



Oregon

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DATE: July 17, 2009

TO: Land Conservation and Development Commission (LCDC)

FROM: Michael Morrissey, Policy Analyst

SUBJECT: **Agenda Item 12, July 29-31, 2009, LCDC meeting**

PUBLIC HEARING AND ADOPTION OF PROPOSED TEMPORARY ADMINISTRATIVE RULES CONCERNING MEASURE 49

I. AGENDA ITEM SUMMARY

This item is a public hearing regarding the proposed adoption of temporary administrative rules concerning House Bill 3225, making certain adjustments to Measure 49 (2007) (ORS 195.300 to 195.336, Oregon Laws, chapter 424 Oregon Laws 2007). The commission will hear public testimony and may adopt the proposed rules (Attachment A) at the conclusion of the hearing. Virginia Gustafson of the Department of Justice drafted the proposed rules, in consultation with the department, and Michael Morrissey will be at the meeting to provide information to the commission.

Specifically, the proposed rules will be codified in Division 41 under Oregon Administrative Rules (OAR) Chapter 660, and would result in the following actions:

- First, the rules allow DLCD to reevaluate, under HB 3225 and Measure 49, about 400 measure 37 claims currently deemed ineligible for supplemental review, or that would otherwise be denied (in the absence of HB 3225).
- Second, the proposed rules allow for collection of a \$175 fee to defray costs of processing the 400 claims (the fee applies only to the categories of claims addressed in HB 3225).
- Third, the rules set timeframes for submission of information by the department and by claimants for payment of fees and for completion of claims processing

For more information about this agenda item, contact Michael Morrissey at (503) 373-0050 ext. 320, or by e-mail at michael.morrissey@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the commission receive testimony on the proposed temporary rules and, at the conclusion of the public hearing, adopt the proposed rules.

III. BACKGROUND AND HISTORY

The proposed rules amend OAR Chapter 660, division 41, which includes rules adopted in 2004 to implement Ballot Measure 37. The Measure 37 rules were initially adopted as temporary rules, but were adopted as permanent rules in January 2007. In June 2008, DLCD converted temporary Measure 49 rules to permanent rules, and also added new Measure 49 permanent rule provisions. Permanent rules were also adopted by the commission in March of 2009, clarifying requirements for processing Measure 49 elections under Section 6, and requiring notice from local governments to DLCD with regard to land use applications and decisions authorized under Measure 49, and also vested rights decisions.

IV. PROPOSED RULES

Detailed Explanation of the Proposed Temporary Rules

The proposed temporary rules would be codified in Division 41, under Oregon Administrative Rules (OAR) chapter 660 and would facilitate additional review under HB 3225 and Measure 49 (M49) for about 400 Measure 37 (M37) claims. Division 41 was adopted in 2004 in order to implement 2004 Ballot Measure 37.

HB 3225 enables categories of otherwise ineligible M37 claimants to make M49 elections, and revises certain criteria that were the cause for denial for other categories of claimants, while also requiring affected claimants to pay a \$175 fee to help defray the costs of further processing their claims. These claims will be completed during the timeframe between July 1, 2010 and (no later than) December 31, 2010. The proposed rules will apply to:

First, a category of claimants who have already elected under M49 and do not need to re-elect, but need to submit a \$175 fee. The proposed rules allow DLCD to collect a fee to reevaluate M37 claims for which Measure 49 elections were received where: (a) DLCD received a completed Measure 49 election more than 90 days and not later than 120 days after DLCD mailed the election form (effectively allowing late election filings to proceed); (b) the claimant filed the M37 claim with the state after December 4, 2006 without the required denial of a land use application, but filed a companion M37 claim with a county before that date; or (c) the claimant did not file a companion claim with a county (state-only claims). The majority of these claims will be evaluated under Section 6 (of M49) (up to three home sites allowed). However, a claim described in category (a) may be processed under section 7 (up to 10 home sites allowed) based on the original election.

Second, a category of claimants who have not previously elected supplemental review under M49, and will have the opportunity to have their claims reviewed under section 6 (of

M49), if they elect prior to December 31, 2009 and pay a \$175 fee. The proposed rules allow DLCD to undertake an election process for state M37 claims where: (a) DLCD received a M49 election form with only the “vested” box checked and the claimant does not have a vested use; or (b) a claimant filed a state M37 claim after June 28, 2007, but had filed a land use application before that date (some may have filed a M37 claim with a county before June 28, 2007 and so may have elected previously). These claimants will only be eligible for section 6 review.

A third category of claimants may or may not have previously elected supplemental review under M49, and so, although a \$175 fee is due for all, only some will be required to elect. The proposed rules allow DLCD to collect a fee, and either reevaluate M37 claims for which M49 elections were received, or undertake the election process where: (a) the majority of a M37 claim property is outside any urban growth boundary (but a portion is inside the UGB); or (b) a M37 claim property is simultaneously outside any urban growth boundary and inside the boundaries of a city. These claimants will only be eligible for section 6 review.

