

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
MEASURE 49 RULES

DIVISION 2
DELEGATION OF AUTHORITY TO DIRECTOR

1 **660-002-0010**

2 **Authority to Director**

3 In addition to the other duties and responsibilities conferred on the Director by ORS
4 Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

5 * * *

6 (8) Carry out the responsibilities and exercise the authorities of the Commission
7 and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and
8 Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

9 (a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws
10 2007;

11 (b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007;
12 and

13 (c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007,
14 except that the Director may approve a claim only by not applying the land use
15 regulations that are the basis of the claim unless legislation is enacted that appropriates
16 funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

17 Stat. Auth.: ORS 183, 196, 197 and Chapter 424, Oregon Laws 2007.

DIVISION 41

MEASURE 49 CLAIMS

1 **660-041-0000**

2 **Purpose and Applicability**

3 (1) The purpose of OAR 660-041-0000 to 660-041-0060 is to clarify and
4 implement the requirements of ORS 197.352 (2004 Oregon Ballot Measure 37) and
5 Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) for Claims filed on or
6 before June 28, 2007. These rules also include requirements for notice of applications
7 and decisions regarding Measure 37 Permits, and clarify when a DLCD Waiver is
8 required and what the effect of Chapter 424, Oregon Laws 2007 is on Existing DLCD
9 Measure 37 Waivers.

10 (2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and Existing
11 DLCD Waivers that are subject to OAR 660-041-0020 to 660-041-0060.

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

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

17 (5) OAR 660-041-0040 to 660-041-0060 apply to all Existing DLCD Measure 37
18 Waivers.

19 Stat. Auth.: ORS 197.040 & 197.065
20 Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
21 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f.
22 2-5-07, cert. ef. 2-9-07

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24 **660-041-0010**

25 **Definitions**

26 The following definitions apply to OAR 660-041-0000 to 660-041-0060:

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

28 (2) "Claim" means a written demand for compensation under ORS 197.352.

29 (3) "Claimant" means the owner who submitted a Claim, or the owner on whose
30 behalf a Claim was submitted.

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

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

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

10 (7) "Existing DLCD Waiver" means a decision by the Land Conservation and
11 Development Commission (LCDC) or DLCD under ORS 197.352 to modify, remove or
12 not apply one or more DLCD Regulations in order to allow the Claimant to carry out a
13 use of that Property that was permitted when the Claimant acquired the Property that was
14 issued before December 6, 2007.

15 (8) "Existing Measure 37 Waiver" means a decision by a city, a county, Metro or
16 the State of Oregon to modify, remove or not apply one or more Land Use Regulations to
17 allow a Claimant to use the Property for a use that was permitted when the Claimant
18 acquired the Property pursuant to ORS 197.352 that was issued before December 6, 2007.

19 (8) "Land Use Application" means an application for a "land use decision," a
20 "limited land use decision," or an "expedited land division," as those terms are defined by
21 ORS 197.015 and 197.360, or an application for a permit or zone change under ORS
22 227.160 to 227.187 or under 215.402 to 215.437.

23 (9) "Land Use Regulation" has the meaning provided by ORS 197.352(11).

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

25 (11) "Measure 37 Permit" means a final decision by a city, a county, or by Metro
26 to authorize the development, division or other use of Property pursuant to an Existing
27 Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use
28 decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402
29 and ORS 227.160), a zone change, or a comprehensive plan amendment.

30 (12) "Metro" means the Portland Metropolitan Service District.

31 (13) "Property" means the Lot or Parcel that is or that includes the private real
32 property that is the subject of a Claim.

33 Stat. Auth.: ORS 197.040 & 197.065

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

35 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f.
36 2-5-07, cert. ef. 2-9-07

1 **660-041-0020**

2 **Contents of a Measure 37 Claim Based on a DLCD Regulation**

3 (1) When a Claim is based on one or more Existing DLCD Regulations, then the
4 Claim must:

5 (a) Be received by DAS within two years of the date a city, county, Metro, or an
6 Agency applied one or more Existing DLCD Regulations, or applied city, county or
7 Metro land use regulations that implement Existing DLCD Regulations, as approval
8 criteria to an application submitted by the Claimant; and

9 (b) Include one of the following:

10 (A) A copy of the final written decision by a city, a county, or Metro on a Land
11 Use Application that includes the Property and that requests authorization for the specific
12 use that the Claim is based on, in which the city, county, or Metro determined that one or
13 more Existing DLCD Regulations or city, county or Metro Land Use Regulations that
14 implement Existing DLCD Regulations were approval criteria for the decision; or

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

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

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

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

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

24 (b) If the Claim is submitted more than two years after the effective date of the
25 New DLCD Regulations, the Claim must include a copy of the final written decision by a
26 city, a county, or Metro on a Land Use Application that includes the Property and that
27 requests authorization for the specific use that the Claim is based on, in which the city,
28 county, or Metro determined that the New DLCD Regulations or city or county or Metro
29 Land Use Regulations that implement the New DLCD Regulations were approval criteria
30 for the decision.

31 (3) When a Claim is based on both Existing and New DLCD Regulations, the
32 requirements of section (1) of this rule must be met with respect to the Existing DLCD
33 Regulations, and the requirements of section (2) of this rule must be met with respect to
34 the New DLCD Regulations.

35 (4) A DLCD Regulation is applied as an approval criterion for purposes of this
36 rule and ORS 197.352(5) when a city, county or Metro makes a final written decision on
37 a Land Use Application, or when an Agency takes final written action on an application

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1 to that Agency, and that final written decision or final written action denies the
2 application or conditions the approval of the application on the basis (in whole or in part)
3 of the DLCD Regulation.

4 (5) This rule applies only to Claims that were received by DAS after December 4,
5 2006 and on or before June 28, 2007, and that are based on one or more DLCD
6 Regulations.

7 Stat. Auth.: ORS 197.040 & 197.065

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

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

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12 **660-041-0030**

13 **Notice of Applications and Decisions**

14 (1) Except for a building permit that is not a "land use decision" under ORS
15 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all
16 applications for a Measure 37 Permit, and all final written decisions on a Measure 37
17 Permit, filed with or made by the city, county or Metro after February 20, 2007.

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

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

25 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615,
26 197.763, 227.175 or 215.416;

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

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

31 (e) The name of the present owner of the property.

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

35 Stat. Auth.: ORS 197.040 & 197.065

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

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

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4 **660-041-0040**

5 **When a DLCD Waiver is Required**

6 (1) Before a Claimant may use Property for a use under an Existing Measure 37
7 Waiver, DLCD must have issued an Existing DLCD Waiver to the Claimant for that use
8 of the Property in all cases where that use is restricted by a DLCD Regulation or by a
9 city, county or Metro Land Use Regulation that implements a DLCD Regulation. These
10 cases include, but are not limited to, all cases where the Property includes:

11 (a) Land zoned for farm use under Goal 3;

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

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

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17 **660-041-0050**

18 **Effect of 2007 Ballot Measure 49 on Existing Measure 37 Waivers**

19 Any authorization for a Claimant to use Property without application of a DLCD
20 Regulation provided by an Existing DLCD Measure 37 Waiver will expire on December
21 6, 2007. A Claimant may continue an existing use of Property that was authorized under
22 ORS 197.352, or complete a use of Property that was begun prior to December 6, 2007,
23 under ORS 197.352 only if the Claimant has a common law vested right to complete or
24 continue that use as of December 6, 2007, and the use complies with the terms of any
25 applicable Existing DLCD Measure 37 Waiver.

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27 **660-041-0060**

28 **State Agency and Special District Land Use Coordination and Existing DLCD**
29 **Measure 37 Waivers**

30 After December 5, 2007, when a state agency or a special district is required to
31 take an action in a manner that complies with the Statewide Planning Goals and that is
32 compatible with comprehensive plans and land use regulations under ORS 197.180 (for a
33 state agency), or under ORS 195.020 (for a special district), the state agency or special
34 district must not take that action based on an Existing Measure 37 Waiver. After
35 December 5, 2007, any authorization to not apply a Land Use Regulation based on an

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- 1 Existing Measure 37 Waiver will expire, and may not serve as the basis for a finding
- 2 required under ORS 197.180 or 195.020.
- 3 Stat. Auth.: ORS 197.040 & 197.065
- 4 Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
- 5 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

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New Claim Rules

(Ballot Measure 49)

1 **660-041-0500**

2 **Purpose and Applicability**

3 The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement Chapter
4 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) in terms of the requirements
5 and procedures for filing and reviewing New Measure 49 Claims. These rules apply to
6 New Measure 49 Claims filed with the State of Oregon.

7 Stat. Auth.: ORS 197.040 & 197.065

8 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424, Oregon
9 Laws 2007

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11 **660-041-0510**

12 **Definitions**

13 The following definitions apply to OAR 660-041-0500 to OAR 660-041-0530:

14 (1) “Agency” has the meaning provided by ORS 183.310.

15 (2) “Claimant” means an Owner who filed a New Measure 49 Claim.

16 (3) “DLCD” means the Department of Land Conservation and Development.

17 (4) “DLCD Regulation” has the meaning provided by section 2(14)(a)-(b) and
18 2(14)(g) of Chapter 424, Oregon Laws 2007.

19 (5) “Farming Practice” has the meaning provided by section 2(5) of Chapter 424,
20 Oregon Laws 2007.

21 (6) “File” or “Filed” has the meaning provided by section 2(7) of Chapter 424,
22 Oregon Laws 2007. The date a document is Filed is the date that it is received by the
23 Public Entity.

24 (7) “Forest Practice” has the meaning provided by section 2(8) of Chapter 424,
25 Oregon Laws 2007.

26 (8) “Land Use Regulation” has the meaning provided in section 2(14) of Chapter
27 424, Oregon Laws 2007. A New Land Use Regulation means a Land Use Regulation
28 that was enacted by the State of Oregon or adopted by an Agency on or after January 1,
29 2007.

30 (9) “Lot” means a single unit of land that is created by a subdivision of land as
31 defined in ORS 92.010.

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1 (10) “New Measure 49 Claim” means a claim Filed with the State of Oregon
2 under ORS 197.352 that was Filed between June 29, 2007 and December 5, 2007, and a
3 claim Filed with the State of Oregon under Chapter 424, Oregon Laws 2007 after
4 December 5, 2007.

5 (11) “Owner” has the meaning provided by section 2(17) of Chapter 424, Oregon
6 Laws 2007.

7 (12) “Parcel” means a single unit of land that is created by a partitioning of land
8 as defined in ORS 92.010 and ORS 215.010.

9 (13) “Property” has the meaning provided by section 2(17) of Chapter 424,
10 Oregon Laws 2007.

11 (14) “Regulating Entity” means an Agency that has enacted, or has authority to
12 remove, modify or not to apply, the Land Use Regulation(s) identified in the New
13 Measure 49 Claim.

14 Stat. Auth.: ORS 197.040 & 197.065

15 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424, Oregon
16 Laws 2007

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18 **660-041-0520**

19 **Procedures for New Measure 49 Claims**

20 (1) A New Measure 49 Claim must be Filed by the Owner of the Property or an
21 authorized agent of the Owner. A New Measure 49 Claim must be Filed on a claim form
22 available from DLCD at the address provided in this rule, or from DLCD’s website, and
23 must contain all information required by the form.

24 (2) A New Measure 49 Claim must be Filed with DLCD at:

25 New Measure 49 Claims

26 635 Capitol St. NE, Suite 150

27 Salem 97301-2540

28 Claims may not be submitted by facsimile or electronically.

29 (3) If the New Measure 49 Claim was Filed after June 28, 2007, but before
30 December 6, 2007, it is deemed Filed on December 6, 2007 for purposes of subsections
31 13(5) to 13(11) of Chapter 424, Oregon Laws 2007.

32 (4) DLCD’s form for a New Measure 49 Claim will require at least the following
33 information:

34 (a) The name and mailing address of each Claimant and each Owner of the
35 Property.

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1 (b) Evidence establishing that each Claimant is an Owner of the Property.

2 (c) The consent to the New Measure 49 Claim by each Owner of the Property if
3 there are Owners of the Property other than the Claimant, which consent must be
4 notarized.

5 (d) A description of the Claimant's specific desired use of the Property, which use
6 must be a residential use or a Farming Practice or a Forest Practice. The description must
7 be sufficiently specific to establish that each Land Use Regulation listed under paragraph
8 (g) of this rule applies to and restricts the Claimant's desired use.

9 (e) The location of the Property by reference to:

10 (A) The township, range, section and tax lot number for each Lot or Parcel that
11 makes up the Property;

12 (B) The street address of each Lot or Parcel that makes up the Property, if a street
13 address has been assigned;

14 (C) The county the Property is located in; and

15 (D) If the Property is located within a city, the name of that city.

16 (f) Evidence of each Claimant's Acquisition Date, as provided in sections 13(7)(c)
17 and 21 of Chapter 424, Oregon Laws 2007;

18 (g) A listing of each specific New Land Use Regulation that is alleged to restrict
19 the Claimant's desired use of the Property, and for each New Land Use Regulation listed,
20 a description of how that regulation restricts the Claimant's desired use of the property;

21 (h) An appraisal of the reduction in the fair market value of the Property caused
22 by the enactment of each listed New Land Use Regulation as provided in section 12(2) of
23 Chapter 424, Oregon Laws 2007.

24 (5) DLCD will review a New Measure 49 Claim to determine whether it
25 complies with the requirements of sections 12 to 14 of Chapter 424, Oregon Laws 2007.
26 If the New Measure 49 Claim is incomplete, within 60 days of receiving the claim,
27 DLCD will notify the person who filed the claim of the information that is missing. The
28 notification will be in writing. A New Measure 49 Claim is complete when DLCD
29 receives:

30 (a) The missing information;

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

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

35 (6) If a Claimant submits a request in writing for additional time to provide
36 missing information, DLCD may agree to provide such additional time, which agreement

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1 must be in writing. An agreement to allow additional time has the effect of abating the
2 time requirements under sections 13 and 14 of Chapter 424, Oregon Laws 2007, until the
3 date specified in the agreement.

4 (7) If DLCD does not notify the Claimant within 60 days after a New Measure 49
5 Claim is Filed that information is missing from the claim, the claim is deemed complete
6 when Filed.

7 (8) If the Claimant does not respond in writing to the written notification from
8 DLCD under subsection (5) of this rule within sixty (60) days of the date the written
9 notification was sent, the claim is deemed withdrawn.

10 (9) DLCD will provide notice of a New Measure 49 Claim as provided by section
11 14 of Chapter 424, Oregon Laws 2007. The notice will describe the New Measure 49
12 Claim and specify a deadline by which written evidence and arguments must be Filed.
13 The Claimant may respond to the written evidence and argument by Filing a written
14 response within fifteen (15) days of the date specified as the deadline for the initial
15 evidence and argument.

16 (10) DLCD will mail a copy of its final determination to the Claimant and to any
17 person who timely filed written evidence or arguments.

18 Stat. Auth.: ORS 197.040 & 197.065

19 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424, Oregon
20 Laws 2007

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22 **660-041-0530**

23 **Coordinating with Other Regulating Entities**

24 (1) If the New Measure 49 Claim is based, in whole or in part, on a New Land
25 Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use
26 Regulation is a state statute that is administered by an Agency other than DLCD, DLCD
27 will forward the claim to that Agency.

28 (2) When a New Measure 49 Claim is based, in whole or in part, on a New Land
29 Use Regulation for which there is no Regulating Entity, DLCD will forward the claim to
30 the Department of Administrative Services.

31 (3) When a Regulating Entity other than DLCD is wholly responsible for a New
32 Measure 49 Claim, that Regulating Entity will process the claim using the procedures set
33 forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures
34 for review.

35 (4) When a Regulating Entity other than DLCD is partially responsible for a New
36 Measure 49 Claim, DLCD will coordinate the review of the claim under the procedures
37 set forth in OAR 660-041-0520. However, the other Regulating Entity will decide
38 whether the Claimant is entitled to relief with respect to the New Land Use Regulations

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1 that it enacted or that it administers as provided in Chapter 424, Oregon Laws 2007 and if
2 so what form of relief to grant under subsection 12(5) with respect to those regulations.

3 (5) DLCD will issue the final order itself or jointly with one or more other
4 Regulating Entities.

5 Stat. Auth.: ORS 197.040 & 197.065

6 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424, Oregon
7 Laws 2007

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