



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

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www.oregon.gov/LCD



January 7, 2010

TO: Land Conservation and Development Commission
FROM: Carmel Bender Charland, Conservation & Compensation Ombudsman
SUBJECT: **Agenda Item 6b, January 20-22, 2010, LCDC Meeting**

OMBUDSMAN UPDATE

I. HB 3225 REPORTS

Through House Bill 3225, the legislature directed the department to investigate and report on two groups of Measure 37 claimants that are currently not eligible for relief under Measure 49: those that filed Measure 37 claims with counties but not the state; and those that filed Measure 49 elections under section 7 (conditional option), but failed to submit the required appraisal or change their election within the allowed timeframe.

The ombudsman researched these issues and found that approximately 700 claims were filed with counties but not the state. Generally, the reason for this was claimant and county misunderstanding of the Measure 37 claim process. Additionally, 85 claimants elected Measure 49 Supplemental Review under section 7 but failed to submit an appraisal. This was due to claimant confusion about the claim process and a failure to review the instruction materials.

The reports were submitted to the Interim House Committee on Agriculture, Natural Resources and Rural Communities on December 31, 2009. Copies are attached for commission review.

II. OMBUDSMAN'S REPORT TO THE GOVERNOR

ORS 182.500 requires all persons providing ombudsman services to make regular reports to the Governor. The report must include a summary of services provided by the ombudsman, recommendations for improving ombudsman services, and recommendations for improving the services for which the ombudsman provides assistance. The first Compensation and Conservation Ombudsman's Report, covering the period from January 2, 2009 through December 31, 2009, will be submitted to the Governor in early January.

III. ATTACHMENTS

- A.** Report to Interim House Committee on Agriculture, Natural Resources and Rural Communities as required by HB 3225 section 17 (1)

- B.** Report to Interim House Committee on Agriculture, Natural Resources and Rural Communities as required by HB 3225 section 17 (2)



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December 31, 2009



The Honorable Brian Clem, Chair
Interim House Committee on Agriculture, Natural Resources and Rural Communities
900 Court Street NE
H-347 State Capitol
Salem, OR 97301-4048

Dear Representative Clem:

This letter includes a report to the Interim House Committee on Agriculture, Natural Resource and Rural Communities required by House Bill 3225 section 17(1). The department of Land Conservation and Development (department) requests the Interim House Committee on Agriculture, Natural Resource and Rural Communities acknowledge receipt of this report.

Nature of the Request

As directed by the legislature through HB 3225 section 17(1), the department has investigated:

- 1) The number of Measure 37 claims that were filed with Oregon counties, but not filed with the state; and
- 2) The reasons why these claimants failed to file a claim with the state.

The department makes the following findings.

Agency Action

Investigation of the Number of Measure 37 Claims not Filed with the State

Upon initial analysis of preliminary data in February 2009, the department reported that approximately 1000 claimants may have filed Measure 37 claims with counties but not the state, and are therefore ineligible for Measure 49 Supplemental Review. Upon further analysis of updated information, that estimate is now lowered to approximately 800.

For this report, the department has reviewed and analyzed data provided by counties as well as the state's own Measure 37 data to develop an estimate of the number of claims not filed with the state. As the tracking systems of each county vary, the methodology used was adapted to accommodate the variances in content, which is reflected in the classification of data in the attached tables.

Table 1 contains the results of a claim by claim comparison of state and county data to develop a specific estimate of claims not filed with the state that would be viable under Measure 49 if review of the claims is allowed. Table 2 contains data based on limited claim analysis and provides a general estimate of claims not filed with the state in those counties. These figures will most likely be reduced to some extent by the variables identified in Table 1 and described below. Table 3 is the total of claims not filed with the state as found in this investigation.

Among circumstances reducing the number of claims not filed with the state that would potentially be eligible for relief under Measure 49, are claims for property located entirely within an Urban Growth Boundary (UGB), claims that were withdrawn, and claims that were denied by the county. Table 1 shows how these issues may affect the general estimate of claims not filed with the state – of the seven representative counties a reduction ranging from 0 to 60% was found. These variables also explain why some claimants did not file claims with the state.

Typically, claims for property within a UGB did not need a state waiver because no state regulations restricted the intended development. Claimants in this situation may have understood this or were correctly advised by local planning staff that they did not need to file with the state. While some claims for property within a UGB were filed with the state, under Measure 49, the county (or city) and not the state provides Measure 49 Supplemental Review of these claims.

Claims that were withdrawn or denied by the county usually were not filed with the state. The claimant reasonably would not expect different results. It should be noted, however, that in a limited number of circumstances, had the claimant also filed with the state, they could be eligible for Measure 49 relief. For example, a surviving spouse whose acquisition date was too late to benefit under Measure 37, could now have the claim reviewed under Measure 49 based on the spouse's acquisition date.

Investigation of Why Claimants did not File Measure 37 Claims with the State

The department reviewed 29 written comments submitted by claimants, and conducted interviews with 23 additional claimants that had contacted the department concerning the status of their Measure 37 claims that were not filed with the state. This sample represents 7% of the estimated number of claims not filed with the state. Table 4 shows that the information provided by claimants falls into two distinct categories:

- 1) The claimant did not understand that filing a claim with the state was necessary and was generally confused by the process; or
- 2) The claimant was specifically advised not to file a claim with the state.

Claimant Misunderstood Measure 37 Claim Process

Measure 37 did not include procedures regarding how claims were to be reviewed. In order to effectively utilize Measure 37, a claimant needed to receive a waiver of all land use regulations that restricted the intended use of the claim property from

all governing bodies that enacted or enforced those regulations. For example: If claimant has a 40 acre parcel currently zoned EFU and he wanted to divide into four 10-acre parcels with a dwelling on each, the county code provisions for EFU zoning would have needed to be waived, and the state would have needed to waive Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, in order for the claimant to develop the property as desired. This would have required filing a separate claim with the county and the state (simultaneously or sequentially in either order). Upon receipt of all necessary waivers, a claimant could seek land use approval from the local government based on the regulations that were in effect when the claimant acquired the property. Early in the implementation of Measure 37, this dual waiver was not universally understood, and several counties disputed the need for state waivers.

Among some claimants, there has been a misperception across the state that the Measure 37 process began with filing a claim with the county and that the county's decision would then be filed with the state, in some cases by the county, and that was the entire process. Others understood that two claims were required but believed the county claim must be completed before a state claim could be filed. The delay in county processing then caused the claimants to not file in time with the state. This has been a recurring theme as the department has dealt with a variety of late and incomplete filing issues, though there does not appear to be a source for this confusion – no claimants have reported being advised that this was the process.

Many counties did include a condition or advisory statement in their Measure 37 orders that a state waiver may be needed (see Attachment 1), however several claimants, most of them elderly, did not read that far. Some report being confused by the county's cover letter advising them that if they did not disagree with the Measure 37 decision, they did not need to respond, as meaning no further action was needed to establish Measure 37 rights, or misunderstood the county's explanatory flow chart (see Attachment 2) to indicate that when the county gave notice to the state that the county waiver had been issued the claim was complete. Several of the comments from claimants expressed some version of this misunderstanding.

Claimant Incorrectly Advised

There are many examples of claimants commenting that county representatives specifically told them that they did not need to file a claim with the state. Nearly half of the respondents indicated such a communication. One reason identified for this miscommunication is that several counties did not recognize that claims involving rural residential property, where the intended use was to develop lots at least two acres in size, would also require a waiver of state regulations. While the use was consistent with Goal 14 generally, a waiver of the Goal and OAR 660-004-0040 was legally required in order for claimants to develop the claim property under Measure 37. There are several examples where Columbia, Douglas, Linn and Washington Counties specifically instructed claimants that state waivers were not needed for this type of claim. This is the case for half of Columbia County's claims that needed state waivers. Douglas County directed claimants to file with the state except in this situation, and all of the claims not filed with the state from that county are for rural residential zoned property.

Another matter that explains why several counties were providing incorrect information, is that the first statewide legal holding affirming that in order for a county to approve land use applications based on Measure 37 waivers, the claimant needed all state and local regulations waived, was issued March 27, 2007, *DLCD v. Jackson County*, LUBA No. 2006-233. Prior to that date, several counties had accepted land use applications based on Measure 37 without a state waiver – particularly Jackson, Klamath, and Linn Counties. The department initiated appeals of Jackson and Klamath land use decisions under Measure 37 in August 2006. Around that same time, Friends of Linn County sent notice to the county of its intent to petition the Land Conservation and Development Commission (LCDC) for enforcement pursuant to ORS 197.319 to 197.335, due to a pattern and practice of approving land use applications based on Measure 37 without a waiver of state land use regulations. They identified 19 land use decisions that should have required state waivers.

The research for this report indicates that the majority of claims not filed with the state were filed with the counties within the first half (December 2004 – June 2006) of the Measure 37 filing period.

Some claimants that received Measure 37 waivers from counties later in the process, report that the county or their own representatives advised them to wait on filing a Measure 37 claim with the state until the outcome of Measure 49 was known.

Finally, while *MacPherson v. Department of Administrative Services* was on review, the state and most counties stopped accepting Measure 37 claims. Nine claims that were submitted and returned during this period were not later re-filed with the state.

Action Requested

The department requests acknowledgment of the report and attachments.

Legislation Affected

The department understands that legislation is likely to be proposed in the 2010 special session addressing Measure 49 claims where no state claim was filed.

Sincerely,

Richard Whitman,
Director

Attachments

TABLE 1 - DETAILED ANALYSIS OF REPRESENTATIVE COUNTIES

County	Total Claims Filed w County	Claims not Filed with State	Inside UGB	Denials	W/D	Claims Potentially Eligible for M49 Relief
Benton	135	22	4	0	9	9
Clatsop	113	32	4	2	6	20
Columbia	185	29	1	9	0	19
Jackson	574	164	4	0	3	157
Josephine	317	128	0	0	0	128
Linn	292	67	0	2	20	45
Washington	878	114	12	8	10	84
TOTAL	2494	556	25	21	48	462

TABLE 2 - GENERAL ANALYSIS

County	Total Claims Filed w County	Claims not Filed with the State
Baker	139	0
Clackamas	1054	29
Coos	240	4
Crook	46	9
Curry	117	17
Deschutes	319	12
Douglas	312	14
Gilliam	1	0
Grant	12	0
Harney	2	0
Hood River	232	17
Jefferson	135	6
Klamath	181	25
Lake	2	0
Lane	395	31
Lincoln	185	0
Malheur	20	8
Marion	487	28
Morrow	2	2
Multnomah	103	0
Polk	330	33
Sherman	1	1
Tillamook	90	6
Umatilla	53	0
Union	54	12
Wallowa	51	1
Wasco	50	9
Wheeler	1	0
Yamhill	518	40
TOTAL	5132	304

TABLE 3 - Total Claims not Filed with the State

Table 1 - Detailed Analysis of Representative Counties	462
Table 2 - General Analysis of Remaining Counties	304
TOTAL ESTIMATED CLAIMS NOT FILED WITH THE STATE	766

TABLE 4 - CLAIMANT COMMENTS RE NOT FILING M37 CLAIM WITH STATE

County	# of Claimant Comments	Claimant was Told Not to File w State	Claimant Did Not Understand Process	Claim Property Zoned RR
Jackson	17	10	6	4
Columbia	6	4	2	3
Washington	7	3	4	3
Clackamas	4	0	4	0
Jefferson	3	0	3	1
Linn	3	2	1	0
Yamhill	2	0	2	0
Deschutes	2	1	1	1
Josephine	2	1	1	0
Lane	2	1	1	1
Clatsop	1	0	1	0
Douglas	1	1	0	1
Multnomah	1	0	1	0
Marion	1	0	1	0
Benton	0	0	0	0
Curry	0	0	0	0
Baker	0	0	0	0
Coos	0	0	0	0
Crook	0	0	0	0
Gilliam	0	0	0	0
Grant	0	0	0	0
Harney	0	0	0	0
Hood River	0	0	0	0
Klamath	0	0	0	0
Lake	0	0	0	0
Lincoln	0	0	0	0
Malheur	0	0	0	0
Morrow	0	0	0	0
Polk	0	0	0	0
Sherman	0	0	0	0
Tillamook	0	0	0	0
Umatilla	0	0	0	0
Union	0	0	0	0
Wallowa	0	0	0	0
Wasco	0	0	0	0
Wheeler	0	0	0	0
TOTAL	52	23	28	14

Yamhill County M37 order language

Planning Director waive any exempt land use regulations as defined by ORS 197.352(3), including the following: Regulations that restrict or prohibit activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

2. This order does not effect any land use regulations of the State of Oregon. If the use allowed by numbered paragraph 1, above, remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development.

3. This Board Order is subject to the provisions of Section 7 of the Measure 37 Implementation Ordinance.

4. Pages 1 through 3 of this Board Order shall be recorded in the Yamhill County Deed and Mortgage Records together with portions from the deed or other instrument in Exhibit "A" sufficient to identify the subject property. The entirety of this Board Order, including all of Exhibit "A," shall be filed in the Commissioners Journal.

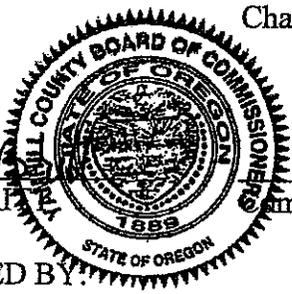
AYES George, Stern, Lewis NAYS _____

DONE at McMinnville, Oregon on June 13, 2007.

ATTEST YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN _____
County Clerk
Kathy George _____
Chair KATHY GEORGE

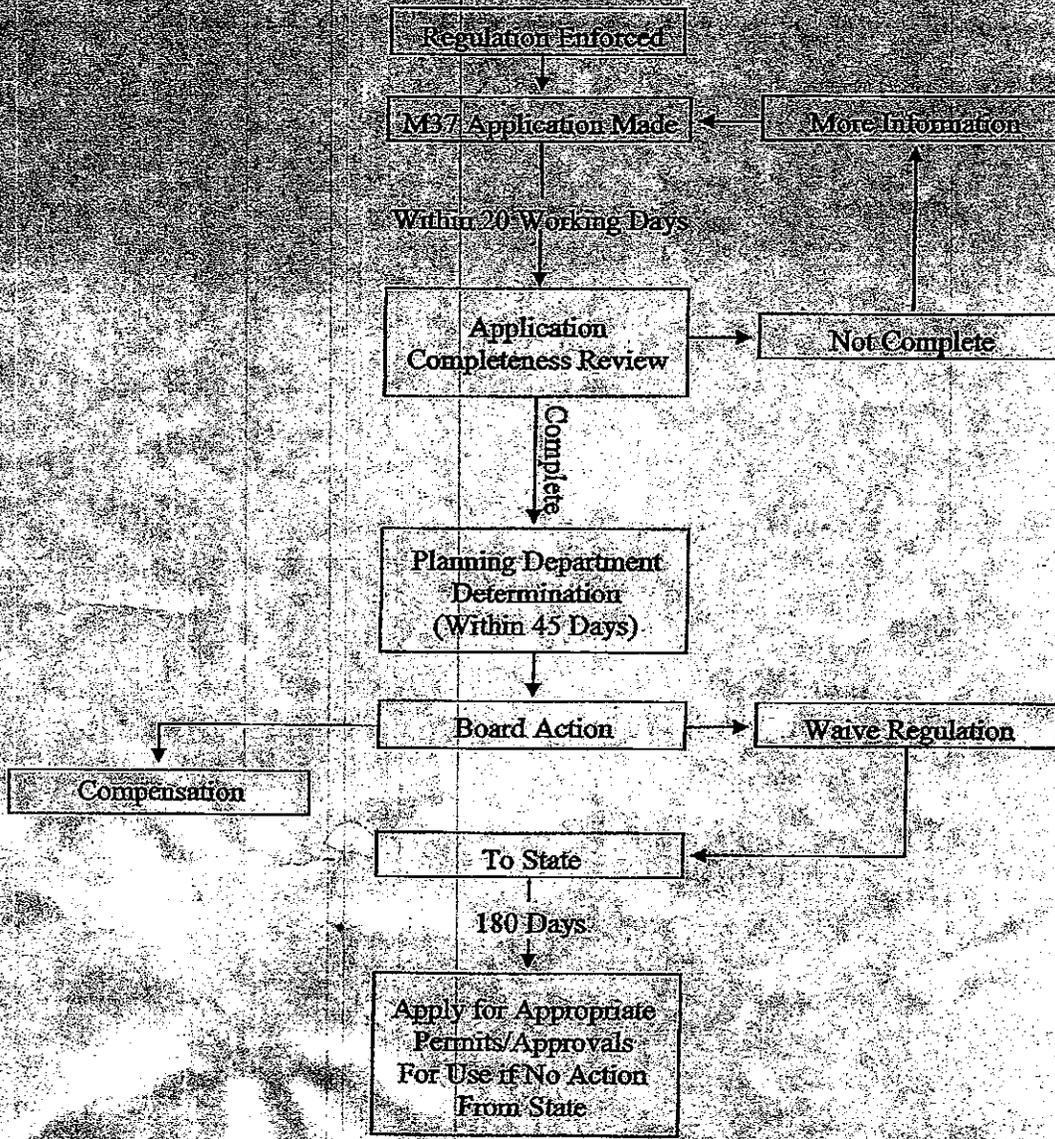
By Anne Br... _____
Deputy ANNE BR...
MAY P. STERN _____
Commissioner MARY P. STERN



FORM APPROVED BY:
/s/ RICK SANAI _____
for JOHN M. GRAY, JR.
Yamhill County Legal Counsel
Leslie Lewis _____
Commissioner LESLIE LEWIS

Attachment 1

Measure 37 Flow Chart



Handout provided by Yamhill County



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Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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December 31, 2009



The Honorable Brian Clem, Chair
Interim House Committee on Agriculture, Natural Resources and Rural Communities
900 Court Street NE
H-347 State Capitol
Salem, OR 97301-4048

Dear Representative Clem:

This letter includes a report to the Interim House Committee on Agriculture, Natural Resource and Rural Communities required by House Bill 3225 section 17(2). The Department of Land Conservation and Development (department) requests the Interim House Committee on Agriculture, Natural Resource and Rural Communities acknowledge receipt of this report.

Nature of the Request

As directed by the legislature through HB 3225 section 17(2), the department has investigated:

- 1) The number of Measure 49 claims that were filed under section 7, chapter 424, Oregon Laws, 2007, in which the claimant failed to file an appraisal; and
- 2) The reasons why these claimants failed to file the requisite appraisal.

The department makes the following findings.

Agency Action

Introduction

ORS 195.300 – 195.336, and sections 5 to 11 of chapter 424, Oregon Laws 2007 (Measure 49) apply to individuals who filed claims with the state and county under Measure 37 for compensation due to land use regulations that reduced the value of their property. These provisions allow such claimants to elect for supplemental review of their claims under Measure 49 by one of two options. First, under Section 6 claimants may receive relief through authorization for up to three home sites without demonstrating a loss of property value due to land use regulation. Alternately, under section 7 claimants may receive relief through the authorization of up to 10 home sites if they demonstrate a loss of fair market value due to land use regulations has been made.

Section 7 was labeled the “Conditional” option on the Measure 49 election form. Once an election selecting the conditional option had been filed with the department, the claimant had 180 days to submit the required appraisal. To determine the lost value of the property, Measure 49 required that the appraisal establish the fair market value of the property one year before the enactment of the restricting regulations and the fair market value one year after, as well as make a “highest and best use” determination for each time period. The appraisal also had to establish the value of the additional home sites requested. The value of the home sites authorized under section 7 may not exceed the established loss in fair market value.

Measure 49 allowed the cost of the appraisal, up to \$5000, to be incorporated into the total claimed loss. Early in the Measure 49 election process the department received many reports from claimants that they could not find an appraiser willing to conduct the required appraisal. DLCD worked with the Oregon Appraiser Certification and Licensure Board to establish a list of appraisers willing to undertake Measure 49 work. This list was posted on their website and a link placed on the Measure 49 site in May 2008.

Property defined as “high-value farmland,” “high-value forestland,” or in a “groundwater restricted area,” under ORS 195.300, was not eligible for review under section 7. The department conducted a preliminary survey of the conditional elections to identify claims that may not be eligible for these reasons. A letter was sent to those claimants notifying them of this issue and reminding them that they could change their election to section 6.

At any point prior to filing an appraisal, a claimant was allowed for any reason to change his election to review under section 6. After the 180-day deadline passed, the claim became ineligible for review under section 7 if no appraisal had been submitted.

Investigation of the Number of Claims Filed Under Section 7 in which the Claimant Failed to Submit an Appraisal or Change their Election

By the close of the election period (January 18, - June 30, 2008), DLCD had received 214 elections seeking Measure 49 supplemental review under section 7. By the close of the 180-day period for submitting appraisals (December 27, 2008), that number had declined to 136 as a result of claimants’ requests to proceed under section 6. Generally, this difference reflects claimants responding to the high value notices that the department sent, and claimants who changed their minds after weighing the risks and expenses of proceeding under section 7.

Of those claims remaining in the conditional review queue, 25 had submitted appraisals that could be reviewed. However, of these, it appears that only 10 fulfilled all of the appraisal requirements and will receive substantive review. The 15 remaining claims will likely be denied due to an insufficient appraisal.

Of those remaining that had not submitted appraisals, Preliminary Evaluations denying the claim based on failure to comply with the appraisal requirement were issued. After

excluding claims that had other eligibility issues, such as late filing, this left a total of 85 claims that were preliminarily denied and are the primary subject of this report.

Section 7 Claims as of 12/31/2008:	136
Less Number of appraisals received:	25
Less Claims with other filing issues:	26
Claims without appraisal:	85

Investigation of Reasons Why These Claimants Failed to Submit the Required Appraisal or Change Their Election

In response to the 85 Preliminary Evaluations, the department received 38 claimant responses (45%). These written responses have been reviewed and are the source for the data provided in this report on the reasons why claimants did not submit an appraisal or change their election to section 6.

This sample represents 17 of Oregon’s 36 counties. Of the claimants receiving a preliminary evaluation denial, 31 (35%) had previously received the high-value notice letter that should have served as a reminder that action was needed. The number of those responding who are included in the sample have a lower rate of receiving the high-value notice (12%), so it should be noted that the data do not fully reflect the reasons why claimants failed to act even after receiving the notice that they may not be eligible for section 7 relief. The data are broken out into three categories of explanation for failing to act within the required time frame.

1. Unable to Provide Appraisal – 18%

These claimants understood that an appraisal was required but were unable to provide one. They had difficulty finding an appraiser to do the specialized appraisal and/or could not afford the appraisal. One claimant wrote “I have not provided the required appraisals because after difficulty finding an appraiser qualified and able to do the work I found one out of my area who estimated \$30,000 for the work.” Many requested an extension of time for filing an appraisal. However, the department did not have a process for responding to the requests since it did not have authority to grant an extension. The Measure 49 call log for the appropriate time period shows 25 calls from claimants asking for assistance in finding an appraiser. Also, at least five calls were received from appraisers seeking clarification of section 7 appraisal requirements.

2. Claimants Mistakenly Relied on Valuation Reports They Provided with Measure 37 Claims to Meet the Section 7 Appraisal Requirement – 22%

These claimants misunderstood that the appraisal requirement under section 7 called for a very specific type of appraisal. Since they had originally submitted some form of documentation demonstrating loss of value with their Measure 37 claim, they believed that they had already satisfied the requirement. Three of these also received high-value

notices. It appears that claimants in this category did not review or understand the instruction materials that accompanied the Measure 49 election form.

3. Claimants did not Understand Section 7 Requirements – 59%

The majority of responses received indicated that claimants did not (and in many cases still do not) understand the extent of the requirements for filing under section 7. This is reflected in all of the responses, including those described above, but is the sole reason in 19 of them. One claimant's attorney stated that "at the time of making their Measure 49 election, clients were unrepresented and unaware of the detailed and rather complex requirements associated with pursuing a 'conditional' election." While most claimants attempted to change their election to section 6 after receiving their Preliminary Evaluation, even though it was too late, 3 claimants still did not understand the appraisal requirement they had failed to meet when submitting their election. One claimant provided a petition of neighbors supporting his development plans in response to his Preliminary Evaluation, but did not address the appraisal issue in his response.

These responses also indicate that many claimants did not understand that the claim would no longer be eligible for Measure 49 relief if an appraisal had not been submitted, or the election changed to section 6 within 180 days of filing the election. Some assumed a default to section 6 or a time extension would be available. The process for electing under section 7 is detailed in the Measure 49 Guide provided with each election form. Twice it explicitly states the deadline for submitting an appraisal. However, it does not specifically describe the consequences of not submitting an appraisal (please see attached).

Action Requested

The department requests acknowledgment of the report and attachments.

Legislation Affected

The department understands that legislation is likely to be proposed in the 2010 special session addressing Measure 49 section 7 claims where no appraisal was filed, or an inadequate appraisal was filed.

Sincerely,

Richard Whitman,
Director

Attachments



Measure 49 Guide

Part 1: Overview

1. What Is Measure 49?

Measure 49 “modif[ies] Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.” Measure 49 has two main parts: the first part concerns Measure 37 claims that were filed on or before June 28, 2007; the second part addresses new Measure 49 claims.

The first part of Measure 49 replaces the two alternate remedies of Measure 37 (a waiver of land use regulations or the payment of compensation) with an approval for claimants to establish a specific, but limited, number of home sites. This home site approval is provided as a form of compensation for land use regulations imposed after owners acquired their properties. It is available only for claimants who filed Measure 37 claims on or before June 28, 2007.

The second part of Measure 49 concerns the filing of new claims, which may be based on land use regulations enacted only after January 1, 2007. As with Measure 37, Measure 49 provides either compensation or waivers for new land use regulations. However, Measure 49 defines the category of land use regulations that are eligible for relief more narrowly, to include only those regulations that limit residential uses of property or that restrict farming or forest practices. In addition, under Measure 49, relief is provided only if the owner demonstrates that the new regulations have reduced the value of property. For claims based on regulation of residential uses, claimants are exempted from regulation only to the extent necessary to allow additional residential development of a value comparable to the value lost as a result of the regulation.

2. How Does Measure 49 Affect Measure 37 Claims?

The first part of Measure 49 applies to all Measure 37 claims that were filed on or before June 28, 2007, whether those claims were approved or pending. If a claimant elects to seek relief under Measure 49, the state must undertake a supplemental review of the relevant Measure 37 claim(s). The supplemental review will verify claimant ownership of the property, when the claimant acquired the property and the number of home sites that the claimant could have developed when the property was acquired. At the end of the supplemental review, the claimant will receive an order indicating what the claimant is approved for in terms of additional land divisions and/or dwellings. What claimants are approved for depends on where the property is located, when the claimant acquired the property and what the claimant asked for under Measure 37.

3. What Options Are There for Measure 37 Claims for Property Located Outside any Urban Growth Boundary (UGB) and any City?

Most Measure 37 claims were filed for property located in rural parts of the state—land outside any UGB and any city. Claims for property located entirely outside any UGB and any city are eligible for relief under two options: an Express option that may allow up to three home sites, and a Conditional option that may allow up to 10 home sites. The Conditional option is not available for property with certain special designations and requires proof that the value of the claimant's property was reduced. Under both options, however, the claimant must have had the right to develop the additional home sites when the property was acquired. Verifying what claimants could have done when they acquired their property is the main focus of the supplemental review under Measure 49. These options are described in more detail in Part II below.

4. What Options Are There for Measure 37 Claims for Property Inside any UGB or any City?

Claims for property located partially or completely inside any UGB or any city are eligible for up to 10 home sites if the property is residentially-zoned and if the claimant proves that the value of the property has been reduced by land use regulations. The number of home sites that may be approved will correspond to the amount of reduction in value shown. Under Measure 49, Metro or the city or county evaluates these claims, not the state.

5. What if I Have Already Completed or Started My Development Under Measure 37?

A claimant with a Measure 37 waiver who has begun the development described in the waiver may proceed under Measure 37 if the use of the property complies with the waiver and the claimant has a common law vested right to complete and continue the use. In areas of the state outside a UGB, claimants must have waivers from both the local government and the state. Generally, claimants also will need to have received land use permits for their uses and to have at least begun construction of their uses, before they will have vested rights. Additional information concerning vested rights is contained in guidance from the state that is available on the DLCD website at <http://www.oregon.gov/LCD/MEASURE49>.

6. What About Measure 37 Claims for Non-Residential Uses of Property?

Claims for non-residential uses filed under Measure 37 for property outside any UGB and any city may be amended to seek approval for residential uses under Measure 49. Other non-residential uses may continue only to the extent they are vested.

7. What About Measure 37 Claims That Were Filed After June 28, 2007?

Fewer than 100 Measure 37 claims were filed after June 28, 2007. Measure 37 claims filed after June 28, 2007, are treated as new Measure 49 claims. Such claims are eligible for waivers or compensation under Measure 49 only if they are based on new land use regulations (those enacted after January 1, 2007) and only to the extent the claim demonstrates that the new regulation(s) has reduced the value of the property.

8. May I File a New Measure 49 Claim?

As noted above, the second part of Measure 49 concerns new land use regulations (those enacted after January 1, 2007). You may file a new Measure 49 claim for a new land use regulation if it has reduced the value of your property. You have five years from the date the new regulation was enacted to file a new claim.

Like Measure 37, Measure 49 requires public entities to compensate claimants for the effect of new land use regulations or to waive those regulations. However, the types of regulations that trigger claims are more limited under Measure 49. They include the following:

- State statutes that establish a minimum lot or parcel size
- State statutes in ORS chapter 215 (counties) and ORS chapter 227 (cities) that restrict the residential use of private real property
- Provisions in city comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property “zoned for residential use”
- Provisions in county comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property
- Certain statutes and rules that restrict forest practices or farming practices
- Statewide planning goals and administrative rules of the Land Conservation and Development Commission
- Provisions of a Metro functional plan that restrict the residential use of private real property

Part 2: The Express and Conditional Options

As noted above, Measure 37 claims for property located entirely outside any UGB and any city that were filed before June 28, 2007, may be eligible for relief through two options under Measure 49: an Express option (up to three home site approvals) or a Conditional option (up to 10 home site approvals).

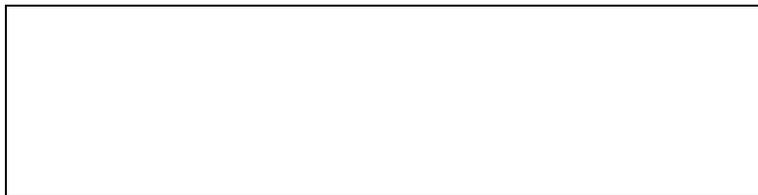
1. How Does the Express Option Work?

The number of lots, parcels or dwellings that may be approved under the Express option is limited to three. In addition, the number cannot exceed the number in the claimant's Measure 37 claim or waiver, if one was issued. If the property already contains one or more dwellings or more than one parcel, then neither the total number of dwellings nor parcels can exceed three.

However, if a claimant's property already contains three or more parcels and three or more dwellings, the claimant may receive one more parcel and one more dwelling if the claimant otherwise qualifies under Measure 49. If a claimant's property already contains three parcels and has two or fewer dwellings, the claimant can receive only additional dwellings. The following diagrams illustrate some possibilities under the Express option.

Express Option Example 1

Before: Claimant has one existing parcel and no dwellings



After: Claimant approved for three parcels and three dwellings

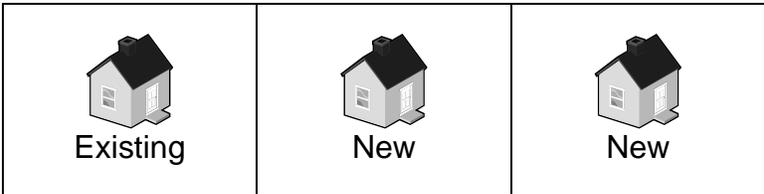


Express Option Example 2

Before: Claimant has one existing parcel and one dwelling



After: Claimant approved for two additional parcels and two additional dwellings

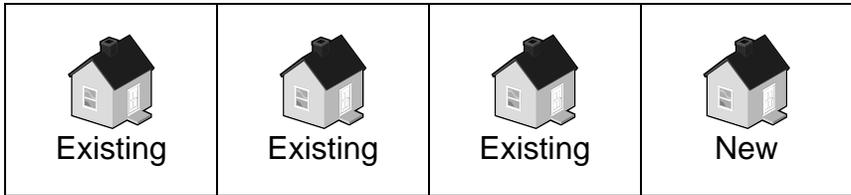


Express Option Example 3

Before: Claimant has three existing parcels and three existing dwellings



After: Claimant approved for one additional parcel and one additional dwelling



A claimant who has filed a claim or obtained a waiver for more than three lots, parcels or dwellings may amend the claim to proceed under the Express option by reducing the number of home sites sought to three or less. In addition, as noted above, a claimant who has filed a claim for a non-residential use (e.g., commercial or industrial use) also may amend the claim to seek up to three home site approvals under the Express option.

To qualify for relief under the Express option, a claimant must have filed a Measure 37 claim with both the state and the county on or before June 28, 2007, and must establish the following:

- The claimant owns¹ the property
- All owners of the property have consented in writing to the claim
- The property is located entirely outside any UGB and any city
- One or more land use regulations prohibit establishing the lot, parcel or dwelling
- Establishing the lot, parcel or dwelling is not prohibited by a regulation that was enacted before the claimant's acquisition date, or by a regulation that is required to protect public health or safety or that is required by federal law
- On the claimant's acquisition date,² the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are sought under the Express option

In addition, Measure 37 claims filed after December 4, 2006, must be accompanied by a local government decision denying or conditioning a land use application made by the claimant for the use requested.

2. How Does the Conditional Option Work?

Up to 10 lots, parcels or dwellings may be approved under the Conditional option if the following standards are met:

- If the claim is based on a Measure 37 waiver for 10 or fewer lots, parcels or dwellings, the claimant is limited to the number approved in the waiver.
- If the claim is based on a pending Measure 37 claim (where no waiver has been issued) seeking 10 or fewer lots, parcels or dwellings, the claimant is limited to the number sought in the original Measure 37 claim.

¹ "Owner" is defined in Measure 49 as the owner of fee title as shown by deed records, a purchaser under a recorded land sales contract, the settlor or trustee of a revocable trust or the trustee of an irrevocable trust. Oral and unrecorded agreements cannot be used to show ownership.

² "Acquisition date" means the date when the claimant became the owner of record. If the claimant is the surviving spouse of a person who was an owner, the claimant's acquisition date is the date of marriage to the owner or the date the claimant's deceased spouse acquired the property, whichever is later. This extends relief under Measure 49 to a class of surviving spouse claimants who were denied relief under Measure 37.

- If there are already dwellings on the property, or if the property contains more than one lot or parcel, the number of lots, parcels or dwellings that can be established under Measure 49 is limited to 10 total, including existing and new lots, parcels or dwellings.

The number of home site approvals allowed is proportional to the loss in value resulting from land use regulations. The value of the home sites approved cannot exceed the loss in value resulting from the regulation(s) on which the claim is based.

The Measure 37 claim property must not be high-value farm- or forestland or in a ground water restricted area.³

To see if your property is affected by these special designations (high-value farm- or forestland and ground water restricted areas), see the DLCD website at <http://www.oregon.gov/LCD/MEASURE49>. If claimants have information showing that their property is not high-value farm- or forestland or in a ground water restricted area as defined in Measure 49, they may submit such information during the supplemental review of their claim.

The other main requirement under the Conditional option is that the claimant must document a specific amount of loss in the value of the property caused by one or more land use regulations. This requires obtaining an appraisal that establishes the

³ “High-value farmland,” as described in Section 2(10) of Measure 49, includes:

- land in an exclusive farm use (EFU) zone or a mixed farm-forest zone that is predominantly composed of soils defined as high-value farmland under ORS 215.710. ORS 215.710 includes references to dairy operations and soils connected with those operations.
- land outside the Willamette Valley that is in an EFU zone or a mixed farm-forest zone and planted predominantly in certain specified perennials
- certain land zoned EFU and entirely within an American Viticultural Area (wine-growing area)
- land that is at least five acres in size and is planted entirely in wine grapes
- land in an EFU or mixed farm-forest zone that, as of June 28, 2007, was entirely within the place of use for an irrigation permit, certificate or decree or entirely within the boundaries of an irrigation district, diking district, drainage district, water improvement district, water control district or a corporation organized for the use or control of water under ORS chapter 554
- land that is composed predominantly of certain identified soils that constitute the Harbor Bench–lily-growing area in Curry County

“High-value forestland” as described in Section 2(11) of Measure 49 is defined as land in a forest or mixed farm-forest zone that (1) in western Oregon is composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and more than 5,000 cubic feet per year of commercial tree species; (2) in eastern Oregon is composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and more than 4,000 cubic feet per year of commercial tree species.

A “ground water restricted area” means an area designated as a “critical ground water area” or a “ground water limited area” by the Oregon Water Resources Department or the Oregon Water Resources Commission before December 6, 2007. In order for this designation to apply under Measure 49, the property must be entirely within the boundaries of a ground water restricted area.

property's value one year before the land use regulation was enacted and the value one year after. The appraisal must be prepared by a certified appraiser and be received by DLCD within 180 days of the date DLCD receives the election form.

After determining the amount of loss, the reduction in value is then adjusted by any property taxes not paid on account of a special farm or forest assessment, plus interest, offset by severance taxes or recapture tax paid or payable if the property is disqualified from special assessment. The value also is adjusted to current value, using the average rate for one-year U.S. Treasury bills on December 31 of each year from the date the land use regulation was enacted to present, compounded annually.⁴

Furthermore, the appraisal also must show the current value of having a developable home site on the property. The value of the home sites approved cannot exceed the amount of loss the claimant experienced from the land use regulations. Finally, the appraisal also must show that residential use was the highest and best use of the property when the land use regulations were enacted. This ensures that the value of the property actually was reduced by land use regulations that restrict residential uses. Whether a particular property will meet this test will depend on its location, the time frame in question and other potential uses for which the property has been suited.

Finally, the claimant must establish the following:

- The claimant owns the property
- All owners of the property have consented in writing to the claim
- The property is located entirely outside any UGB and any city
- One or more land use regulations prohibit establishing the lot, parcel or dwelling
- Establishing the lot, parcel or dwelling is not prohibited by a regulation that was enacted before the claimant's acquisition date, or by a regulation that is required to protect public health or safety or that is required by federal law
- On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are sought under the Conditional option

3. What Is the Process for Express and Conditional Option Claims?

The DLCD election packet explains claimants' options under Measure 49 and identifies information needed for the supplemental review of claims. The packet also includes an Election Form for claimants to use in electing the relief they wish to seek under the measure.

⁴ The Federal Reserve stopped selling one-year U.S. Treasury bills after June 30, 2000. The rate to use for calculations subsequent to that date is the one-year Constant Maturity Treasury (CMT) Index published by the Federal Reserve. Rates are available on the Federal Reserve's website at: <http://www.federalreserve.gov/releases/H15/data.htm>.

Claimants have 90 days from the date of mailing of the packet to elect how they wish to proceed. ***If DLCD does not receive a completed election form within 90 days from the date of mailing, the claimant will not be eligible to relief under Measure 49.***

Claimants seeking up to 10 home site approvals under the Conditional option have 180 days from the date DLCD receives the election form to submit the required appraisal. Until the appraisal is submitted, claimants can change their election to proceed under the Express option instead. Once an appraisal is filed, however, the election to proceed under the Conditional option is final and cannot be changed.

DLCD will review claims in the order the election forms are received. If DLCD determines that a claim is based exclusively on a county land use regulation, DLCD will transfer the claim to the appropriate county for processing.

DLCD is required to review claims "as quickly as possible, consistent with careful review of the claims," and to report to the Joint Legislative Audit Committee by March 31, 2008, on its progress. If DLCD approves a claim, it must state the number of home site approvals and any other conditions of approval.

Part 3: Claims for Properties Inside any UGB or any City

1. What About Claims for Properties Inside any UGB or any City?

Claimants who filed a Measure 37 claim on or before June 28, 2007, for property located, in whole or in part, inside any UGB or any city may be eligible for up to 10 single-family dwellings. The number of dwellings that may be allowed is dependent upon the following conditions:

- If there is an approved Measure 37 waiver, the claimant is limited to the number approved in the waiver
- If there is no approved waiver, the claimant is limited to the number sought in the original claim
- Regardless of whether there is a Measure 37 waiver, the total number of dwellings on the property cannot exceed 10, including both new and existing dwellings
- The total value of any new dwellings approved cannot exceed the amount of the reduction in value caused by the enactment of a land use regulation, as determined by an appraisal

How property value is measured is discussed in more detail below. A claimant who has filed a claim or obtained a waiver for more than 10 dwellings may amend his or her claim to request not more than 10 dwellings.

To qualify for relief for property inside any UGB or any city, a claimant also must show:

- The claimant owns the property
- All owners of the property have consented in writing to the claim
- The property is located wholly or in part inside a UGB or a city
- One or more land use regulations prohibit establishing the dwellings
- Establishing the dwellings is not prohibited by land use regulations that protect public health or safety, or by regulations required by federal law
- The land use regulation that is the basis of the claim was enacted after the property was brought inside a UGB (or Metro boundary, or the boundary of a city, as applicable)
- The highest and best use of the property at the time the regulation was enacted was residential use

For claims regarding property inside any UGB or any city, the reduction in fair market value caused by the enactment of a regulation must be shown by measuring the property's value one year before the land use regulation was enacted relative to the value one year after. This difference is then adjusted for interest from the date the land

use regulation was enacted to present, computed based on the average rate for one-year U.S. Treasury Bills on December 31, each year from the date of enactment of the land use regulation to the date the claim was filed, compounded annually.

The appraisal in support of a claim for urban property also must be done in accordance with the terms of the measure, by a certified appraiser, in compliance with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

In the case of Metro, if Metro and a city or county within Metro are reviewing a claim on the same property, they must coordinate their review and decisions.

2. What Is the Process for Claims Inside any UGB or any City?

If a waiver was issued on a Measure 37 claim for property inside any UGB or any city before December 6, 2007, the entity that issued the waiver must review the claim on the record to determine if the claimant is entitled to relief under Measure 49. Certain time lines apply to the review.

If a waiver was not issued before December 6, 2007, the entity must send notice to the claimant within 90 days after the effective date of Measure 49. The claimant must then indicate within 120 days if the claimant intends to pursue the claim. If the claimant fails to respond or to provide any required information, the claimant abandons the right to proceed with that claim under Measure 49.

Claims for property inside any UGB or any city filed under Measure 37 after December 4, 2006, must have included a copy of a final land use decision by the city or county having jurisdiction that denied an application for the residential use requested. If a claimant did not include such a final decision with the claim, the claimant is not entitled to relief under Measure 49.

Part 4: Completing Development Based on a Measure 49 Approval

1. When Can a Claimant Develop the Property?

Once a claimant has received an approval under Measure 49, there is no time limit on when the claimant may carry out the development of the property. However, if the claimant sells the property, the *purchaser* then has 10 years to complete the development. The division of the property, and any dwellings, approved under Measure 49 are treated as permitted uses even if they would not otherwise be allowed under the zoning for the property.

2. May a Claimant Sell the Property With the Approval?

Yes. Unlike Measure 37, Measure 49 makes the development approval transferable to a new owner. After receiving an approval, a claimant is free to sell the property and the new owner may use the approval within 10 years (see above).

3. What Development Standards Apply to Measure 49?

Once a claimant has received a Measure 49 approval, the claimant will still need to apply for a subdivision or partition approval to divide the property, and for a building and development permit for any dwellings. Subdivisions, partitions and dwellings approved under Measure 49 must comply with all current applicable siting and development standards, except to the extent that the application of the development standards would prohibit the use. (There is an exception to this exception, in that standards that are “reasonably necessary to protect public health or safety or carry out federal law” must be applied even if the effect would be to prohibit the use.)

In addition, newly-created lots or parcels in an exclusive farm use (EFU), forest or mixed farm-forest zone may not exceed two acres, if located on land that is high-value farm- or forestland or in a ground water restricted area; or five acres otherwise. In addition, if the property is in an EFU, forest or mixed farm-forest zone, the new lots or parcels must be clustered “so as to maximize the suitability of the remnant lot or parcel for farm or forest use.” A claimant with home site approvals on more than one property may cluster some or all of the dwellings, lots or parcels to which the claimant is entitled on one of the properties.

Under no circumstances is a claimant entitled to more than 20 home site approvals, regardless of how many properties the claimant owns or how many claims the claimant has filed.

4. What Happens if a Claimant Dies While a Measure 49 Claim Is Pending?

If a claimant dies while action on a Measure 49 claim is pending, the right to pursue the claim and use the property under an approval is not affected if the death occurs on or after December 6, 2007. The right passes to the person who acquires the property by devise or operation of law. Additionally, House Bill 3546, which was incorporated into Measure 49, states that the ability of a claimant to pursue a claim is not affected by the claimant's death provided the claim was filed *after* November 1, 2006, and the claimant dies following submission of the claim.

Part 5: Additional Resources

There are a number of resources to assist claimants in better understanding Measure 49. Among them are:

Oregon Department of Land Conservation and Development. <http://www.oregon.gov/LCD>

Oregon Department of Justice. http://www.doj.state.or.us/hot_topics/measure37.shtml

League of Oregon Cities. <http://www.orcities.org>

Association of Oregon Counties. <http://www.aocweb.org>

1000 Friends of Oregon. <http://www.friends.org>

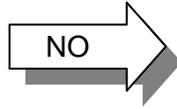
Oregonians in Action. <http://www.oia.org>

ELECTION PROCESS

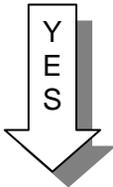
Proceeding under
Measure 49



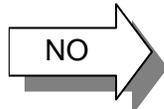
1) Is the property entirely outside any UGB or city?



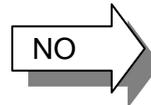
Contact city, county or Metro



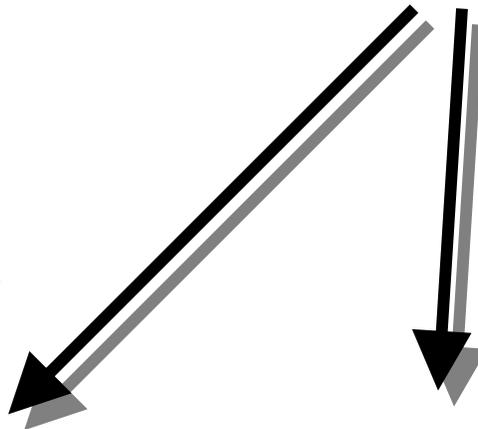
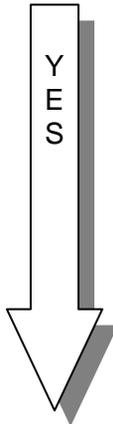
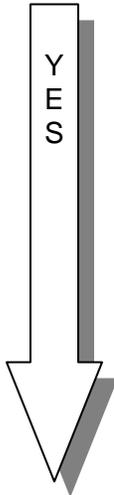
2) Is the property high-value farm- or forestland, or in a ground water restricted area?



3) Was the claim/waiver for 3 or fewer homesites or exclusively for non-residential use?



4) CHOICE
Eligible for either the Conditional or Express option



EXPRESS

1. The property is entirely outside any UGB or city; **AND**
2. The property is high-value farm- or forestland or in a ground water restricted area; **AND/OR**
3. The claim or waiver was for 3 or fewer homesites or exclusively for a non-residential use; **AND/OR**
4. The choice under Measure 49 is for 3 or fewer new homesites.

CONDITIONAL

1. The property is entirely outside any UGB or city; **AND**
2. The property is not high-value farm- or forestland and is not in a ground water restricted area; **AND**
3. The claim or waiver was for residential use of 4 or more homesites; **AND**
4. The choice under Measure 49 is for 4 to 10 homesites.



Department of Land
Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
(503) 373-0050
www.oregon.gov/LCD

Measure 49 Election Form Instructions

MEASURE 49

Many claimants who filed a claim under ORS 197.352 (Measure 37) on or before June 28, 2007, are eligible for home site approvals under Measure 49.

To be eligible for home site approval(s) **for property outside any urban growth boundary (UGB) and any city**, under either Section 6 (Express option) or Section 7 (Conditional option) of Measure 49, a claimant must have filed a Measure 37 claim for the subject property with both the state and the county where the property is located and must establish the following:

- The claimant is an owner of the property
- All owners of the property have consented in writing to the claim
- The property is located entirely outside any UGB and any city
- The home site(s) sought are not allowed under existing law
- The home site(s) sought are not prohibited by land use regulations that protect public health or safety, prevent nuisances or that are required by federal law
- On the claimant's acquisition date, the claimant lawfully was permitted to establish the home sites sought under the claimant's Measure 49 election

If **any portion** of the property that is the subject of a Measure 37 claim is **inside any UGB or any city**, then Metro or the city or county in which the property lies will address the claim under Measure 49. The state will not review a claim if any portion of the property is inside any UGB or any city.

In addition, for the small number of claims filed **after December 4, 2006**, the Department of Land Conservation and Development (DLCD) must verify that the claim is accompanied by a local government decision denying or conditioning a land use application made by the claimant for the use requested.

If you elect either the Express or Conditional option you must show compliance with each of the requirements listed above, either through documentation already submitted with your Measure 37 claim or through documentation provided during this supplemental review process.

COMPLETING AND SUBMITTING A DLCD MEASURE 49 ELECTION FORM

DLCD will review claims in the order that the election forms are received and will perform its supplemental review "as quickly as possible, consistent with careful review of the claim," as required by Measure 49, Section 8(6).

To receive supplemental review of your Measure 37 claim under Measure 49, you must complete and return the enclosed Election Form, electing either the Express or Conditional option, within 90 days from the date of mailing of this packet. If DLCD does not receive a completed election form within 90 days of the date of mailing, you will not be eligible for relief under Measure 49.

Mail or deliver your completed election form and all attachments to:

Supplemental Measure 49 Claim Review
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Election forms will not be accepted by facsimile or electronically.

ELECTION FORM SECTION I. NAMES OF ALL CLAIMANTS

A claimant must be an “owner” of the real property that is the subject of the claim.

Measure 49 defines an owner as:

- The owner of fee title to the property as shown in the deed records of the county where the property is located
- The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property
- If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner

Each person or entity (such as a corporation, limited liability company or partnership) must be listed separately, even if ownership is jointly held (e.g., married couples must be identified individually).

If an owner is an entity, the election form must be signed by an individual who has the authority to act on behalf of the entity.

If there are multiple owners of the property, not all owners must be claimants. However, Measure 49 requires that a claimant obtain the consent of all owners before a claim may undergo supplemental review. Therefore, if a claimant elects the Express or Conditional option, the claimant must obtain the consent of each owner who is not a claimant using the enclosed **Supplemental Review Consent Form**.

An individual or entity who was not a claimant to the original Measure 37 claim may **not** be added as a claimant under Measure 49. However, a claimant to the original Measure 37 claim who does not meet the definition of “owner” under Measure 49, or who no longer wishes to be a claimant for any other reason, may be removed as a claimant by excluding that claimant’s name and signature from the election form. If the removed claimant wishes to allow the claim to proceed, the removed claimant would need to complete a **Supplemental Review Consent Form**.

ELECTION FORM SECTION II. NAME AND CONTACT INFORMATION OF PRIMARY CONTACT/AGENT

If the election form is submitted by two or more claimants who are not represented by an agent, designate one of the claimants as the primary contact.

If the election form is submitted by an agent on behalf of the claimant(s), identify the name and contact information of the agent and submit a notarized statement or Power of Attorney signed by all claimants authorizing the agent to act on their behalf.

ELECTION FORM SECTION III. MEASURE 49 ELECTION

Before Electing an Option

Measure 49 defines the “property” that is subject to supplemental review as “the private real property described in a [Measure 37] claim and **contiguous** private real property that is owned by the same owner, whether or not the contiguous property is described in another claim.”

Under Measure 49, an owner of property is eligible for a maximum of 20 home site approvals statewide, regardless of how many properties that person owns or how many claims that person filed. Also, under either the Express or Conditional options, a claimant may seek fewer home site approvals than originally requested in a Measure 37 claim, but may not seek more home site approvals.

If a claimant elects the Vested or Withdrawal option, that claimant **cannot** later change the election to the Express or Conditional option.

Measure 49 defines “home site approval” as “approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.”

Election Options under Measure 49

I. Express (Measure 49, Section 6)

The Express option allows approval of up to three home sites on the property, *including* any existing home sites already established on the property.

If a claimant already has three dwellings on the property, or if the property is already divided into three parcels, a claimant may be eligible for approval of one additional home site. See the enclosed Measure 49 Guide for more detailed information.

You may elect only the Express option if any of the following describes your situation:

- You already received a waiver for three or fewer home sites
- Your Measure 37 claim requested three or fewer home sites
- Your Measure 37 claim requested only a non-residential use of the property

II. Conditional (Measure 49, Section 7)

The Conditional option allows approval of up to 10 home sites on the property, *including* any existing home sites already established on the property.

The number of home site approvals under the Conditional option is limited by the amount of reduction in value sustained due to the regulation(s) on which the claim is based. The value of the new home sites cannot exceed the amount of reduction in value.

Within 180 days of filing the Election Form, claimants who elect the Conditional option must submit an appraisal proving the amount of reduction in fair market value of the property that resulted from one or more land use regulations. The appraisal requirements for the Conditional option are described in more detail in the enclosed Measure 49 Guide.

If your property is more than 50 percent high-value farm- or forestland or in a ground water restricted area, you are not eligible to elect the Conditional option (you may elect the Express option). To see if your property is affected by these special designations, see the DLCD website at <http://www.oregon.gov/LCD/MEASURE49>. If your county's data is not included on this website, or you do not have Internet access, contact DLCD or your county to verify whether your property is affected by these criteria.

III. Vested

Claimants who received a waiver prior to December 6, 2007, and who have begun development of the use described in the waiver, may be able to continue and complete the use described in the waiver if they had done enough to create a common law vested right as of December 6, 2007.

If you elect the Vested option, **your Measure 37 claim will not undergo supplemental review under Measure 49**. If it is later determined that your use is not vested at common law (either by a court, local government or other appropriate entity), you may not then amend your election to elect either the Express or Conditional option. You are encouraged to seek legal counsel before electing the Vested option.

IV. Withdrawal

If a claimant no longer wishes to proceed with a Measure 37 claim, the claimant can elect to withdraw it.

If you elect to withdraw your claim, DLCD will consider the matter closed. **Additionally, if you do not return an election form to DLCD within 90 days from the date of mailing, your claim will be withdrawn by operation of law.**

V. UGB/City Withdrawal of State Claim:

If any portion of the property that is the subject of your Measure 37 claim lies within any UGB or any city, you must withdraw your state claim and pursue your claim with Metro or the city or county in which your property lies. The entity responsible for reviewing your claim will contact you.

ELECTION FORM SECTION IV. SIGNATURE

All claimants or the agent of the claimant(s) must sign the election form. The form must be notarized.

ELECTION REQUIREMENTS (CHECKLIST)

Before submitting your election, please use this checklist to ensure that the election includes the following:

- A completed Election Form indicating which option the claimant(s) is electing.
- A completed Supplemental Review Consent Form for each non-claimant owner of the property (if electing either the Express or Conditional option).
- A completed Supplemental Review Information Form (if electing either the Express or Conditional option). Include other relevant information that you did not submit with your state Measure 37 claim or that has changed since submitting your claim. This information may include, but is not limited to:
 - Recorded deeds or land sale contracts showing when the claimant(s) acquired the property
 - Death and/or marriage certificates establishing when the claimant(s) acquired the property for purposes of Measure 49
 - Trust information if the property is held in a trust
 - Deed cards or plat cards verifying when the claimant(s) acquired the property and verifying continuous and current ownership of the property
 - Property tax records verifying current ownership of the property
 - Property tax records verifying property use at time of acquisition
 - Documentation of any prior land use decisions involving the property
 - Evidence helping to establish that the number of home sites requested would be approved
- A notarized statement or Power of Attorney signed by all claimants authorizing the agent to act (if the election is being submitted by an agent).

Complete all forms in ink and include your state Measure 37 claim number on all information you submit.

Forms are not available on the Internet. Contact DLCD for replacement forms.