

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 41

MEASURE 3749 CLAIMS

*February 7, 2008, Draft
Proposed New and Amended Temporary Rules regarding Claims Process
For LCDC Hearing and Possible Adoption February 12, 2008*

1 **660-041-0000**

2 **Purpose and Applicability**

3 (1) The purpose of OAR 660-041-0000 to 660-041-01060 is to ~~clarify and implement~~
4 **Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing**
5 **procedures for Supplemental Review of Measure 37 claims**~~the requirements of ORS~~
6 ~~197.352 (2004 Oregon Ballot Measure 37) for filing Measure 37 Claims after December~~
7 ~~4, 2006 and on or before June 28, 2007 based on one or more DLCD Regulations.~~ These
8 rules also contain requirements for notice of applications and decisions regarding
9 Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver is required. Finally,
10 these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

11
12 (2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37
13 Waivers that are subject to OAR 660-041-0020 to 660-041-01060.

14
15 (3) OAR 660-041-0020 applies only to Claims that were received by DAS after
16 December 4, 2006 and on or before June 28, 2007, and that are based on one or more
17 DLCD Regulations.

18
19 (4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit
20 filed or made on or after February 20, 2007.

21
22 (5) OAR 660-041-0040 to 660-041-0060 apply to all DLCD Measure 37 Waivers.

23 24 **(6) OAR 660-041-0070 to 660-041-0100 apply to the Supplemental Review of a** 25 **Claim by DLCD.**

26
27 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

28 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

29 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-
30 2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru
31 6-7-08

32 33 34 **660-041-0010**

35 **Definitions**

36 The following definitions apply to OAR 660-041-0000 to 660-041-01060:

37
38 (1) "Agency" has the meaning provided by ORS 183.310.
39

1 (2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that
2 was filed on or before June 28, 2007.

3
4 (3) "Claimant" means ~~the owner~~ a person who submitted a Claim, and who
5 subsequently Elected to seek relief under section 6 or section 7 of Chapter 424,
6 Oregon Laws 2007, ~~or the owner on whose behalf a Claim was submitted.~~

7
8 (4) "DAS" means the Department of Administrative Services.

9
10 (5) "DLCD" means the Department of Land Conservation and Development.

11
12 (6) "DLCD Measure 37 Waiver" means a decision by the Land Conservation and
13 Development Commission (LCDC) or DLCD that was made before December 6,
14 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD
15 Regulations to allow a Claimant to use the Property for a use that was permitted
16 when the Claimant acquired the Property.

17
18 ~~(67)~~ "DLCD Regulation" means a Land Use Regulation that is also a state statute
19 codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an
20 LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was
21 enacted by the State of Oregon or adopted by LCDC with an effective date prior to
22 December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was
23 enacted by the State of Oregon or adopted by LCDC with an effective date of on or after
24 December 2, 2004.

25
26 ~~(87)~~ "DLCD Measure 37 Waiver" means a decision by the Land Conservation and
27 Development Commission (LCDC) or DLCD that was made before December 6, 2007
28 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD
29 Regulations to allow a Claimant to use the Property for a use that was permitted when the
30 Claimant acquired the Property. "Elected" means filed the form provided by DLCD as
31 required by section 8 of Chapter 424, Oregon Laws 2007.

32
33 ~~(98)~~ "Land Use Application" means an application for a "land use decision," a "limited
34 land use decision," or an "expedited land division," as those terms are defined by ORS
35 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160
36 to 227.187 or under 215.402 to 215.437.

37
38 ~~(109)~~ "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

39
40 ~~(119)~~ "LCDC" means the Land Conservation and Development Commission.

41
42 ~~(124)~~ "Measure 37 Permit" means a final decision by a city, a county, or by Metro to
43 authorize the development, division or other use of Property pursuant to a Measure 37
44 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an
45 expedited land use decision, a permit (as that term is defined in ORS 215.402 and
46 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also

1 includes a final decision by a city, a county, or by Metro that a person has a vested right
2 to complete or continue a use based on a Measure 37 Waiver.

3
4 (132) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of
5 Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify,
6 remove or not apply one or more Land Use Regulations to allow a Claimant to use the
7 Property for a use that was permitted when the Claimant acquired the Property.

8
9 (143) "Metro" means the Portland Metropolitan Service District.

