

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 41 MEASURE 37 CLAIMS

OAR 660-041-0000

Purpose

The purpose of this division is to clarify 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 for filing Claims based on one or more DLCD Regulations after December 4, 2006, notice of applications and decisions regarding Measure 37 Permits, and requirements for DLCD Waivers.

Stat. Auth.: ORS 197.040 & ORS 197.065

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

Hist.:

OAR 660-041-0010

Definitions

The following definitions apply to this division:

- (1) "Agency" has the meaning provided by ORS 183.310.
- (2) "Claim" means a written demand for compensation under ORS 197.352.
- (3) "Claimant" means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.
- (4) "DAS" means the Department of Administrative Services.
- (5) "Department" means the Department of Land Conservation and Development.
- (6) "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.
- (7) "DLCD Waiver" means a decision by the Land Conservation and Development Commission (LCDC) or DLCD under ORS 197.352 to modify, remove or not apply one or more DLCD Regulations in order to allow the Claimant to carry out a use of that Property that was permitted when the Claimant acquired the Property.
- (8) "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 ORS 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under ORS 215.402 to 215.437.
- (9) "Land Use Regulation" has the meaning provided by ORS 197.352(11).
- (10) "LCDC" means the Land Conservation and Development Commission.
- (11) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of 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 ORS 227.160), a zone change, or a comprehensive plan amendment.

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

(13) “Metro” means the Portland Metropolitan Service District.

(14) “Property” means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.

Stat. Auth.: ORS 197.040 & ORS 197.065

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

Hist.:

660-041-0020

Contents of a Measure 37 Claim Based on a DLCD Regulation

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

(a) Be received by DAS within two years of the date a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied 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 includes the Property and that requests 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) When a Claim is based on one or more New DLCD Regulations, then the Claim must:

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

(A) The effective date of the New DLCD Regulations; 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 is later; and

(b) If the Claim is submitted more than two years after the effective date of the New DLCD Regulations, 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 Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that the New DLCD Regulations or city or county or Metro Land Use Regulations that implement the New DLCD Regulations were approval criteria for the decision.

(3) When a Claim is 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 Regulations, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulations.

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

and that final written decision or final written action denies the application or conditions 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 are based on one or more DLCD Regulations.

Stat. Auth.: ORS 197.040 & ORS 197.065

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

Hist.:

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 the department 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 the department's Salem office at least ten 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 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, ORS 197.365, ORS 197.615, ORS 197.763, ORS 227.175 or ORS 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 property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to the department's Salem office within ten 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 & ORS 197.065

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

Hist.:

660-041-0040

When a DLCD Waiver is Required

(1) Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant must obtain a DLCD Waiver for that use of the Property in all cases where that use is 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 Property includes:

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

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

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

(2) 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 Property under a Measure 37 Waiver unless the Claimant has obtained a DLCD Waiver for that use of the Property.

Stat. Auth.: ORS 197.040 & ORS 197.065

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

Hist.:

660-041-0050

Applicability

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

Stat. Auth.: ORS 197.040 & ORS 197.065

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

Hist.: