



Oregon

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DATE: April 17, 2008

TO: Land Conservation and Development Commission (LCDC)

FROM: Michael Morrissey, DLCD and Virginia Gustafson DOJ

SUBJECT: **Agenda Item 8; May 1, 2008, LCDC meeting**



PUBLIC HEARING AND ADOPTION OF PROPOSED PERMANENT ADMINISTRATIVE RULES CONCERNING MEASURE 49

AGENDA ITEM SUMMARY

This item is a public hearing regarding the proposed adoption of permanent administrative rules concerning 2007 Ballot Measure 49 (ORS 195.300 to 195.336; chapter 424, Oregon Laws 2007). The Commission will hear public testimony and may adopt the proposed rules (Attachment A) at the conclusion of the hearing. Virginia Gustafson of the Department of Justice and Richard Whitman, Director of DLCD, drafted the proposed rules, in consultation with the department, and will be at the meeting to provide information to the Commission.

Specifically, the proposed rules will be codified in Oregon Administrative Rules (OAR) chapter 660, divisions 2 and 41, and would do several things:

- First, the rules specify procedures and filing requirements for persons submitting a new claim under Measure 49.
- Second, the rules address the effect of Measure 49 on waivers that have already been approved by DLCD under 2004 Ballot Measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180.
- Third, the rules establish procedures for the supplemental review of Measure 37 claims under Measure 49, and interpret certain Measure 49 provisions for the purposes of determining whether Measure 37 claimants are entitled to relief under Measure 49 and, if so, what relief to which they are entitled.
- Fourth, the rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property.
- Finally, the rules delegate authority to the Director of DLCD to carry out the responsibilities and exercise the authorities of the Commission and DLCD to review and respond to claims under Measures 37 and 49.

For more information about this agenda item, contact Michael Morrissey at (503) 373-0050 ext. 320, or via email at michael.morrissey@state.or.us.



SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission receive testimony on the proposed permanent rules and, at the conclusion of the public hearing, adopt the proposed rules.

BACKGROUND AND HISTORY

The proposed rules amend OAR chapter 660, division 41, which includes rules adopted in 2004 to implement Measure 37. The Measure 37 rules were initially adopted as temporary rules, but were adopted as permanent rules in January 2007.

On December 6, 2007 and February 12, 2008, the Commission amended the Measure 37 rules (these amendments were adopted as temporary rules), and adopted new temporary rules, to establish procedures for the supplemental review of Measure 37 claims under Measure 49; to identify requirements for notice of applications and decisions regarding Measure 37 permits; to clarify when a DLCD Measure 37 Waiver was required; and to explain the effect of Measure 49 on DLCD waivers. The temporary rules also clarified and implemented chapter 424, Oregon Laws 2007 (Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 claims filed with the state. However, under state law, temporary rules may not remain in effect for more than 6 months. As such, the Commission must adopt the temporary rules as permanent rules prior to June 7, 2008, if it intends to continue to apply the requirements specified in the temporary rules. The attached proposed rules are intended to convert the temporary rules to permanent rules, and are also intended to add new permanent rule provisions described below.

PROPOSED RULES

Current Temporary Rule Requirements Proposed as Permanent Rules

The proposed rules (Attachment A) would, among other things, adopt the current temporary rules (Attachment B) as permanent rules—the Commission should simultaneously repeal the temporary rules. These permanent rules, which in some cases are the same as the temporary rules, but which also include amendments to the text of the prior temporary rules and some new permanent rules, are intended to clarify certain requirements specified in Measure 49 (chapter 424, Oregon laws 2007; *See* Attachment C) that establish procedures for the supplemental review of Measure 37 claims; identify requirements for notice of applications and decisions regarding Measure 37 permits; clarify when a DLCD Measure 37 Waiver was required; and explain the effect of Measure 49 on DLCD waivers. The temporary rules also clarified and implemented chapter 424, Oregon Laws 2007 (Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 claims filed with the state.