10
11 (154) "Property" **has the meanings** ~~the Lot or Parcel that is or that includes the private~~
12 ~~real property that is the subject of a Claim.~~ **provided by section 2(17) of Chapter 424,**
13 **Oregon Laws 2007.**

14
15 **(16) "Supplemental Information" means information required, under section 8(3) of**
16 **Chapter 424, Oregon Laws 2007, to proceed with Supplemental Review.**

17
18 **(17) "Supplemental Review" means review by DLCDD of a Claim, as Elected by the**
19 **Claimant, pursuant to either section 6 or section 7 of Chapter 424, Oregon Laws**
20 **2007.**

21
22 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

23 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

24 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-

25 2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru
26 6-7-08

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28
29 **660-041-0020**

30 **Contents of a Measure 37 Claim Based on a DLCDD Regulation**

31 (1) When a Claim is based on one or more Existing DLCDD Regulations, then the Claim
32 must:

33
34 (a) Be received by DAS within two years of the date a city, county, Metro, or an Agency
35 applied one or more Existing DLCDD Regulations, or applied city, county or Metro land
36 use regulations that implement Existing DLCDD Regulations, as approval criteria to an
37 application submitted by the Claimant; and

38
39 (b) Include one of the following:

40
41 (A) A copy of the final written decision by a city, a county, or Metro on a Land Use
42 Application that includes the Property and that requests authorization for the specific use
43 that the Claim is based on, in which the city, county, or Metro determined that one or
44 more Existing DLCDD Regulations or city, county or Metro Land Use Regulations that
45 implement Existing DLCDD Regulations were approval criteria for the decision; or
46

1 (B) A copy of the final written action by an Agency on a complete application to the
2 Agency, in which the Agency determined that one or more Existing DLCD Regulations
3 were approval criteria for the application.

4
5 (2) When a Claim is based on one or more New DLCD Regulations, then the Claim must:

6
7 (a) Be received by DAS within two years of:

8
9 (A) The effective date of the New DLCD Regulations; or

10
11 (B) Within two years of the date the Claimant submitted a Land Use Application in
12 which the Land Use Regulations were approval criteria, whichever is later; and

13
14 (b) If the Claim is submitted more than two years after the effective date of the New
15 DLCD Regulations, the Claim must include a copy of the final written decision by a city,
16 a county, or Metro on a Land Use Application that includes the Property and that requests
17 authorization for the specific use that the Claim is based on, in which the city, county, or
18 Metro determined that the New DLCD Regulations or city or county or Metro Land Use
19 Regulations that implement the New DLCD Regulations were approval criteria for the
20 decision.

21
22 (3) When a Claim is based on both Existing and New DLCD Regulations, the
23 requirements of section (1) of this rule must be met with respect to the Existing DLCD
24 Regulations, and the requirements of section (2) of this rule must be met with respect to
25 the New DLCD Regulations.

26
27 (4) A DLCD Regulation is applied as an approval criterion for purposes of this rule and
28 ORS 197.352(5) when a city, county or Metro makes a final written decision on a Land
29 Use Application, or when an Agency takes final written action on an application to that
30 Agency, and that final written decision or final written action denies the application or
31 conditions the approval of the application on the basis (in whole or in part) of the DLCD
32 Regulation.

33
34 (5) This rule applies only to Claims that were received by DAS after December 4, 2006,
35 and that are based on one or more DLCD Regulations.

36
37 Stat. Auth.: ORS 197.040 & 197.065

38 Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

39 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-
40 2007, f. 2-5-07, cert. ef. 2-9-07

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43 **660-041-0030**

44 **Notice of Applications and Decisions**

45 (1) Except for a building permit that is not a "land use decision" under ORS
46 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all

1 applications for a Measure 37 Permit, and all final written decisions on a Measure 37
2 Permit, filed with or made by the city, county or Metro after February 20, 2007.

3
4 (2) Notice of an application for a Measure 37 Permit required under section (1) of this
5 rule must be mailed to DLCD's Salem office at least ten calendar days before any
6 deadline for comment on the application for a Measure 37 Permit. If there is no
7 opportunity for comment, then the notice must be sent ten days before the decision
8 becomes final. The notice must include:

9
10 (a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

11
12 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763,
13 227.175 or 215.416;

14
15 (c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

16
17 (d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject land
18 use application; and,

19
20 (e) The name of the present owner of the property.

21
22 (3) Notice of a final decision on a Measure 37 Permit required under section (1) of this
23 rule must be mailed to DLCD's Salem office within ten calendar days of the date of the
24 final written decision. The notice must include a copy of the final written decision.

25
26 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

27 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

28 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-
29 2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru
30 6-7-08

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32
33 **660-041-0040**

34 **When a DLCD Measure 37 Waiver is Required**

35 Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant
36 must obtain a DLCD Measure 37 Waiver for that use of the Property in all cases where
37 that use is restricted by a DLCD Regulation or by a city, county or Metro Land Use
38 Regulation that implements a DLCD Regulation. These cases include, but are not limited
39 to, all cases where the use is a use of land, and the Property includes:

40
41 (1) Land zoned for farm use under Goal 3;

42
43 (2) Land zoned for forest use under Goal 4; or

44

1 (3) Land outside of an acknowledged urban growth boundary where the Claimant's
2 desired use of the Property is an urban use under Goal 14, or that use includes the
3 establishment or extension of a sewer or water system restricted under Goal 11.
4

5 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
6 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
7 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert.
8 ef. 12-10-07 thru 6-7-08
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11 **660-041-0050**

12 **Applicability**

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14 **[Rule suspended Dec 10, 2007]**

15
16 ~~OAR 660-041-0020 applies only to Claims that were received by DAS after December 4,~~
17 ~~2006, and that are based on one or more DLCD Regulations. OAR 660-041-0030 applies~~
18 ~~to applications for and decisions on a Measure 37 Permit filed or made on or after~~
19 ~~February 20, 2007. OAR 660-041-0040 takes effect upon the filing of these rules with the~~
20 ~~Oregon Secretary of State.~~
21

22 Stat. Auth.: ORS 197.040 & 197.065
23 Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
24 Hist.: ~~LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; Suspended by LCDD 2-~~
25 ~~2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08~~
26
27

28 **660-041-0060**

29 **Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers**

30 Any authorization for a Claimant to use Property without application of a DLCD
31 Regulation provided by a DLCD Measure 37 Waiver ~~will expired~~ on December 6,
32 2007, as did will the effect of any order of DLCD denying a Claim. A Claimant may
33 continue an existing use of Property that was authorized under ORS 197.352 (2005), or
34 complete a use of Property that was begun prior to December 6, 2007 (2005) only if the
35 Claimant hads a common law vested right to complete and continue that use on
36 December 6, 2007, and the use complies with the terms of any applicable DLCD Measure
37 37 Waiver.
38

39 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
40 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
41 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08
42

1 **660-041-0070**

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

4 After December 5, 2007, when a state agency or a special district is required to take an
5 action in a manner that complies with the Statewide Planning Goals and that is
6 compatible with comprehensive plans and land use regulations under ORS 197.180 (for a
7 state agency), or under ORS 195.020 (for a special district), the state agency or special
8 district must not take that action if it involves a use of Property based on a Measure 37
9 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation
10 based on a DLCD Measure 37 Waiver will expire, and a DLCD Measure 37 Waiver may
11 not serve as the basis for a finding required under ORS 197.180 or 195.020.

12
13 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

14 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

15 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

16
17 **660-041-0080**

18 **Supplemental Information for Supplemental Review of Measure 37 Claims under**
19 **Measure 49**

20
21 **(1) DLCD may request Supplemental Information from a Claimant or the**
22 **Claimant's authorized agent if the record for the Claim does not include all the**
23 **information needed for DLCD to proceed with the Supplemental Review of the**
24 **Claim.**

25
26 **(2) Supplemental Information requested by DLCD must be filed with DLCD within**
27 **sixty (60) days of the date the request is sent and must be filed in the manner**
28 **described in OAR 660-041-0100**

29
30 **(3) For good cause shown, DLCD may extend the period for filing Supplemental**
31 **Information beyond sixty (60) days.**

32
33 **Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007**

34 **Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL**
35 **2007**

36 **Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08**

37
38
39 **660-041-0090**

40 **Notice and Comment for Supplemental Review of Measure 37 Claims under**
41 **Measure 49**

42
43 **(1) DLCD will mail written notice of a Supplemental Review to the claimant or the**
44 **claimant's authorized agent, to any person who is an owner of record of real**
45 **property located within 250 feet of the Property if the Property is not within a farm**
46 **or forest zone or within 750 feet of the Property if the Property is located in a farm**

1 or forest zone, and to any neighborhood or community organization(s) whose
2 boundaries include the Property if the county in which the Property is located
3 provides DLCD contact information for the organization(s).

4
5 (2) To be considered by DLCD in its Supplemental Review of a Claim, comments,
6 evidence or information concerning that Claim must be filed as provided in OAR
7 660-041-0100 with DLCD within twenty-eight (28) days of the date the notice under
8 subsection (1) of this rule is mailed.

9
10 (3) The Claimant or Claimant's authorized agent may file a written response to any
11 comments, evidence or information filed by a third party. To be considered by
12 DLCD, the response must filed as provided in OAR 660-041-0100 with DLCD
13 within forty-nine (49) days after the date the notice under subsection (1) of this rule
14 is mailed.

15
16 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

17 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL
18 2007

19 Hist:

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21
22 660-041-0100

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

25
26 (1) All information filed with DLCD regarding the Supplemental Review of a Claim
27 must be filed at:

28
29 Supplemental Measure 49 Claim Review

30 635 Capitol Street NE, Suite 150

31 Salem, Oregon 97301-2540

32
33 (2) Submissions regarding a Supplemental Review shall not be submitted by
34 facsimile or electronically.

35
36 (3) The date information is filed is the date the information is received by DLCD, or
37 the date it is mailed, provided it is mailed by registered or certified mail and the
38 person filing the information has proof from the post office of such mailing date. If
39 the date of mailing is relied upon as the date of filing, acceptable proof from the post
40 office shall consist of a receipt stamped by the United States Postal Service showing
41 the date mailed and the certified or registered number.

42
43 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

44 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL
45 2007

46 Hist.: