

1 DIVISION 41

2 MEASURE 49

3 Existing Claim Rules

4 (Measure 37 Claims, Including Supplemental Review Under Ballot Measure 49)

5 660-041-0000

6 Purpose and Applicability

7 (1) The purpose of OAR 660-041-0000 to 660-041-0150 is to implement Chapter 424,
8 Oregon Laws 2007 (2007 Oregon Ballot Measure 49), Chapter 855, Oregon Laws 2009
9 (2009 House Bill 3225), and Chapter 8, Oregon Laws 2010 (2010 Senate Bill 1049), by
10 establishing procedures for Supplemental Review of Measure 37 Claims. These rules also
11 contain requirements for notice of applications and decisions regarding Measure 37
12 Permits, and clarify when a DLCD Measure 37 Waiver was required in addition to a
13 waiver from a city or county. Finally, these rules also explain the effect of Measure 49 on
14 DLCD Measure 37 Waivers.

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

18 (3) OAR 660-041-0020 applies only to Claims that were received by DAS after
19 December 4, 2006 and before December 6, 2007, and that are based on one or more
20 DLCD Regulations and that are not described in section 3 of Chapter 855, Oregon Laws
21 2009.

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

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

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

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

28 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
29 424, OL 2007

30 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f.
31 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD
32 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

33 660-041-0010

1 **Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (13) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to
32 authorize the development, division or other use of Measure 37 Claim Property pursuant

1 to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land
2 use decision, an expedited land use decision, a permit (as that term is defined in ORS
3 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure
4 37 Permit also includes a final decision by a city, a county, or by Metro that a person has
5 a vested right to complete or continue a use based on a Measure 37 Waiver.

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

11 (15) "Measure 49" means Chapter 424, Oregon Laws 2007 as amended by Chapter 855,
12 Oregon Laws 2009, and Chapter 8, Oregon Laws 2010.

13 (16) "Measure 49 Authorization" means a final order and authorization issued by the
14 department under Measure 49 that authorizes a claimant to seek local approval of one or
15 more home sites; or, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws
16 2010, of a dwelling and, when applicable, a lot or parcel for that dwelling.

17 (17) "Supplemental Information" means information needed by DLCD, under section
18 8(3) of Measure 49, to proceed with the Supplemental Review of a Claim.

19 (18) "Supplemental Review" means review by DLCD of a Claim under either section 6
20 or section 7 of Measure 49 and when applicable, Chapter 855, Oregon Laws 2009 and
21 Chapter 8, Oregon Laws 2010.

22 Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
23 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 &
24 2007 OL Ch. 424
25 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f.
26 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD
27 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08;
28 LCDD 1-2009, f. & cert. ef. 4-2-09

29 **660-041-0020**

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

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

34 (a) Demonstrate that a city, county, Metro, or an Agency applied one or more Existing
35 DLCD Regulations, or applied one or more city, county or Metro land use regulations

1 that implement Existing DLCD Regulations, as approval criteria to an application
2 submitted by the Claimant; and

3 (b) Include one of the following:

4 (A) A copy of the final written decision by a city, a county, or Metro on a Land Use
5 Application that included the Measure 37 Claim Property and that requested
6 authorization for the specific use that the Claim is based on, in which the city, county, or
7 Metro determined that one or more Existing DLCD Regulations or city, county or Metro
8 Land Use Regulations that implement Existing DLCD Regulations were approval criteria
9 for the decision; or

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

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

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

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

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

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

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

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

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

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

5 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
6 424, OL 2007

7 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f.
8 2-5-07, cert. ef. 2-9-07; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD
9 4-2008, f. & cert. ef. 5-23-08

10 **660-041-0030**

11 **Notice of Applications and Decisions**

12 (1) Except for a building permit that is not a "land use decision" under ORS
13 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all
14 applications for a Measure 37 Permit, and all final written decisions on a Measure 37
15 Permit, filed with or made by the city, county or Metro after February 20, 2007.

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

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

22 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763,
23 227.175 or 215.416;

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

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

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

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

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

32 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
33 424, OL 2007

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

1 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD
2 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

3 **660-041-0040**

4 **When a DLCD Measure 37 Waiver Was Required**

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

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

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

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

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

18 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
19 424, OL 2007

20 Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-
21 10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-
22 2008, f. & cert. ef. 5-23-08

23 **660-041-0060**

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

25 Any authorization for a Claimant to use Measure 37 Claim Property without application
26 of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6,
27 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue
28 an existing use of Measure 37 Claim Property that was authorized under ORS 197.352
29 (2005). A Claimant may complete a use of Measure 37 Claim Property that was begun
30 prior to December 6, 2007, only if the Claimant had a common law vested right to
31 complete and continue that use on December 6, 2007, and the use complies with the
32 terms of any applicable DLCD Measure 37 Waiver.

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

34 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
35 424, OL 2007

1 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f.
2 & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

3 **660-041-0070**

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

6 After December 5, 2007, when a state agency or a special district is required to take an
7 action in a manner that complies with the Statewide Planning Goals and that is
8 compatible with comprehensive plans and land use regulations under ORS 197.180 (for a
9 state agency), or under ORS 195.020 (for a special district), the state agency or special
10 district must not take that action if it involves a use of Measure 37 Claim Property based
11 on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land
12 Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure
13 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or
14 195.020. This rule does not apply to a use that was lawfully established or vested based
15 on a DLCD Measure 37 Waiver on December 6, 2007.

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

17 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
18 424, OL 2007

19 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f.
20 & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

21 **660-041-0080**

22 **Supplemental Information for Supplemental Review of Measure 37 Claims under**
23 **Measure 49 and Fees under Chapter 855, Oregon Laws 2009 and Chapter 8, Oregon**
24 **Laws 2010.**

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

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

31 (3) If the Claim is described in section 5 or 6 of Chapter 8, Oregon Laws 2010, a
32 Claimant or Claimant's authorized agent must submit a \$2,500 fee to DLCD. If the
33 Claim is divided into more than one claim under OAR 660-041-0150, an additional
34 \$2,500 fee is due for each resultant claim. If the Claim is combined with one or more
35 other Claims, only one \$2,500 fee is due for the resultant claim. DLCD will request the
36 \$2,500 fee for a Claim from a Claimant or the Claimant's authorized agent by no later
37 than September 30, 2010. However, if changes to the number of claims occur under OAR

1 660-041-0150 after DLCD has requested the fee for a Claim, DLCD may request
2 additional fees or refund fees after September 30, 2010.

3 ~~(43)~~ Supplemental Information, or a \$175 fee for a Claim described in sections 2 through
4 5a or section 13 of Chapter 855, Oregon Laws 2009, or a \$2,500 fee for a Claim
5 described in section 5 or 6 of Chapter 8, Oregon Laws 2010 requested by DLCD must be
6 filed with DLCD within fifty-six (56) days of the date the request is sent and must be
7 filed in the manner described in OAR 660-041-0100.

8 ~~(54)~~ For good cause shown, DLCD may extend the period for filing Supplemental
9 Information or a \$175 fee beyond fifty-six (56) days. DLCD will not extend the period
10 for filing a \$2,500 fee.

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

14 ~~(7)~~ If DLCD fails to issue a final order on a Claim described in section 5 or 6 of Chapter
15 8, Oregon Laws 2010 by June 30, 2011, DLCD shall refund any \$2,500 fee submitted for
16 that Claim.

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

20 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
21 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
22 424, OL 2007
23 Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert.
24 ef. 5-23-08

25 **660-041-0090**

26 **Procedures for Supplemental Review of Measure 37 Claims under Measure 49**

27 (1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure
28 49 and when applicable, Chapter 855, Oregon Laws 2009 and Chapter 8, Oregon Laws
29 2010, DLCD will review the Claim, as supplemented by the Election and the
30 Supplemental Information, and prepare a Preliminary Evaluation of the relief that the
31 Claimant may be entitled to. The Preliminary Evaluation will be based on and include an
32 initial preliminary assessment of the number of lots, parcels and dwellings, if any, the
33 Claimant lawfully was permitted to establish on the date the Claimant acquired the
34 Measure 37 Claim Property.

35 (2) Prior to the issuance of the Preliminary Evaluation, DLCD will mail written notice of
36 the Supplemental Review and a copy of any materials submitted by the Claimant to the

1 county with land use jurisdiction over the Measure 37 Claim Property, and will provide
2 that county an opportunity to submit written comment on the Supplemental Review.
3 DLCD will consider all comments from the county in its preparation of the Preliminary
4 Evaluation.

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

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

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

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

25 (7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either
26 will deny the authorization of home sites or a dwelling; or will approve a the specific
27 number of home sites under section 6 or section 7 of Measure 49 or a dwelling, and lot or
28 parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws
29 2010. to which the Claimant is entitled. If approved, the Final Decision will authorize the
30 county with land use jurisdiction over the Measure 37 Claim Property to approve a permit
31 to allow the number of home sites approved or the approved dwelling, and unless the
32 property includes a vacant lot or parcel, a lot or parcel for the dwelling, for Claims
33 described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

34 (8) Following issuance of the Final Decision, the owner of the Measure 37 Claim
35 Property may file an application with the county with land use jurisdiction over the
36 Measure 37 Claim Property for a permit to establish home sites authorized or to establish
37 an authorized dwelling, and unless the property includes a vacant lot or parcel, a lot or
38 parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws
39 2010. under the Final Decision.

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

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

3 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.

4 424, OL 2007

5 Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert.

6 ef. 5-23-08

7 **660-041-0100**

8 **Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim**

9 **under Measure 49**

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

13 (2) All information filed with DLCD regarding the Supplemental Review of a Claim
14 must be filed at: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite
15 150, Salem, Oregon 97301-2540

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

18 (4) The date information is filed is the date the information is received by DLCD, or the
19 date it is mailed, provided it is mailed by registered or certified mail and the person filing
20 the information has proof from the post office of such mailing date. If the date of mailing
21 is relied upon as the date of filing, acceptable proof from the post office shall consist of a
22 receipt stamped by the United States Postal Service showing the date mailed and the
23 certified or registered number.

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

25 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.

26 424, OL 2007

27 Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert.

28 ef. 5-23-08

29 **660-041-0105**

30 **County Identification of Claims Described in Section 6 of Chapter 8, Oregon Laws**

31 **2010**

32 (1) To qualify for Supplemental Review under section 6 of Chapter 8, Oregon Laws
33 2010, a Claim filed with a county but not with the state must have been both valid and
34 not withdrawn. For purposes of this subsection, a Claim is "valid" if the county found
35 the Claim to meet the county's own filing requirements. For purposes of this subsection,

1 a Claim is “not withdrawn” if the county found that the Claim had not been withdrawn
2 according to the county’s own standards.

3 (2) Counties must submit certified copies of any Claims described in section 6 of
4 Chapter 8, Oregon Laws 2010 to DLCD on or before June 30, 2010 in accordance with
5 the standards for submissions to DLCD in OAR 660-041-0100, except that for purposes
6 of this subsection a county may submit certified copies of Claims electronically. For
7 purposes of this subsection, a county may certify copies of Claims by providing a single
8 statement in writing from an agent of the county confirming that all Claim materials
9 provided are for Claims that meet the criteria of section 6 of Chapter 8, Oregon Laws
10 2010.

11 (3) DLCD will notify and request Elections and fees as provided in OAR 660-041-0080
12 only from Claimants whose Claims are submitted by counties as provided in subsection
13 (2) of this rule and who may be eligible for relief under section 6 of Chapter 8, Oregon
14 Laws 2010. Claims that are not submitted by counties as provided in subsection (2) of
15 this rule on or before June 30, 2010 are not eligible for Supplemental Review.

16 **660-041-0110**

17 **Determining What Was Lawfully Permitted on the Claimant’s Acquisition Date**

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

23 (2) Based on the Claimant’s acquisition date, as determined under ORS 195.328, DLCD
24 will apply the following standards and criteria to determine the number of lots, parcels or
25 dwellings that were lawfully permitted; or, for Claims described in section 5 or 6 of
26 Chapter 8, Oregon Laws 2010, to determine whether, in addition to the existing lots,
27 parcels and dwellings contained within the Measure 37 Claim Property, a Claimant was
28 lawfully permitted to establish one dwelling and, unless the property includes a vacant lot
29 or parcel, a lot or parcel for the dwelling:

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

33 (b) If the Claimant’s acquisition date is on or after January 25, 1975 but before the date
34 the county with land use jurisdiction over the Measure 37 Claim Property had its
35 applicable comprehensive plan and land use regulations acknowledged by LCDC for
36 compliance with the Statewide Planning Goals, DLCD will apply the standards set forth
37 in section 2 of Chapter 8, Oregon Laws 2010. ~~directly apply the Statewide Planning~~
38 Goals, applicable state statutes and existing DLCD regulations. To determine the number

1 ~~of lots, parcels or dwellings that were lawfully permitted under the Statewide Planning~~
2 ~~Goals, DLCDC will apply the first acknowledged local land use regulations, unless the~~
3 ~~evidence in the record, including but not limited to, county Measure 37 waivers or local~~
4 ~~land use determinations issued at the time the property was acquired, establishes that a~~
5 ~~greater number of lots, parcels or dwellings would have been lawfully permitted; and~~

6 (c) If the Claimant's acquisition date is on or after the date the county with land use
7 jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan
8 and local land use regulations acknowledged by LCDC for compliance with the
9 Statewide Planning Goals, DLCDC will apply the applicable local land use regulations and
10 comprehensive plan provisions along with any directly-applicable state statutes,
11 Statewide Planning Goals, or LCDC rules, or the standard set forth in section 4 of
12 Chapter 8, Oregon Laws 2010.

13 Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
14 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 &
15 2007 OL Ch. 424
16 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 1-2009, f. & cert. ef. 4-2-09

17 **660-041-0120**

18 **Evaluation of Measure 37 Contiguous Property in Supplemental Review**

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

22 (2) Except for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010, in
23 determining the relief to which a Claimant is entitled under section 6 or section 7 of
24 Measure 49, the number of home site approvals a Claimant is entitled to will be reduced
25 by the number of existing lots, parcels and dwellings contained within the entire property,
26 which includes both the Measure 37 Claim Property and any contiguous property in the
27 same ownership.

28 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
29 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
30 424, OL 2007
31 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

32 **660-041-0130**

33 **High-Value Farmland and High-Value Forestland**

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

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

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

4 (c) The Measure 37 Claim Property is greater than five acres in size and all of the
5 Measure 37 Claim Property is planted in wine grapes, as provided by ORS
6 195.300(10)(d); or

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

9 (2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS
10 195.300(11).

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

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

18 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
19 424, OL 2007

20 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

21 **660-041-0140**

22 **Groundwater Restricted Areas**

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

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

27 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
28 424, OL 2007

29 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

30 **660-041-0150**

31 **Combining and Dividing Claims**

32 To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section
33 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the

1 Measure 37 Claim Property contains multiple lots or parcels that are not in the same
2 ownership. In addition, DLCD will combine multiple Claims into one claim if the
3 Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the
4 same ownership.

5 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
6 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
7 424, OL 2007
8 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

9 **660-041-0160**

10 **Appraisals Under Section 7 of Measure 49**

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

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

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

25 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
26 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.
27 424, OL 2007
28 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

29 **660-041-0170**

30 **Notice of County Applications and Decisions Under Measure 49**

31 (1) The county with land use jurisdiction over property for which a Measure 49
32 Authorization has been issued must provide written notice to DLCD of any land use
33 application that seeks approval of one or more home sites or of a dwelling, and lot or
34 parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws
35 2010 under the Measure 49 Authorization; and of all final written decisions on home site
36 approvals or on a dwelling, and lot or parcel when applicable, for Claims described in

1 section 5 or 6 of Chapter 8, Oregon Laws 2010 that are based on a Measure 49
2 Authorization.

3 (2) Notice of an application for home site approval(s) or for a dwelling, and lot or parcel
4 when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010
5 under a Measure 49 Authorization, required under section (1) of this rule, must be mailed
6 to DLCDD's Salem office at least ten (10) calendar days before any deadline for comment
7 on the application for a home site approval. If there is no opportunity for comment, then
8 the notice must be sent ten (10) days before the decision becomes final. The notice must
9 include:

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

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

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

15 Stat. Auth.: ORS 197.040 & 197.065

16 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 &
17 2007 OL Ch. 424

18 Hist.: LCDD 1-2009, f. & cert. ef. 4-2-09

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