date it is mailed, provided it is mailed by registered or certified mail and the person filing

the information has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0110

Determining What Was Lawfully Permitted on the Claimant's Acquisition Date

(1) A Claimant lawfully was permitted to establish one or more lots, parcels or dwellings on the Claimant's acquisition date if DLCD determines that the characteristics of the Measure 37 Claim Property as it existed on that date, including the size, soil quality and location of the Measure 37 Claim Property, would have allowed the Claimant to satisfy the standards and criteria for approval of the lot, parcel or dwelling in effect on that date.

(2) Based on the Claimant's acquisition date, as determined under ORS 195.328, DLCD will apply the following standards and criteria to determine the number of lots, parcels or dwellings that were lawfully permitted:

(a) If the Claimant's acquisition date is prior to January 25, 1975, DLCD will apply the applicable local land use regulations and comprehensive plan provisions, if any, along with any directly-applicable state statutes;

(b) If the Claimant's acquisition date is on or after January 25, 1975 but before the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will directly apply the Statewide Planning Goals, applicable state statutes and existing DLCD regulations. To determine the number of lots, parcels or dwellings that were lawfully permitted under the Statewide Planning Goals, DLCD will apply the first acknowledged local land use regulations, unless the evidence in the record, including but not limited to, county Measure 37 waivers or local land use determinations issued at the time the property was acquired, establishes that a greater number of lots, parcels or dwellings would have been lawfully permitted; and

(c) If the Claimant's acquisition date is on or after the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and local land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the applicable local land use regulations and

comprehensive plan provisions along with any directly-applicable state statutes, Statewide Planning Goals, or LCDC rules.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 1-2009, f. & cert. ef. 4-2-09

660-041-0120

Evaluation of Measure 37 Contiguous Property in Supplemental Review

(1) For purposes of the Supplemental Review of a Claim, ownership of contiguous property will be determined and evaluated as of the date the Claimant Elected relief under section 6 or section 7 of Measure 49.

(2) In determining the relief to which a Claimant is entitled under section 6 or section 7 of Measure 49, the number of home site approvals a Claimant is entitled to will be reduced by the number of existing lots, parcels and dwellings contained within the entire property, which includes both the Measure 37 Claim Property and any contiguous property in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0130

High-Value Farmland and High-Value Forestland

(1) Measure 37 Claim Property is high-value farmland as described in ORS 195.300(10) if:

(a) The Measure 37 Claim Property meets the criteria in ORS 195.300(10)(a) or (b), or both ORS 195.300(10)(a) and (b);

(b) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(c);

(c) The Measure 37 Claim Property is greater than five acres in size and all of the Measure 37 Claim Property is planted in wine grapes, as provided by ORS 195.300(10)(d); or

(d) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(e) or (f), or both ORS 195.300(10)(e) and (f).

(2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS 195.300(11).

(3) To determine the cubic foot potential of Measure 37 Claim Property and whether it is high-value forestland as described in ORS 195.300(11), DLCD will use soil survey information from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), unless other information or data are made a part of the record for the Supplemental Review, in which case DLCD will consider such information or data along with any pertinent NRCS information.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0140

Groundwater Restricted Areas

Measure 37 Claim Property is in a Ground Water Restricted Area if the Measure 37 Claim Property is located entirely within the boundaries of a Ground Water Limited Area or Critical Ground Water Area, or both.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0150

Combining and Dividing Claims

To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the Measure 37 Claim Property contains multiple lots or parcels that are not in the same ownership. In addition, DLCD will combine multiple Claims into one claim if the Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0160

Appraisals Under Section 7 of Measure 49

(1) A Claimant seeking relief under section 7 of Measure 49 must provide an appraisal for the Measure 37 Claim Property showing the fair market value one year before the enactment of the Land Use Regulation(s) that are the basis for the Claim, and the fair market value one year after the enactment of the Land Use Regulation(s).

(2) The appraisal provided under this rule must also show the present fair market value of each lot, parcel or dwelling that the Claimant is seeking under section 7(2) of Measure 49. The appraisal must comply with all provisions of section 7(7) of Measure 49.

(3) For the Claimant to obtain relief under section 7, the appraisal must show that the enactment of one or more Land Use Regulations that are the basis of the Claim, other than land use regulations described in ORS 197.352(3) (2005), caused a reduction in the fair market value of the Measure 37 Claim Property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under section 7(2) of Measure 49. The reduction in fair market value of the Measure 37 Claim Property must be measured as set forth in section 7(6) of Measure 49.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0170

Notice of County Applications and Decisions Under Measure 49

(1) The county with land use jurisdiction over property for which a Measure 49 Authorization has been issued must provide written notice to DLCD of any land use application that seeks approval of one or more home sites under the Measure 49 Authorization, and all final written decisions on home site approvals based on a Measure 49 Authorization.

(2) Notice of an application for home site approval(s) under a Measure 49 Authorization, required under section (1) of this rule, must be mailed to DLCD's Salem office at least ten (10) calendar days before any deadline for comment on the application for a home site approval. If there is no opportunity for comment, then the notice must be sent ten (10) days before the decision becomes final. The notice must include:

(a) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(b) The claim number of the Measure 49 Authorization issued by the State of Oregon; and

(c) The name of the present owner of the Measure 49 Claim Property.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 1-2009, f. & cert. ef. 4-2-09