Affected claimants who do not need to re-elect in order for DLCD to evaluate their claims under the revised criteria will be contacted by DLCD, and will be required to submit a \$175 fee. Affected claimants who need to elect will generally be contacted by DLCD by October 31, 2009 and will need to notify DLCD by December 31, 2009 of their M49 election, and will also need to pay the \$175 fee. The \$175 fee to help offset processing costs is mandated by HB 3225. These Division 41 rules will require that the fee is paid within 56 days after notice from DLCD. An extension of time may be requested by the claimant. If DLCD fails to issue a final order for a claim that is subject to the fee by December 31, 2010, DLCD shall refund any fee that has been paid.

Summary by Rule:

DIVISION 41
Existing Claim Rules

OAR 660-0410010: Definitions:

Adds to Section 18 “Supplemental Review” DLCD review of up to approximately 400 claims made eligible for review as a result of passage of HB 3225.

OAR 660-041-0080: Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49 and Fee under Chapter---Oregon Laws 2009

Section 2 is added, specifying when a \$175 fee is required from a claimant. Section 3 describes the timeframe for payment of the fee. Section 4 allows an extension of time for payment of the fee, and section 5 directs repayment of the fee if a final order is not issued by the department by December 31, 2010.

660-041-0095: Allows claims made eligible for supplemental review based on passage of

HB 3225 to proceed, if claimant(s) file forms with DLCD and elect by December 31, 2009 (see summary above for explanation of which categories of claims are eligible). Indicates that date for DLCD to notice such claimants that they are eligible to elect is October 31, 2009, and that a \$175 fee is required. Indicates extension of time may be granted by DLCD.

V. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The commission is authorized to adopt administrative rules under ORS 197.040, which indicates certain requirements for rulemaking, including economic impact assessments. These assessments will be completed as part of the notices required to be submitted for publication in the Secretary of State Bulletin upon LCDC adoption of these temporary rules. ORS 197.040 states:

“The Land Conservation and Development Commission shall: . . .

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. . .”. In designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.”

Additional sources of authority for the proposed rules are found in ORS 197.045 (LCDC authorized to “perform other functions required to carry out ORS chapters 195, 196 and 197”); 197.090 (coordinating land conservation and development functions with other government entities); 197.175 (comprehensive planning responsibilities of cities and counties); 197.180 (land use planning responsibilities of state agencies); and ORS 197.353(7) (authorizing state agencies to adopt procedures for filing claims under ORS 197.352).

State law at ORS 183.335 provides general authorization for all agencies to adopt rules and provides requirements for notice of such rule adoption:

“Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action . . . in the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency’s proposed action.”

The commission has adopted notice requirements for the adoption of rules, under OAR 660-001-0000(1). Those rules are copied below. The department provided the required notice to interested parties (See Attachment D), in accordance with LCDC’s Division 1 rules, which state:

“(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule;

(b) By mailing a copy of the notice and proposed rule(s) to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(c) By mailing a copy of the notice to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption;

(d) By mailing or furnishing a copy of the notice to the Associated Press and Capitol Press Room; [and]

(e) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.”

Additional LCDC Guidelines for Rule Adoption

In 2004, the commission approved Citizen Involvement Guidelines for Policy Development (“the CIG”) intended to guide the commission and the department in promoting public involvement in the development of commission policy on land use, including new or amended administrative rules. With regard to this rulemaking, the CIG guidelines provide:

“[T]he Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;

2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;

3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department’s website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and

5. Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”

“ The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.”

VI. OVERALL CONCLUSION AND RECOMMENDATION

The department recommends that the commission receive testimony on the proposed temporary rules and adopt the rules.

ATTACHMENTS

- A. Proposed Temporary Rules
- B. Measure 49 (ORS 195.300)
- C. Statement Required by Law for Adoption of Temporary Rules
- D. Notice of Temporary Administrative Rules

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 DLCDC 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 DLCDC Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCDC 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 DLCDC Regulations and that are not described in section 3 of Chapter ---, 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 DLCDC Measure 37 Waivers.

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

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 and, when applicable, sections 2 through 5a or Section 13 of Chapter ---, Oregon Laws 2009.

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 ---, 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 ---, 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 ---, 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 DLCD 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 ---, 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 ---, 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 ---, 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 ---, Oregon Laws 2009 by December 31, 2010, DLCD shall refund any \$175 fee submitted for that Claim.

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 be 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

660-041-0095

(1) If a Claim is described in sections 2 through 5a of Chapter ---, Oregon Laws 2009 and the Claimant did not Elect under section 8, chapter 424, Oregon Laws 2007 to pursue compensation under either section 6, Chapter 424, Oregon Laws 2007 or section 7, Chapter 424, Oregon Laws 2007, the Claimant may proceed under section 6, Chapter 424, Oregon Laws 2007 and Chapter ---, Oregon Laws 2009, by filing the form provided by DLCD on or before December 31, 2009.

(2) DLCD will mail notices and forms to any Claimant that is the subject of this rule on or before October 31, 2009. A Claimant that makes an election under this rule must also submit the \$175 fee required by section 18 of Chapter ---, Oregon Laws 2009.

(3) Once DLCD receives the Election and \$175 fee, DLCD will proceed with Supplemental Review of the Claim as described in 660-041-0090.

(4) For good cause shown, DLCD may extend any time period under this rule to the extent permitted by Chapter---, Oregon Laws 2009.

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

JUST COMPENSATION FOR LAND USE REGULATION

195.300 Definitions for ORS 195.300 to 195.336. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007:

- (1) "Acquisition date" means the date described in ORS 195.328.
- (2) "Claim" means a written demand for compensation filed under:
 - (a) ORS 195.305, as in effect immediately before December 6, 2007; or
 - (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.
- (3) "Enacted" means enacted, adopted or amended.
- (4) "Fair market value" means the value of property as determined under ORS 195.332.
- (5) "Farming practice" has the meaning given that term in ORS 30.930.
- (6) "Federal law" means:
 - (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government;
 - (b) A requirement contained in a plan or rule enacted by a compact entity; or
 - (c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.
- (7) "File" means to submit a document to a public entity.
- (8) "Forest practice" has the meaning given that term in ORS 527.620.
- (9) "Ground water restricted area" means an area designated as a critical ground water area or as a ground water limited area by the Water Resources Department or Water Resources Commission before December 6, 2007.
- (10) "High-value farmland" means:
 - (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.
 - (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and the following soils:
 - (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;
 - (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and
 - (C) Subclassification IVw, specifically Huffling Silty Clay Loam.
 - (c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:
 - (A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;
 - (B) Within the boundaries of a district, as defined in ORS 540.505; or
 - (C) Within the boundaries of a diking district formed under ORS chapter 551.
 - (d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

(11) "High-value forestland" means land:

(a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

(12) "Home site approval" means approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.

(13) "Just compensation" means:

(a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, for land use regulations enacted on or before January 1, 2007; and

(b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

(a) A statute that establishes a minimum lot or parcel size;

(b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;

(c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;

(d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;

(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

(15) “Measure 37 permit” means a final decision by Metro, a city or a county to authorize the development, subdivision or partition or other use of property pursuant to a waiver.

(16) “Owner” means:

(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.

(17) “Property” means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.

(18) “Protection of public health and safety” means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.

(19) “Public entity” means the state, Metro, a county or a city.

(20) “Urban growth boundary” has the meaning given that term in ORS 195.060.

(21) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property.

(22) “Zoned for residential use” means zoning that has as its primary purpose single-family residential use. [2007 c.424 §2]

195.301 Legislative findings. (1) The Legislative Assembly finds that:

(a) In some situations, land use regulations unfairly burden particular property owners.

(b) To address these situations, it is necessary to amend Oregon’s land use statutes to provide just compensation for unfair burdens caused by land use regulations.

(2) The purpose of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and the amendments to Ballot Measure 37 (2004) is to modify Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair

burdens while retaining Oregon's protections for farm and forest uses and the state's water resources. [2007 c.424 §3]

195.305 Compensation for restriction of use of real property due to land use regulation. (1) If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in ORS 195.310 to 195.314.

(2) Just compensation under ORS 195.310 to 195.314 shall be based on the reduction in the fair market value of the property resulting from the land use regulation.

(3) Subsection (1) of this section shall not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:

(a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

(b) Restricting or prohibiting activities for the protection of public health and safety;

(c) To the extent the land use regulation is required to comply with federal law; or

(d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just compensation under this section. Nothing in subsection (3) of this section is intended to affect or alter rights provided by the Oregon or United States Constitution.

(b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection of human health and safety.

(c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the public entity enacting the regulation has no discretion under federal law to decline to enact the regulation.

(5) A public entity may adopt or apply procedures for the processing of claims under ORS 195.310 to 195.336.

(6) The public entity that enacted the land use regulation that gives rise to a claim under subsection (1) of this section shall provide just compensation as required under ORS 195.310 to 195.336.

(7) A decision by a public entity that an owner qualifies for just compensation under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and a decision by a public entity on the nature and extent of that compensation are not land use decisions.

(8) The remedies created by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, are in addition to any other remedy under the Oregon or United States Constitution, and are not intended to modify or replace any constitutional remedy.

(9) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [Formerly 197.352]

(Temporary provisions relating to previously filed claims)

Note: Sections 5, 6, 7, 8, 9, 10 and 11, chapter 424, Oregon Laws 2007, provide:

Sec. 5. A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is entitled to just compensation as provided in:

(1) Section 6 or 7 of this 2007 Act, at the claimant's election, if the property described in the claim is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(2) Section 9 of this 2007 Act if the property described in the claim is located, in whole or in part, within an urban growth boundary; or

(3) A waiver issued before the effective date of this 2007 Act [December 6, 2007] to the extent that the claimant's use of the property complies with the waiver and the claimant has a common law vested right on the effective date of this 2007 Act to complete and continue the use described in the waiver. [2007 c.424 §5]

Sec. 6. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is eligible for three home site approvals on the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be approved for property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state; or

(b) Three, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed three.

(3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief under this section may establish at least one additional lot, parcel or dwelling on the property. In addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant may amend the claim to reduce the number to no more than three by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If a claim was for a use other than a subdivision or partition of property, or other than approval for establishing a dwelling on the property, the claimant may amend the claim to seek one or more home site approvals under this section. A person amending a claim under this subsection may not make a claim under section 7 of this 2007 Act.

(5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim

filed with the state, but not more than three in any case.

(6) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act, to qualify for a home site approval under this section the claimant must establish that:

- (a) The claimant is an owner of the property;
- (b) All owners of the property have consented in writing to the claim;
- (c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;
- (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;
- (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)]; and
- (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are authorized under this section.

(7) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(8) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for a property under this section, the claimant may seek other governmental authorizations required by law for the partition or subdivision of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §6]

Sec. 7. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property that is not high-value farmland or high-value forestland and that is not in a ground water restricted area is eligible for four to 10 home site approvals for the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be established on the property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state;

(b) 10, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed 10; or

(c) The number of home site approvals with a total value that represents just

compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than 10 in any case.

(5) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act to qualify for a home site approval under this section, the claimant must establish that:

- (a) The claimant is an owner of the property;
- (b) All owners of the property have consented in writing to the claim;
- (c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;
- (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;
- (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];
- (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels and dwellings on the property that are authorized under this section; and
- (g) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the 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 subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the

claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each home site approval to which the claimant is entitled under section 6 (2) of this 2007 Act, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under subsection (6) of this section. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(10) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for the property under this section, the claimant may seek other governmental authorizations required by law for the subdivision or partition of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the subdivision or partition, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §7]

Sec. 8. (1) No later than 120 days after the effective date of this 2007 Act [December 6, 2007], the Department of Land Conservation and Development shall send notice to all the following claimants that filed a claim for property outside an urban growth boundary:

(a) A claimant whose claim was denied by the state before the effective date of this 2007 Act, but who may become eligible for just compensation because of section 21 (2) of this 2007 Act [195.328 (2)] or any other provision of sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act];

(b) A claimant whose claim was approved by the state before the effective date of this

2007 Act; and

(c) A claimant whose claim has not been approved or denied by the state before the effective date of this 2007 Act.

(2) The notice required by subsection (1) of this section must:

(a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a dwelling on the property under sections 5 to 22 of this 2007 Act;

(b) Identify any information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by filing the form provided by the department within 90 days after the date the department mails the notice and form required under subsection (1) of this section. In addition, the claimant must file any information required in the notice. If the claimant fails to file the form within 90 days after the date the department mails the notice, the claimant is not entitled to relief under section 6 or 7 of this 2007 Act.

(4) The department shall review the claims in the order in which the department receives the forms required under subsection (3) of this section. In addition to reviewing the claim, the department shall review the department's record on the claim, the form required under subsection (3) of this section, any new material from the claimant and any other information required by sections 5 to 22 of this 2007 Act to ensure that the requirements of this section and section 6 or 7 of this 2007 Act are met. The department shall provide a copy of the material submitted by the claimant to the county where the property is located and consider written comments from the county that are timely filed with the department. If the department determines that the only land use regulations that restrict the claimant's use of the property are regulations that were enacted by the county, the department shall transfer the claim to the county where the property is located and the claim shall be processed by the county in the same manner as prescribed by this section for the processing of claims by the department. The county must consider any written comments from the department that are timely filed with the county.

(5) If the claimant elects to obtain relief under section 7 of this 2007 Act, the claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7 (6) of this 2007 Act. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must be filed with the department or, if the claim is being processed by the county, with the county within 180 days after the date the claimant files the election to obtain relief under section 7 of this 2007 Act. A claimant that elects to obtain relief under section 7 of this 2007 Act may change that election to obtain relief under section 6 of this 2007 Act, but only if the claimant provides written notice of the change on or before the date the appraisal is filed. If a county is processing the claim, the county may impose a fee for the review of a claim under section 7 of this 2007 Act in an amount that does not exceed the actual and reasonable cost of the review.

(6) The department or the county shall review claims as quickly as possible, consistent with careful review of the claim. The department shall report to the Joint Legislative Audit Committee on or before March 31, 2008, concerning the department's progress and the counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.

(7) The department's final order and a county's final decision on a claim under section 6 or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision approves the claim, the order or decision must state the number of home site approvals issued for the property and may contain other terms that are necessary to ensure that the use of the property is lawful. [2007 c.424 §8]

Sec. 9. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the lesser of:

(a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;

(b) 10, except that if there are existing dwellings on the property, the number of single-family dwellings that may be established is reduced so that the maximum number of dwellings, including existing dwellings located on the property, does not exceed 10; or

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the information required by section 10 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of single-family dwellings that may be established for purposes of subsection (2)(a) of this section is the number in the most recent waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but not more than 10 in any case.

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located, in whole or in part, within an urban growth boundary;

(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;

(e) The property is zoned for residential use;

(f) One or more land use regulations prohibit establishing the single-family dwellings;
(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered

under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) When Metro, a city or a county has issued a final decision authorizing one or more single-family dwellings under this section on the portion of the property located within the urban growth boundary, the claimant may seek other governmental authorizations required by law for that use, and a land use regulation enacted by a public entity that has the effect of prohibiting the use does not apply to the review of those authorizations, except as provided in section 11 of this 2007 Act. If Metro is reviewing a claim for a property, and a city or a county is reviewing a claim for the same property, Metro and the city or county shall coordinate the review and decisions and may:

(a) Provide that one of the public entities be principally responsible for the review; and

(b) Provide that the decision of each of the public entities is contingent on the decision of the other public entity.

(10) The only types of land use that are authorized by this section are the subdivision or partition of land for one or more single-family dwellings, or the establishment of one or more single-family dwellings on land on which the dwellings would not otherwise be allowed. [2007 c.424 §9]

Sec. 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act [December 6, 2007] for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public entity shall complete a tentative review no later than 240 days after the effective date of this 2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

(2) If Metro, a city or a county has not made a final decision before the effective date of this 2007 Act on a claim filed for property located, in whole or in part, within an urban growth boundary, the public entity with which the claim was filed shall send notice to the

claimant within 90 days after the effective date of this 2007 Act. The notice must:

- (a) Explain that the claimant is entitled to seek relief under section 9 of this 2007 Act;
- (b) Identify the information that the claimant must file; and
- (c) Provide a form for the claimant's use.

(3) Within 120 days after the date the public entity mails notice under subsection (2) of this section, a claimant must notify the public entity if the claimant intends to continue the claim and must file the information required in the notice. If the claimant fails to file the notice and required information with the public entity within 120 days after the date the public entity mails the notice, the claimant is not entitled to relief under section 9 of this 2007 Act.

(4) A public entity that receives a notice from a claimant under subsection (3) of this section shall review the claim, the record on the claim, the notice received from the claimant and the information required under subsection (3) of this section to determine whether the claim demonstrates that the requirements of section 9 of this 2007 Act are satisfied. The public entity shall complete a tentative review no later than 120 days after receipt of the notice from the claimant and shall provide written notice to the claimant, the department and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 180 days after receipt of the notice from the claimant.

(5) If a claimant filed a claim that is subject to this section after December 4, 2006, the claim must have included a copy of a final land use decision by the city or county with land use jurisdiction over the property that denied an application by the claimant for the residential use described in the claim. If the claim was filed after December 4, 2006, and did not include a final land use decision denying the residential use described in the claim, the claimant is not entitled to relief under section 9 of this 2007 Act. [2007 c.424 §10]

Sec. 11. (1) A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.

(2) Before beginning construction of any dwelling authorized under section 6 or 7 of this 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

(3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:

- (A) Two acres if the lot or parcel is located on high-value farmland, on high-value

forestland or on land within a ground water restricted area; or

(B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.

(b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.

(4) If an owner is authorized to subdivide or partition more than one property, or to establish dwellings on more than one property, under sections 5 to 11 of this 2007 Act and the properties are in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of the properties if that property is less suitable than the other properties for farm or forest use. If one of the properties is zoned for residential use, the owner may cluster some or all of the dwellings, lots or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on the property zoned for residential use.

(5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11 of this 2007 Act, regardless of how many properties that person owns or how many claims that person has filed.

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of this 2007 Act runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

(a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 of this 2007 Act remains a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law; and

(b) A dwelling or other residential use of the property based on an authorization under section 6, 7 or 9 of this 2007 Act is a permitted use and may be established or continued by the claimant or a subsequent owner, except that once the claimant conveys the property to a person other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner must establish the dwellings or other residential use authorized under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance.

(7) When relief has been claimed under sections 5 to 11 of this 2007 Act:

(a) Additional relief is not due; and

(b) An additional claim may not be filed, compensation is not due and a waiver may not be issued with regard to the property under sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act] or ORS 197.352 [renumbered 195.305] as in effect immediately before the effective date of this 2007 Act [December 6, 2007], except with respect to a land use regulation enacted after January 1, 2007.

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the

rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable development interests between the jurisdictions of the public entities that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

(9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or 9 of this 2007 Act and an authorization to use the property provided by a waiver under section 6, 7 or 9 of this 2007 Act:

(a) Is not affected by the death of the claimant if the death occurs on or after the effective date of this 2007 Act; and

(b) Passes to the person that acquires the property by devise or by operation of law. [2007 c.424 §11]

195.308 Exception to requirement for compensation. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693, 561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes. [2007 c.490 §1]

Note: 195.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

195.310 Claim for compensation; calculation of reduction in fair market value; highest and best use of restricted property; status of use authorized. (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to 195.314 after June 28, 2007, if:

(a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(b) The person's desired use of the property is a residential use or a farming or forest practice;

(c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the

enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(3) Relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.

(4) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:

(a) Compensate the claimant for the reduction in the fair market value of the property;

or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

(a) Compensate the claimant for the reduction in the fair market value of the property;

or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130. [2007 c.424 §12]

195.312 Procedure for processing claims; fees. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation.

(2) A claim filed under ORS 195.310 must be filed with the public entity that enacted the land use regulation that is the basis for the claim.

(3) Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim.

(4) A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

(5) A public entity that receives a claim filed under ORS 195.310 must issue a final determination on the claim within 180 days after the date the claim is complete, as described in subsection (9) of this section.

(6) If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111, the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the claim must be filed with the chief administrative office of the public entity, or with an individual designated by ordinance, resolution or order of the public entity.

(7) A claim filed under ORS 195.310 must be in writing and must include:

(a) The name and address of each owner;

(b) The address, if any, and tax lot number, township, range and section of the property;

(c) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(d) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the public entity to identify the specific land use regulation that is the basis for the claim;

(e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(f) An appraisal of the property that complies with ORS 195.310 (2).

(8) A claim filed under ORS 195.310 must include the fee, if any, imposed by the public entity with which the claim is filed pursuant to subsection (3) of this section.

(9) The public entity shall review a claim filed under ORS 195.310 to determine whether the claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the public entity shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by subsection (8) of this section and:

(a) The missing information;

(b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(10) If a public entity does not notify a claimant within 60 days after a claim is filed under ORS 195.310 that information or the fee is missing from the claim, the claim is deemed complete when filed.

(11) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice to the claimant under subsection (9) of this section and the claimant does not comply with the requirements of subsection (9) of this section. [2007 c.424 §13]

195.314 Notice of claim; evidence and argument; record on review; final determination. (1) A public entity that receives a complete claim as described in ORS 195.312 shall provide notice of the claim at least 30 days before a public hearing on the claim or, if there will not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

- (a) All owners identified in the claim;
- (b) All persons described in ORS 197.763 (2);
- (c) The Department of Land Conservation and Development, unless the claim was filed with the department;
- (d) Metro, if the property is located within the urban growth boundary of Metro;
- (e) The county in which the property is located, unless the claim was filed with the county; and
- (f) The city, if the property is located within the urban growth boundary or adopted urban planning area of the city.

(2) The notice required under subsection (1) of this section must describe the claim and state:

- (a) Whether a public hearing will be held on the claim, the date, time and location of the hearing, if any, and the final date for submission of written evidence and arguments relating to the claim;
- (b) That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the public entity; and
- (c) That judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond.

(3) Except as provided in subsection (4) of this section, written evidence and arguments in proceedings on the claim must be submitted to the public entity not later than:

- (a) The close of the final public hearing on the claim; or
- (b) If a public hearing is not held, the date that is specified by the public entity in the notice required under subsection (1) of this section.

(4) The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

(5) A public entity shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections (3) and (4) of this section.

(6) A public entity shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record.

The public entity shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located. [2007 c.424 §14]

195.316 Notice of Measure 37 permit. In addition to any other notice required by law, a county must give notice of a Measure 37 permit for property located entirely outside an urban growth boundary to:

- (1) The county assessor for the county in which the property is located;
- (2) A district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within one-half mile of the property; and
- (3) The Department of Land Conservation and Development, the State Department of Agriculture, the Water Resources Department and the State Forestry Department. [2007 c.424 §15]

195.318 Judicial review. (1) A person that is adversely affected by a final determination of a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, may obtain judicial review of that determination under ORS 34.010 to 34.100, if the determination is made by Metro, a city or a county, or under ORS 183.484, if the determination is one of a state agency. Proceedings for review of a state agency determination under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, must be commenced 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. A determination by a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is not a land use decision.

- (2) A person is adversely affected under subsection (1) of this section if the person:
 - (a) Is an owner of the property that is the subject of the final determination; or
 - (b) Is a person who timely submitted written evidence, arguments or comments to a public entity concerning the determination.
- (3) Notwithstanding subsection (1) of this section, judicial review of a final determination under ORS 195.305 or 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is:
 - (a) Limited to the evidence in the record of the public entity at the time of its final determination.
 - (b) Available only for issues that are raised before the public entity with sufficient specificity to afford the public entity an opportunity to respond. [2007 c.424 §16]

195.320 Ombudsman. (1) The Governor shall appoint an individual to serve, at the pleasure of the Governor, as the Compensation and Conservation Ombudsman.

- (2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:
 - (a) Analyze problems of land use planning, real property law and real property valuation; and
 - (b) Facilitate resolution of complex disputes. [2007 c.424 §17]

195.322 Duties of ombudsman. (1) For the purpose of helping to ensure that a claim is complete, as described in ORS 195.312, the Compensation and Conservation Ombudsman may review a proposed claim if the review is requested by a claimant that intends to file a claim under ORS 195.305 and 195.310 to 195.314.

(2) At the request of the claimant or the public entity reviewing a claim, the ombudsman may facilitate resolution of issues involving a claim under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. [2007 c.424 §18]

195.324 Effect of certain applications or petitions on right to relief. (1) If an owner submits an application for a comprehensive plan or zoning amendment, or submits an application for an amendment to the Metro urban growth boundary, and Metro, a city or a county approves the amendment, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the application was filed.

(2) If an owner files a petition to initiate annexation to a city and the city or boundary commission approves the petition, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the petition was filed. [2007 c.424 §19]

195.326 Qualification of appraisers; review of appraisals. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. The Department of Land Conservation and Development is authorized to retain persons to review the appraisals. [2007 c.424 §20]

195.328 Acquisition date of claimant. (1) Except as provided in this section, a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

(2) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, by using the procedure provided in ORS 105.623 to 105.649.

(3) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.

(4) A default judgment entered after December 2, 2004, does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004. [2007 c.424 §21]

195.330 Filing date of documents. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, a document is filed on the date the document is received by the public entity. [2007 c.424 §21a]

195.332 Fair market value of property. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements. [2007 c.424 §21b]

195.334 Effect of invalidity. If any part of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, is held to be unconstitutional or otherwise invalid, all remaining parts of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, shall not be affected by the holding and shall remain in full force and effect. [2007 c.424 §21c]

195.336 Compensation and Conservation Fund. (1) The Compensation and Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on moneys in the Compensation and Conservation Fund shall be credited to the fund. The fund consists of moneys received by the Department of Land Conservation and Development under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and other moneys available to the department for the purpose described in subsection (2) of this section.

(2) Moneys in the fund are continuously appropriated to the department for the purpose of paying expenses incurred to review claims under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and for the purpose of paying the expenses of the Compensation and Conservation Ombudsman appointed under ORS 195.320. [2007 c.424 §22]

Statement Required by Law for Adoption of Temporary Rules

OAR 660-001-0000(2)(a) requires that, in adopting a temporary rule, the Land Conservation and Development Commission (LCDC) must include a statement of findings demonstrating “*that its failure to act promptly will result in serious prejudice to the public interest or the parties concerned and the specific reasons for its findings of prejudice.*” In adopting the temporary rules under Division 41, the Commission adopts the following statement:

“The proposed temporary rules under Division 41 are necessary so that the Department of Land Conservation and Development (DLCD) may meet the requirements of HB 3225. HB 3225 directs DLCD to process an approximately 400 Measure 37 claims previously deemed as either ineligible for supplemental review under Measure 49, or ineligible for relief under such review. The legislation sets a deadline of December 31, 2010 for processing these additional claims. HB 3225 also requires that the department collect a \$175 fee for each claim that will be newly processed under the legislation and sets a deadline of December 31, 2009 for some of the categories of claimants who are affected by HB 3225 to request supplemental review of their claims. To enable DLCD to timely identify potentially affected claimants, to provide notice to those claimants and interested parties of the options, procedures and deadlines set forth in HB 3225, and to collect the required fees, the department must promptly adopt temporary rules.”

Attachment D
(Mailed by DLCD to M37
claimants whose claims may be
affected by HB 3225)

DRAFT

July___, 2009

TO: Interested Persons

FROM: The Department of Land Conservation and Development

RE : Notice of Temporary Administrative Rules Regarding Measure 49

The Land Conservation and Development Commission (LCDC) is considering the adoption of new and amended temporary rules intended to implement provisions of HB 3225. The rules establish procedures that allow specified categories of Measure 37 claimants who were deemed not eligible to proceed with their claims under Measure 49, or who were subject to a denial of their claim under Measure 49, to be eligible for additional claim review under Measure 49. These procedures are estimated to affect approximately 400 claims. Additionally, the rules specify that a \$175 fee is required from affected claimants, and how that fee is to be administered.

LCDC will hold a public hearing to consider adoption of the proposed temporary rules at the LCDC regularly scheduled meeting in Brookings, July 29-31, 2009 at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings. The topic is agenda item # 11, scheduled for Thursday July 30. Interested persons may address the Commission concerning the proposed rules at this public hearing, or may provide written comments. Written comments may be accepted until the close of the hearing. Following the hearing, the Commission may adopt the proposed temporary rules. If adopted, the temporary rules will be effective immediately upon filing with the Secretary of State, in accordance with ORS 183.325(5).

The draft temporary rules and related documents may be obtained from the DLCD website at <http://www.oregon.gov/lcd>. Alternatively, to obtain a copy of the proposed amendments through mail, email or fax, please contact Lisa Howard at (503)373-0050 ext. 271.

Address written comments to the Chair of the Land Conservation and Development Commission, care of Lisa Howard. Email comments to Lisa.Howard@state.or.us, or fax comments to Lisa Howard at 503-378-6033. The Commission will accept comments, until the close of the public hearing on July 30, 2009.

If you have questions about the proposed rules, contact Judith Moore at (503) 373-0050 ext. 373; email Judith.Moore@state.or.us.

Summary of the Proposed Rules

Specifically, the proposed temporary rules would be codified in Division 41, under Oregon Administrative Rules (OAR) chapter 660, and would facilitate additional review under HB 3225 and Measure 49 for about 400 Measure 37 claims. HB 3225 enables categories of otherwise ineligible Measure 37 claimants to make M49 elections, and revises certain criteria that were the cause for denial for other categories of claimants, while also requiring affected claimants to pay a \$175 fee to help defray the costs of further processing their claims. These claims will be processed roughly between July 1, 2010 and (no later than) December 31, 2010. The proposed rules will apply to:

First, a category of claimants who have already elected under Measure 49 and do not need to re-elect, but need to submit a \$175 fee. The proposed rules allow DLCD to collect a fee to reevaluate Measure 37 claims for which Measure 49 elections were received where: (a) DLCD received a completed Measure 49 election more than 90 days and not later than 120 days after DLCD mailed the election form; (b) the claimant filed the Measure 37 claim with the state after December 4, 2006 without the required denial of a land use application, but filed a companion M37 claim with a county before that date; or (c) the claimant did not file a companion claim with a county. The majority of these claims will be evaluated under Section 6 (of Measure 49) (up to three homesites allowed). However, a claim described in category (a) may be processed under section 7 (up to 10 homesites allowed) based on the original election.

Second, a category of claimants who have not previously elected supplemental review under Measure 49, and will have the opportunity to have their claims reviewed under section 6 (of Measure 49), if they elect prior to December 31, 2009 and pay a \$175 fee. The proposed rules allow DLCD to undertake an election process for state Measure 37 claims where: (a) DLCD received a Measure 49 election form with only the “vested” box checked and the claimant does not have a vested use; or (b) a claimant filed a state M37 claim after June 28, 2007, but had filed a land use application before that date (some may have filed a M37 claim with a county before June 28, 2007 and so may have elected previously). These claimants will only be eligible for section 6 review.

A third category of claimants may or may not have previously elected supplemental review under M49, and so, although a \$175 fee is due for all, only some will be required to elect. The proposed rules allow DLCD to collect a fee, and either reevaluate M37 claims for which M49 elections were received, or undertake the election process where: (a) the majority of a Measure 37 claim property is outside any urban growth boundary (but a portion is inside the ugb); or (b) a M37 claim property is simultaneously outside any urban growth boundary and inside the boundaries of a city. These claimants will only be eligible for section 6 review.

Affected claimants who do not need to re-elect in order for DLCD to evaluate their claims under the revised criteria will be contacted by DLCD, and will be required to submit a \$175 fee. Affected claimants who need to elect will generally be contacted by

DLCD by October 31, 2009 and will need to notify DLCD by December 31, 2009 of their M49 election, and will also need to pay the \$175 fee. The \$175 fee to help offset processing costs is mandated by HB 3225. These Division 41 rules will require that the fee is paid within 56 days after notice from DLCD. An extension of time may be requested by the claimant. If DLCD fails to issue a final order for a claim that is subject to the fee by December 31, 2010, DLCD shall refund any fee that has been paid.