

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 41  
MEASURE 49

Existing Claim Rules  
(Measure 37 Claims, Including Supplemental Review  
Under Ballot Measure 49)

660-041-0000

**Purpose and Applicability**

(1) The purpose of OAR 660-041-0000 to 660-041-~~0100~~**0150** is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver ~~is~~**was** required **in addition to a waiver from a city or county**. Finally, these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-01~~0~~**60**, **as well as to the Supplemental Review of Measure 37 Claims under OAR 660-041-0080 to 660-041-0160**.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and ~~on or~~ before **December 6** ~~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 660-041-00~~7~~**6** apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-00~~8~~**7** to 660-041-01~~6~~**0** apply to the Supplemental Review of a Claim by DLCD.

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

Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35~~2~~**3**, & Ch. 424, OL 2007

660-041-0010

**Definitions**

The following definitions apply to OAR 660-041-0000 to 660-041-01~~6~~**0**:

(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 ~~June 28~~**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** ~~the Land Conservation and Development Commission (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.

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

7 (8) "Elected" [~~means filed the form provided by DLCD as required by section 8 of Chapter 424,~~  
8 ~~Oregon Laws 2007.~~] **means signed and filed the form provided by DLCD with a box**  
9 **checked.**

10 (9) "Land Use Application" means an application for a "land use decision," a "limited land use  
11 decision," or an "expedited land division," as those terms are defined by ORS 197.015 and  
12 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under  
13 215.402 to 215.437.

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

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

16 **(12) "Measure 37 Claim Property" means the private real property described in a Measure**  
17 **37 Claim.**

18 (~~{12}~~**13**) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to  
19 authorize the development, division or other use of **Measure 37 Claim** Property pursuant to a  
20 Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use  
21 decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and  
22 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also  
23 includes a final decision by a city, a county, or by Metro that a person has a vested right to  
24 complete or continue a use based on a Measure 37 Waiver.

25 (~~{13}~~**14**) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of  
26 Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove  
27 or not apply one or more Land Use Regulations to allow a Claimant to use the **Measure 37**  
28 **Claim** Property for a use that was permitted when the Claimant acquired the **Measure 37 Claim**  
29 Property.

30 **(15) "Measure 49" means Chapter 424, Oregon Laws 2007.**

31 [~~(14) "Metro" means the Portland Metropolitan Service District.~~]

32 [~~(15) "Property" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.~~]

33 (16) "Supplemental Information" means information needed by DLCD, under section 8(3) of  
34 **Measure 49**[~~Chapter 424, Oregon Laws 2007~~], to proceed with the Supplemental Review of a  
35 Claim.

36 (17) "Supplemental Review" means review by DLCD of a Claim under either section 6 or  
37 section 7 of [~~Chapter 424, Oregon Laws 2007~~]**Measure 49.**

38 Stat. Auth.: ORS 197.040[~~-&~~], 197.065 &[~~;~~] Ch. 424, OL 2007

39 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[~~2~~]**3 &**[~~;~~] Ch.  
40 424, OL 2007

41  
42 **660-041-0020**

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

44 (1) When a Claim was[~~is~~] **received by DAS after December 4, 2006 and was** based on one or  
45 more Existing DLCD Regulations, then the Claim must:

1 (a) **Demonstrate that** [~~Be received by DAS within two years of the date~~] a city, county, Metro,  
2 or an Agency applied one or more Existing DLCD Regulations, or applied **one or more** city,  
3 county or Metro land use regulations that implement Existing DLCD Regulations, as approval  
4 criteria to an application submitted by the Claimant; and

5 (b) Include one of the following:

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

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

14 (2) When a Claim **wa**[i]s based on one or more New DLCD Regulations, then the Claim must:

15 (a) **Have been**[~~Be~~] received by DAS within two years of:

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

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

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

26 (3) When a Claim **wa**[i]s based on both Existing and New DLCD Regulations, the requirements  
27 of section (1) of this rule must be met with respect to the Existing DLCD Regulation[s], and the  
28 requirements of section (2) of this rule must be met with respect to the New DLCD  
29 Regulation[s].

30 (4) A DLCD Regulation **wa**[i]s applied as an approval criterion for purposes of this rule and  
31 ORS 197.352(5) (**2005**) when a city, county or Metro mad[k]e[s] a final written decision on a  
32 Land Use Application, or when an Agency **took**[akes] final written action on an application to  
33 that Agency, and that final written decision or final written action denied[s] the application or  
34 conditioned[s] the approval of the application on the basis (in whole or in part) of the DLCD  
35 Regulation.

36 (5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that  
37 **were**[~~are~~] based on one or more DLCD Regulations.

38 Stat. Auth.: ORS 197.040[~~-&~~], 197.065 **& Ch. 424, OL 2007**

39 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[2]3 **& Ch.**  
40 **424, OL 2007**

41  
42 **660-041-0030**

43 **Notice of Applications and Decisions**

44 (1) Except for a building permit that is not a "land use decision" under ORS

1 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all  
2 applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit,  
3 filed with or made by the city, county or Metro after February 20, 2007.  
4 (2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must  
5 be mailed to DLCD's Salem office at least ten **(10)** calendar days before any deadline for  
6 comment on the application for a Measure 37 Permit. If there is no opportunity for comment,  
7 then the notice must be sent ten **(10)** days before the decision becomes final. The notice must  
8 include:  
9 (a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;  
10 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or  
11 215.416;  
12 (c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);  
13 (d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject Land  
14 Use Application; and,  
15 (e) The name of the present owner of the **Measure 37 Claim P**roperty.  
16 (3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must  
17 be mailed to DLCD's Salem office within ten **(10)** calendar days of the date of the final written  
18 decision. The notice must include a copy of the final written decision.  
19 Stat. Auth.: ORS 197.040[&], 197.065[;] & Ch. 424, OL 2007  
20 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[2]3[;] & Ch.  
21 424, OL 2007  
22

#### 23 **660-041-0040**

#### 24 **When a DLCD Measure 37 Waiver Was Required**

25 Before a Claimant could lawfully use **Measure 37 Claim** Property for a use under a  
26 Measure 37 Waiver, the Claimant must have obtained a DLCD Measure 37 Waiver for that use  
27 of the **Measure 37 Claim** Property in all cases where that use was restricted by a DLCD  
28 Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD  
29 Regulation. These cases include, but are not limited to, all cases where the use is a use of land,  
30 and the **Measure 37 Claim** Property includes:

- 31 (1) Land zoned for farm use under Goal 3;
- 32 (2) Land zoned for forest use under Goal 4; or
- 33 (3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use  
34 of the **Measure 37 Claim** Property was an urban use under Goal 14, or that use included  
35 the establishment or extension of a sewer or water system restricted under Goal 11.

36 Stat. Auth.: ORS 197.040, [&]197.065[;] & Ch. 424, OL 2007

37 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[2]3[;] & Ch.  
38 424, OL 2007]

#### 39 40 **[660-041-0050**

#### 41 **Applicability**

42 ~~OR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006,~~  
43 ~~and that are based on one or more DLCD Regulations. OR 660-041-0030 applies to~~  
44 ~~applications for and decisions on a Measure 37 Permit filed or made on or after February 20,~~  
45 ~~2007. OR 660-041-0040 takes effect upon the filing of these rules with the Oregon Secretary of~~  
46 ~~State.~~

1 Stat. Auth.: ORS 197.040 & 197.065  
2 Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352]

3  
4 **660-041-0060**

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

6 Any authorization for a Claimant to use **Measure 37 Claim** Property without application of a  
7 DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as  
8 did the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use  
9 of **Measure 37 Claim** Property that was authorized under ORS 197.352 (2005). ~~;~~ **A Claimant**  
10 **may** complete a use of **Measure 37 Claim** Property that was begun prior to December 6,  
11 2007, ~~(2005)~~ only if the Claimant had a common law vested right to complete and continue that  
12 use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure  
13 37 Waiver.

14 Stat. Auth.: ORS 197.040~~[-&]~~, 197.065 ~~&~~ Ch. 424, OL 2007

15 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[2]**3** ~~&~~ Ch.  
16 424, OL 2007

17  
18 **660-041-0070**

19 **State Agency and Special District Land Use Coordination and DLCD Measure 37**  
20 **Waivers**

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

30 Stat. Auth.: ORS 197.040~~[-&]~~, 197.065~~[-]~~ ~~&~~ Ch. 424, OL 2007

31 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35[2]**3**~~[-]~~ ~~&~~ Ch.  
32 424, OL 2007

33  
34 **660-041-0080**

35 **Supplemental Information for Supplemental Review of Measure 37 Claims under**  
36 **Measure 49**

37 (1) ~~DLCD may request Supplemental Information from a Claimant or the Claimant's authorized~~  
38 ~~agent~~ ~~;~~ ~~if the record for the Claim does not include [aH] the information needed for DLCD to~~  
39 ~~proceed with the Supplemental Review of the Claim,~~ **DLCD will request Supplemental**  
40 **Information from a Claimant or the Claimant's authorized agent.**

41 (2) Supplemental Information requested by DLCD must be filed with DLCD within fifty-six (56)  
42 days of the date the request is sent and must be filed in the manner described in OAR 660-041-  
43 0100.

44 (3) For good cause shown, DLCD may extend the period for filing Supplemental Information  
45 beyond fifty-six (56) days.

46 Stat. Auth.: ORS 197.040, ~~[-&]~~ 197.065~~[-]~~ ~~&~~ Ch. 424, OL 2007

1 Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065, 197.35[2]3[7] & Ch.  
2 424, OL 2007

3  
4 **660-041-0090**

5 [~~Notice and Comment~~]Procedures for Supplemental Review of Measure 37 Claims under  
6 Measure 49

7 **(1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure 49,**  
8 **DLCD will review the Claim, as supplemented by the Election and the Supplemental**  
9 **Information, and prepare a Preliminary Evaluation of the relief that the Claimant may be**  
10 **entitled to. The Preliminary Evaluation will be based on and include an initial preliminary**  
11 **assessment of the number of lots, parcels and dwellings, if any, the Claimant lawfully was**  
12 **permitted to establish on the date the Claimant acquired the Measure 37 Claim Property.**  
13 **(2)[+] Prior to the issuance of the Preliminary Evaluation,** DLCD will mail written notice of  
14 **[a]the Supplemental Review [to the Claimant or the Claimant's authorized agent,]and a copy of**  
15 **any materials submitted by the Claimant** to the [~~local government~~]county with land use  
16 jurisdiction over the Measure 37 Claim Property, and **will provide that county an opportunity**  
17 **to submit written comment on the Supplemental Review.** [~~to any person who is an owner of~~  
18 ~~record of real property located within 250 feet of the Property if the Property is not within a farm~~  
19 ~~or forest zone or within 750 feet of the Property if the Property is located in a farm or forest~~  
20 ~~zone, and to any neighborhood or community organization(s) whose boundaries include the~~  
21 ~~Property if the county in which the Property is located provides DLCD the name and address of~~  
22 ~~the organization(s).]**DLCD will consider all comments from the county in its preparation of**  
23 **the Preliminary Evaluation.**~~

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

32 **([2]4) Any person may submit written comments, evidence or information in response to**  
33 **the Preliminary Evaluation**[~~To be considered by DLCD in its Supplemental Review of a~~  
34 ~~Claim, comments, evidence or information concerning that Claim by a third party or local~~  
35 ~~government must be filed] as provided in OAR 660-041-0100 [~~with DLCD~~]within twenty-eight  
36 (28) days of the date the **Preliminary Evaluation is mailed**[~~notice~~] under [~~sub~~]section (3[+]) of  
37 this rule[~~is mailed~~].~~

38 **(5[3]) DLCD will mail copies of [the-]any comments, evidence and[or] information concerning**  
39 **the Preliminary Evaluation that are timely received**[~~Claim~~] **under section (4) of this rule**  
40 **to the Claimant and the Claimant's authorized agent.**

41 **(6[4]) The Claimant and[or] the Claimant's authorized agent may file [a] written [response to**  
42 **any] comments, evidence or information in response to any materials** filed by a third party **or**  
43 **county.** To be considered by DLCD, the response must be filed as provided in OAR 660-041-0100  
44 [~~with DLCD~~]within twenty-one (21) days after the date DLCD mailed the comments, evidence  
45 **and[or] information to the Claimant and the Claimant's authorized agent** as provided [~~for~~  
46 ]under [~~sub~~]section (5[3]) of this rule.

1 **(7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either**  
2 **will deny the authorization of home sites or will approve the specific number of home sites**  
3 **under section 6 or section 7 of Measure 49 to which the Claimant is entitled. If approved,**  
4 **the Final Decision will authorize the county with land use jurisdiction over the Measure 37**  
5 **Claim Property to approve a permit to allow the number of home sites approved.**

6 **(8) Following issuance of the Final Decision, the owner of the Measure 37 Claim Property**  
7 **may file an application with the county with land use jurisdiction over the Measure 37**  
8 **Claim Property for a permit to establish home sites authorized under the Final Decision.**

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

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

11 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35~~[2]~~~~3~~ & Ch.  
12 424, OL 2007

13  
14 **660-041-0100**

15 **Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim**  
16 **under Measure 49**

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

20 (2) All information filed with DLCD regarding the Supplemental Review of a Claim must be  
21 filed at:

22  
23 Supplemental Measure 49 Claim Review  
24 635 Capitol Street NE, Suite 150  
25 Salem, Oregon 97301-2540

26  
27 (3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or  
28 electronically.

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

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

35 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065, 197.35~~[2]~~~~3~~ & Ch.  
36 424, OL 2007

37  
38 **660-041-0110**

39 **Determining What Was Lawfully Permitted on the Claimant's Acquisition Date**

40 **(1) A Claimant lawfully was permitted to establish one or more lots, parcels or dwellings on**  
41 **the Claimant's acquisition date if DLCD determines that the characteristics of the Measure**  
42 **37 Claim Property as it existed on that date, including the size, soil quality and location of**  
43 **the Measure 37 Claim Property, would have allowed the Claimant to satisfy the standards**  
44 **and criteria for approval of the lot, parcel or dwelling in effect on that date.**

1 **(2) Based on the Claimant’s acquisition date, as determined under ORS 195.328, DLCD**  
2 **will apply the following standards and criteria to determine the number of lots, parcels or**  
3 **dwelling that were lawfully permitted:**

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

7 **(b) If the Claimant’s acquisition date is on or after January 25, 1975 but before the date the**  
8 **county with land use jurisdiction over the Measure 37 Claim Property had its applicable**  
9 **comprehensive plan and land use regulations acknowledged by LCDC for compliance with**  
10 **the Statewide Planning Goals, DLCD will apply the first applicable acknowledged local**  
11 **land use regulations, unless the Claimant establishes that the number of lots, parcels or**  
12 **dwelling that would have been lawfully permitted under the first acknowledged local land**  
13 **use regulations is smaller than the number of lots, parcels or dwelling that would have**  
14 **been lawfully permitted under direct application of one or more applicable state statutes,**  
15 **Statewide Planning Goals, or LCDC rules; and**

16 **(c) If the Claimant’s acquisition date is on or after the date the county with land use**  
17 **jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan**  
18 **and local land use regulations acknowledged by LCDC for compliance with the Statewide**  
19 **Planning Goals, DLCD will apply the applicable local land use regulations and**  
20 **comprehensive plan provisions along with any directly-applicable state statutes, Statewide**  
21 **Planning Goals, or LCDC rules.**

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

23 **Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424,**  
24 **OL 2007**

25  
26 **660-041-0120**

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

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

31 **(2) In determining the relief to which a Claimant is entitled under section 6 or section 7 of**  
32 **Measure 49, the number of home site approvals a Claimant is entitled to will be reduced by**  
33 **the number of existing lots, parcels and dwelling contained within the entire property,**  
34 **which includes both the Measure 37 Claim Property and any contiguous property in the**  
35 **same ownership.**

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

37 **Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424,**  
38 **OL 2007**

39  
40 **660-041-0130**

41 **High-Value Farmland and High-Value Forestland**

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

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

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

1 (c) The Measure 37 Claim Property is greater than five acres in size and all of the Measure  
2 37 Claim Property is planted in wine grapes, as provided by ORS 195.300(10)(d); or  
3 (d) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(e) or (f), or  
4 both ORS 195.300(10)(e) and (f).

5 (2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS  
6 195.300(11).

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

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

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

16  
17 660-041-0140

18 Groundwater Restricted Areas

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

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

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

25  
26 660-041-0150

27 Combining and Dividing Claims

28 To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section 7  
29 of Measure 49, DLCDC will divide a single Claim into two or more claims if the Measure 37  
30 Claim Property contains multiple lots or parcels that are not in the same ownership. In  
31 addition, DLCDC will combine multiple Claims into one claim if the Measure 37 Claim  
32 Property contains multiple contiguous lots or parcels that are in the same ownership.

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

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

36  
37 660-041-0160

38 Appraisals Under Section 7 of Measure 49

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

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

1 **(3) For the Claimant to obtain relief under section 7, the appraisal must show that the**  
2 **enactment of one or more Land Use Regulations that are the basis of the Claim, other than**  
3 **land use regulations described in ORS 197.352(3) (2005), caused a reduction in the fair**  
4 **market value of the Measure 37 Claim Property that is equal to or greater than the fair**  
5 **market value of the home site approvals that may be established on the property under**  
6 **section 7(2) of Measure 49. The reduction in fair market value of the Measure 37 Claim**  
7 **Property must be measured as set forth in section 7(6) of Measure 49.**  
8 **Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007**  
9 **Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424,**  
10 **OL 2007**

11  
12 **New Claim Rules**  
13 **(Ballot Measure 49)**

14  
15 **660-041-0500**

16 **Purpose and Applicability**

17 The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement **ORS 195.300**  
18 **to 195.336**[Chapter 424, Oregon Laws 2007] (2007 Oregon Ballot Measure 49) in terms of the  
19 requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to  
20 Measure 49 Claims filed with the State of Oregon.

21 Stat. Auth.: ORS **195.300 to 195.336**, 197.040[;] **&** 197.065[, Ch. 424, OL 2007]

22 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065[;] **&** 197.35[2]3[, Ch.  
23 424, OL 2007]

24  
25 **660-041-0510**

26 **Definitions**

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

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

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

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

31 (4) "DLCD Regulation" has the meaning provided by [~~section 2(14)(a) (b) and 2(14)(g) of~~  
32 ~~Chapter 424, Oregon Laws 2007]~~ **ORS 195.300(14)(a)-(b) and ORS 195.300(14)(g).**

33 (5) "Farming Practice" has the meaning provided by [~~section 2(5) of Chapter 424, Oregon Laws~~  
34 ~~2007]~~ **ORS 195.300(5).**

35 (6) "File" or "Filed" has the meaning provided by [~~section 2(7) of Chapter 424, Oregon Laws~~  
36 ~~2007]~~ **ORS 195.300(7).** The date a document is Filed is the date that it is received by the Public  
37 Entity.

38 (7) "Forest Practice" has the meaning provided by [~~section 2(8) of Chapter 424, Oregon Laws~~  
39 ~~2007]~~ **ORS 195.300(8).**

40 (8) "Land Use Regulation" has the meaning provided **by**[~~in section 2(14) of Chapter 424,~~  
41 ~~Oregon Laws 2007]~~ **ORS 195.300(14).** A "New Land Use Regulation" means a Land Use  
42 Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January  
43 1, 2007.

44 (9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS  
45 92.010.

46 (10) "Measure 49 Claim" means:

1 **(a) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after December 5,**  
2 **2007; and**

3 **(b) A**~~[-a]~~ claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between  
4 June 29, 2007 and December 5, **2007 if no corresponding claim was filed for the Property**  
5 **with the city or county with land use jurisdiction over the Property prior to June 29, 2007.**~~[-;~~  
6 ~~and a claim Filed with the State of Oregon under Chapter 424, Oregon Laws 2007 after~~  
7 ~~December 5, 2007.]~~

8 (11) “Owner” has the meaning provided by~~[-section 2(17) of Chapter 424, Oregon Laws 2007]~~  
9 **ORS 195.300(16).**

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

12 (13) “Property” has the meaning provided by~~[-section 2(17) of Chapter 424, Oregon Laws 2007]~~  
13 **ORS 195.300(17).**

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

16 Stat. Auth.: ORS 197.040, [~~&-~~]197.065~~[-]~~ **&** Ch. 424, OL 2007

17 Stats. Implemented: ORS **195.300 to 195.336,** 197.015, 197.040, 197.065, 197.35~~[2]~~**3,**~~[-]~~ **&** Ch.  
18 424, OL 2007

19  
20 **660-041-0520**

21 **Procedures for Measure 49 Claims**

22 (1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of  
23 the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the  
24 address provided in this rule, or from DLCD’s website, and must contain all information required  
25 by the form. **Claims may not be submitted by facsimile or electronically.**

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

27  
28 Measure 49 Claims  
29 635 Capitol St. NE, Suite 150  
30 Salem 97301-2540

31  
32 ~~[Claims may not be submitted by facsimile or electronically.]~~

33 (3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, **and if**  
34 **no corresponding claim was filed for the Property with the city or county with land use**  
35 **jurisdiction over the Property prior to June 29, 2007, the Measure 37 Claim** [~~##~~] is deemed  
36 Filed on December 6, 2007 for purposes of ~~[subsections 13(5) to 13(11) of Chapter 424, Oregon~~  
37 ~~Laws 2007]~~**ORS 195.312.**

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

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

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

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

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

- 1 (e) The location of the Property by reference to:  
2 (A) The township, range, section and tax lot number for each Lot or Parcel that makes up the  
3 Property;  
4 (B) The street address of each Lot or Parcel that makes up the Property, if a street address has  
5 been assigned;  
6 (C) The county the Property is located in; and  
7 (D) If the Property is located within a city, the name of that city.  
8 (f) Evidence of each Claimant's Acquisition Date, as provided in~~[-sections 13(7)(e) and 21 of~~  
9 ~~Chapter 424, Oregon Laws 2007]~~ **ORS 195.328**;  
10 (g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's  
11 desired use of the Property, and for each New Land Use Regulation listed, a description of how  
12 that regulation restricts the Claimant's desired use of the property;  
13 (h) An appraisal of the reduction in the fair market value of the Property caused by the enactment  
14 of each listed New Land Use Regulation as provided in~~[-section 12(2) of Chapter 424, Oregon~~  
15 ~~Laws 2007]~~ **ORS 195.310**.  
16 (5) DLCD will review a Measure 49 Claim to determine whether it complies with the  
17 requirements of~~[-sections 12 to 14 of Chapter 424, Oregon Laws 2007]~~ **ORS 195.310 to**  
18 **195.312**. If the Measure 49 Claim is incomplete, within **sixty (60)** days of receiving the  
19 **C[e]laim**, DLCD will notify the person who filed the **C[e]laim** of the information that is missing.  
20 The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:  
21 (a) The missing information;  
22 (b) Part of the missing information and written notice from the Claimant that the remainder of  
23 the missing information will not be provided; or  
24 (c) Written notice from the **C[e]laimant** that none of the missing information will be provided.  
25 (6) If a Claimant submits a request in writing for additional time to provide missing information,  
26 DLCD may for good cause shown agree to provide such additional time, which agreement must  
27 be in writing. An agreement to allow additional time has the effect of abating the time  
28 requirements under~~[-sections 13 and 14 of Chapter 424, Oregon Laws 2007]~~ **ORS 195.312 and**  
29 **195.314**, until the date specified in the agreement.  
30 (7) If DLCD does not notify the Claimant within **sixty (60)** days after a Measure 49 Claim is  
31 Filed that information is missing from the **C[e]laim**, the **C[e]laim** is deemed complete when  
32 Filed.  
33 (8) If the Claimant does not respond in writing to the written notification from DLCD under  
34 ~~[sub]section (5) of this rule~~ within sixty (60) days of the date the written notification was sent,  
35 the **C[e]laim** is deemed withdrawn.  
36 (9) DLCD will provide notice of a Measure 49 Claim as provided by~~[-section 14 of Chapter 424,~~  
37 ~~Oregon Laws 2007]~~ **ORS 195.314**. The notice will describe the Measure 49 Claim and specify a  
38 deadline by which written evidence and arguments must be Filed. The Claimant may respond to  
39 the written evidence and argument by Filing a written response within fifteen (15) days of the  
40 date specified as the deadline for the initial evidence and argument.  
41 (10) DLCD will mail a copy of its final determination to the Claimant and to any person who  
42 timely filed written evidence or arguments.

43 Stat. Auth.: ORS **195.300 to 195.336**, 197.040 & 197.065~~[-Ch. 424, OL 2007]~~

44 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065~~[-]~~ **&** 197.35~~[2]~~**3**~~[-Ch.~~  
45 ~~424-OL 2007]~~

46

1 **660-041-0530**

2 **Coordinating with Other Regulating Entities**

3 (1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that  
4 was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute  
5 that is administered by an Agency other than DLCD, DLCD will forward the C[e]laim to that  
6 Agency.

7 (2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for  
8 which there is no Regulating Entity, DLCD will forward the C[e]laim to the Department of  
9 Administrative Services.

10 (3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim,  
11 that Regulating Entity will process the C[e]laim using the procedures set forth in OAR 660-041-  
12 0520 unless that Regulating Entity has adopted its own procedures for review.

13 (4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim,  
14 DLCD will coordinate the review of the C[e]laim under the procedures set forth in OAR 660-  
15 041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to  
16 relief with respect to the New Land Use Regulations that it enacted or that it administers as  
17 provided in [~~Chapter 424, Oregon Laws 2007~~] **ORS 195.300 to 195.336** and if so what form of  
18 relief to grant under [~~subsection 12(5)]**ORS 195.310(5)** with respect to those regulations.~~

19 (5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.  
20 Stat. Auth.: ORS **195.300 to 195.336**, 197.040 & 197.065 [~~, Ch. 424, OL 2007~~]  
21 Stats. Implemented: ORS **195.300 to 195.336**, 197.015, 197.040, 197.065 [~~;~~] **&** 197.35[2]**3** [~~, Ch.~~  
22 424, OL 2007]