

DIVISION 41

MEASURE 3749 CLAIMS

660-041-0000

Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-00750 this division is to clarify and implement the requirements of ORS 197.352 (2004 Oregon Ballot Measure 37) as they relate to other aspects of the statewide land use planning program, including requirements and Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) for filing Claims filed based on one or more DLCD Regulations after December 4, 2006 and on or before June 28, 2007. These rules also include requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a requirements for DLCD Waivers is required and what the effect of Chapter 424, Oregon Laws 2007 is on Existing DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies only to all Claims, Measure 37 Permits and Existing DLCD Waivers that are subject to OAR 660-041-0020 to 660-041-00760. that were received by DAS on or before June 28, 2007, and that are based on one or more DLCD Regulations.

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

(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 Existing DLCD Measure 37 Waivers.

Stat. Auth.: ORS 197.040 & 197.065

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

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

660-041-0010

Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0070 this division:

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

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

DRAFT LCDC MEASURE 49 RULES: 11-30-07

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

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

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

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

13 (7) "Existing DLCD Waiver" means a decision that was issued before December
14 6, 2007 by the Land Conservation and Development Commission (LCDC) or DLCD
15 under ORS 197.352 to modify, remove or not apply one or more DLCD Regulations in
16 order to allow the Claimant to carry out a use of that Property that was permitted when
17 the Claimant acquired the Property pursuant to ORS 197.352(8).

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

23 (8) "Land Use Application" means an application for a "land use decision," a
24 "limited land use decision," or an "expedited land division," as those terms are defined by
25 ORS 197.015 and 197.360, or an application for a permit or zone change under ORS
26 227.160 to 227.187 or under 215.402 to 215.437.

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

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

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

34 (~~12~~) "~~Measure 37 Waiver~~" means a decision by a city, a county, Metro or the State of
35 Oregon to modify, remove or not apply one or more land use regulations to allow a
36 Claimant to use the Property for a use that was permitted when the Claimant acquired the
37 Property.

38 (~~12~~3) "Metro" means the Portland Metropolitan Service District.

DRAFT LCDC MEASURE 49 RULES: 11-30-07

1 (134) "Property" means the Lot or Parcel that is or that includes the private real
2 property that is the subject of a Claim.

3 Stat. Auth.: ORS 197.040 & 197.065

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

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

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8 **660-041-0020**

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

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

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

16 (b) Include one of the following:

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

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

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

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

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

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

31 (b) If the Claim is submitted more than two years after the effective date of the
32 New DLCD Regulations, the Claim must include a copy of the final written decision by a
33 city, a county, or Metro on a Land Use Application that includes the Property and that
34 requests authorization for the specific use that the Claim is based on, in which the city,
35 county, or Metro determined that the New DLCD Regulations or city or county or Metro

DRAFT LCDC MEASURE 49 RULES: 11-30-07

1 Land Use Regulations that implement the New DLCD Regulations were approval criteria
2 for the decision.

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

7 (4) A DLCD Regulation is applied as an approval criterion for purposes of this
8 rule and ORS 197.352(5) when a city, county or Metro makes a final written decision on
9 a Land Use Application, or when an Agency takes final written action on an application
10 to that Agency, and that final written decision or final written action denies the
11 application or conditions the approval of the application on the basis (in whole or in part)
12 of the DLCD Regulation.

13 (5) This rule applies only to Claims that were received by DAS after December 4,
14 2006, and that are based on one or more DLCD Regulations.

15 Stat. Auth.: ORS 197.040 & 197.065

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

17 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f.
18 2-5-07, cert. ef. 2-9-07

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20 **660-041-0030**

21 **Notice of Applications and Decisions**

22 (1) Except for a building permit that is not a "land use decision" under ORS
23 197.015(11)(b)(B), cities, counties and Metro must provide written notice to ~~DLCD~~the
24 ~~department~~ of all applications for a Measure 37 Permit, and all final written decisions on
25 a Measure 37 Permit, filed with or made by the city, county or Metro after February 20,
26 2007.

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

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

34 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615,
35 197.763, 227.175 or 215.416;

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

DRAFT LCDC MEASURE 49 RULES: 11-30-07

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

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

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

8 Stat. Auth.: ORS 197.040 & 197.065

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

10 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f.
11 2-5-07, cert. ef. 2-9-07

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13 **660-041-0040**

14 **When a DLCD Waiver is Required**

15 (1) Before a Claimant may use Property for a use under an Existing Measure 37
16 Waiver, DLCDthe must have issued an Existing DLCD Waiver to the Claimant must
17 obtain a DLCD Waiver for that use of the Property in all cases where that use is restricted
18 by a DLCD Regulation or by a city, county or Metro Land Use Regulation that
19 implements a DLCD Regulation. These cases include, but are not limited to, all cases
20 where the use is a use of land, and the Property includes:

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

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

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

26 Stat. Auth.: ORS 197.040 & 197.065

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

28 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

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30 **660-041-0050**

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

32 **Any authorization provided by an Existing DLCD Measure 37 Waiver for a**
33 **Claimant to use Property without application of a DLCD Regulation will expire on**
34 **December 6, 2007. A Claimant may continue an existing use of Property that was**
35 **authorized under ORS 197.352, or complete a use of Property that was begun prior**
36 **to December 6, 2007, under ORS 197.352, only if the Claimant has a common law**

DRAFT LCDC MEASURE 49 RULES: 11-30-07

1 vested right to complete or continue that use as of December 6, 2007, and the use
2 complies with the terms of any applicable Existing DLCD Measure 37 Waiver.

3 Stat. Auth.: ORS 197.040 & 197.065

4 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, and Chapter 424, Oregon
5 Laws 2007

6 Hist.:

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9 660-041-0060

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

12 (12) After December 5, 2007, wWhen a state agency or a special district is
13 required to take an action in a manner that complies with the Statewide Planning Goals
14 and that is compatible with comprehensive plans and land use regulations under ORS
15 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state
16 agency or special district must not take that action if it involves a use of Property under
17 an Existing Measure 37 Waiver unless the Claimant has a common law vested right to
18 complete or continue that use.~~obtained a DLCD Waiver for that use of the Property.~~

19 (2) After December 5, 2007, any authorization to not apply a Land Use
20 Regulation based on an Existing Measure 37 Waiver will expire, and may not serve as the
21 basis for a finding required under ORS 197.180 or 195.020.

22 Stat. Auth.: ORS 197.040 & 197.065

23 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, and Chapter 424, Oregon
24 Laws 2007

25 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

26 660-041-0050

27 Applicability

28 ~~OAR 660-041-0020 applies only to Claims that were received by DAS after December 4,~~
29 ~~2006, and that are based on one or more DLCD Regulations. OAR 660-041-0030 applies~~
30 ~~to applications for and decisions on a Measure 37 Permit filed or made on or after~~
31 ~~February 20, 2007. OAR 660-041-0040 takes effect upon the filing of these rules with the~~
32 ~~Oregon Secretary of State.~~

33 Stat. Auth.: ORS 197.040 & 197.065

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

35 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

New Claim Rules

(Ballot Measure 49)

660-041-0500

Purpose and Applicability

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

Stat. Auth.: ORS 197.040 & 197.065

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

Hist.:

660-041-0510

Definitions

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

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

(2) "Claimant" means an Owner who filed a New Measure 49 Claim.

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

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

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

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

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

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

1 (9) "Lot" means a single unit of land that is created by a subdivision of land
2 as defined in ORS 92.010.

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

7 (11) "Owner" has the meaning provided by section 2(17) of Chapter 424,
8 Oregon Laws 2007.

9 (12) "Parcel" means a single unit of land that is created by a partitioning of
10 land as defined in ORS 92.010 and ORS 215.010.

11 (13) "Property" has the meaning provided by section 2(17) of Chapter 424,
12 Oregon Laws 2007.

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

16 Stat. Auth.: ORS 197.040 & 197.065

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

19 Hist.:

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21 660-041-0520

22 Procedures for New Measure 49 Claims

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

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

28 New Measure 49 Claims

29 635 Capitol St. NE, Suite 150

30 Salem 97301-2540

31 Claims may not be submitted by facsimile or electronically.

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

DRAFT LCDC MEASURE 49 RULES: 11-30-07

1 (4) DLCD's form for a New Measure 49 Claim will require at least the
2 following information:

3 (a) The name and mailing address of each Claimant and each Owner of the
4 Property.

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

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

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

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

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

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

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

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

21 (f) Evidence of each Claimant's Acquisition Date, as provided in sections
22 13(7)(c) and 21 of Chapter 424, Oregon Laws 2007;

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

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

30 (5) DLCD will review a New Measure 49 Claim to determine whether it
31 complies with the requirements of sections 12 to 14 of Chapter 424, Oregon Laws
32 2007. If the New Measure 49 Claim is incomplete, within 60 days of receiving the
33 claim, DLCD will notify the person who filed the claim of the information that is
34 missing. The notification will be in writing. A New Measure 49 Claim is complete
35 when DLCD receives:

36 (a) The missing information;

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

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

5 (6) If a Claimant submits a request in writing for additional time to provide
6 missing information, DLCD may for good cause shown agree to provide such
7 additional time, which agreement must be in writing. An agreement to allow
8 additional time has the effect of abating the time requirements under sections 13
9 and 14 of Chapter 424, Oregon Laws 2007, until the date specified in the agreement.

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

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

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

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

24 Stat. Auth.: ORS 197.040 & 197.065

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

27 Hist.:

28
29 660-041-0530

30 Coordinating with Other Regulating Entities

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

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

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

5 (4) When a Regulating Entity other than DLCD is partially responsible for a
6 New Measure 49 Claim, DLCD will coordinate the review of the claim under the
7 procedures set forth in OAR 660-041-0520. However, the other Regulating Entity
8 will decide whether the Claimant is entitled to relief with respect to the New Land
9 Use Regulations that it enacted of that it administers as provided in Chapter 424,
10 Oregon Laws 2007 and if so what form of relief to grant under subsection 12(5) with
11 respect to those regulations.

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

14 Stat. Auth.: ORS 197.040 & 197.065

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

17 Hist.: