

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 41 MEASURE 49

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.

(1[6]7) “Supplemental Information” means information needed by DLCD, under section 8(3) of Measure 49, to proceed with the Supplemental Review of a Claim.

(1[7]8) “Supplemental Review” means review by DLCD of a Claim under either section 6 or section 7 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

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.** ~~[first applicable acknowledged local land use regulations, unless the Claimant establishes that]~~ **To determine** the number of lots, parcels or dwellings that **were** ~~[would have been]~~ 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** ~~[is smaller than the number of lots, parcels or dwellings that would have been lawfully permitted under direct application of one or more applicable state statutes, Statewide Planning Goals, or LCDC rules];~~ 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 & Ch. 424, OL 2007

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

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 DLCDC 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 DLCDC'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, ORS 197.065

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