The temporary rules (which are recommended for permanent adoption) address the effect of Measure 49 on waivers that have already been approved by DLCD under Measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180. The rules also concern the delegation to the Director the responsibilities and

authorities of the Commission and the department in responding to claims under Measure 49. The permanent rules would replace the temporary rules that were added to rules under OAR 660, divisions 2 and 41.

The temporary rules adopted in December 2007 concerned procedures for filing new Measure 49 claims for land use regulations adopted after January 1, 2007. Temporary rules adopted in February, 2008 largely concerned notice and comment related to the supplemental review of Measure 37 claims under Measure 49. Again, all existing temporary rules, as amended and supplemented by the proposal in Attachment A, are proposed for adoption by the Commission as permanent rules.

Proposed Additional Rule Provisions

The proposed new permanent rules include additional provisions related to Measure 49 not included in the current temporary rules: First, the proposed new rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired their Measure 37 claim property. Second, the rules clarify procedures for the supplemental review of Measure 37 claims, including procedures for the development of Preliminary Evaluations and Final Decisions. Third, the rules clarify the role of contiguous property in the evaluation of claims in the supplemental review process. Fourth, the rules clarify that Measure 37 claims filed with the state after June 28, 2007 and before December 7, 2007 are eligible for Measure 49 supplemental review if a corresponding claim was filed with a city or county prior to June 29, 2007.

Detailed Explanation of the Proposed Permanent Rules

The proposed permanent Measure 49 rules will be included in OAR chapter 660, divisions 2 and 41. Division 41 was adopted in 2004 in order to implement Measure 37.

DIVISION 2

Delegation of Authority to Director

OAR 660-002-0010: Authority to Director

OAR 660-002-0015: Notice of Director's Actions

These existing permanent and temporary rules should be adopted as permanent rules. They are unchanged from the Measure 37 "Delegation" rules, except for amendments needed to conform to Measure 49.

DIVISION 41

Existing Claim Rules

OAR 660-041-0000: Purpose and Applicability

This rule is carried over from the original division 41 as it related to Measure 37, but is amended to reflect Measure 49. The statement identifies the substantive requirements of the

rules that implement chapter 424, Oregon Laws 2007 (Measure 49), including (1) establishing procedures for Supplemental Review of Measure 37 Claims; (2) establishing requirements for notice of applications and decisions regarding Measure 37 Permits; and (3) explaining the effect of Measure 49 on DLCD Measure 37 Waivers. Applicability language was inserted in this section during the temporary rule adoption process.

OAR 660-041-0010: Definitions

Some definitions carry over from the Measure 37 rules, and include basic terms such as "Claim," "Claimant," and "Land Use Application." Other definitions have been added or amended to reflect implementation of Measure 49. Of note is that "Measure 37 Permit" now includes a vesting decision by a local government. "Contiguous Property" and "Measure 37 Claim Property" are new definitions that help clarify how the Supplemental Review analysis will take place and how Measure 49 authorizations will be calculated. "Claims" clarifies the date of filing a Measure 37 claim for the purpose of being eligible to elect for a Measure 49 benefit and includes claimants informally identified as "gap" claimants.

OAR 660-041-0020: Contents of a Measure 37 Claim Based on a DLCD Regulation

This rule provides that when a claim identifies an existing DLCD regulation as the basis for the claim, then the claim must contain certain specified information: The current rule, however, applies only to claims received after December 6, 2006. Such claims are required to include a copy of a final written action by a city, county, Metro, or state agency in response to an application for a use in which an existing DLCD regulation was an approval criterion for the application. Pertinent applications include requests for permits, land use decisions, limited land use decisions, or other local or state agency decisions. When a claim identifies a new DLCD regulation as the basis for the claim (*i.e.*, a regulation adopted or enacted after December 2, 2004), the claim must have been received by DAS within two years of the effective date of the new DLCD regulation, or within two years of the date the claimant submitted a complete land use application to a local government in which the new DLCD regulation was applied as an approval criterion, whichever is later.

Note that the term "applied" is not defined in OAR 660-041-0010, *i.e.*, as part of the definitions for division 41. Since the term occurs in only OAR 660-041-0020, it is defined in section 4 of that rule. The proposal clarifies that a DLCD Regulation is "applied" when a local government makes a final written decision on a land use application, or when a state agency takes final written action on an application and either denies the application or conditions the approval of the application on the basis of a DLCD Regulation.

660-041-0030: Notice of Applications and Decisions

This rule is largely unchanged. The proposed permanent rule includes substantive requirements specifying that local government must provide DLCD notice of all applications and all final written decisions regarding local permits, including vesting decisions or other authorizations based on Measure 37 waivers. DLCD met with

representatives of cities and counties prior to proposing these rules in order to discuss the notice provisions. In general, the representatives expressed the desire that, to the extent possible, the rules not require more than cities and counties are already required to do in terms of notice, *i.e.*, that they simply add DLCD as a person to receive notice.

The department has submitted information to the Secretary of State regarding the estimated costs to state and local governments resulting from the proposed notice requirement. *See Attachment D.* In general, local governments are required to prepare and issue notices of land use decisions. As such, the department believes the cost to local government in providing notice to DLCD would be minimal.

The notice requirements specify that notice of an application for a local permit based on a Measure 37 waiver must be mailed to the department's Salem office at least 10 calendar days before any deadline for comment on the application. Furthermore, the proposed rule requires that if the local government does not provide an opportunity for comment, then the notice must be sent 10 days before the decision becomes final (so as to allow DLCD an adequate opportunity to review and respond to the local decision prior to its effective date).

The notice requirement for a "Measure 37 Permit" as defined in proposed OAR 660-041-0010(10), includes, but is not be limited to, all requests for a dwelling on farm- or forestland subject to any of the applicable provisions of ORS chapter 215, Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), and OAR chapter 660, divisions 5, 6, and 33, specified in a DLCD waiver. Such dwelling requests are "land use decisions" under *Doughton v. Douglas County 82 Or App 444(1986) rev. denied 303 Or 74 (87)*. If a local government approves such a dwelling only through issuance of a building permit (without some prior form of development permit), that approval is a "land use decision" under existing law. Other building permits may also be land use decisions and require notice if there is no prior development permit, and the building permit "involves the application of the goals, a comprehensive plan, a zoning ordinance implementing a comprehensive plan or other ordinance implementing a comprehensive plan." *Bell v. Klamath County 77 Or App 131 (1985)*.

660-041-0040: When a DLCD Waiver Was Required

This rule clarifies that before claimants could have lawfully carried out a use under Measure 37, they must have applied to the state and obtained a DLCD waiver whenever their desired use was restricted by a DLCD regulation or by a local regulation that implemented a DLCD regulation. This rule was proposed in order to assure that property owners understood the legal requirements for carrying out a use authorized under Measure 37.

660-041-0050: Applicability

This rule was suspended on December 10, 2007 and is proposed for permanent repeal because the applicability provisions were incorporated in OAR 660-041-0000.

New Temporary Rules Adopted in December 2007 and February 2008

The following temporary rules are proposed for adoption as permanent rules:

660-041-0060: Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

This rule directs that any authorization for a claimant to carry out a use under a Measure 37 waiver expired on December 6, 2007, the effective date of Measure 49, unless the claim was vested under common law.

660-041-0070: State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

This rule gives direction to state agencies and special districts when considering taking action involving a use of Measure 37 claim property after December 5, 2007, based on a Measure 37 waiver. This rule is not intended to restrict action by a claimant with a vested use under common law; however, the rule may restrict the actions of public entities that would otherwise provide services to a use of land.

660-041-0080: Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49

This rule specifies information needed in addition to information submitted with the Measure 37 claim. The specified information may be needed to meet the requirements of Measure 49. The overall purpose of this rule is to set a deadline for claimants to respond to the department's request, although DLCD is allowed to extend that deadline.

660-041-0090: Procedures for Supplemental Review of Measure 37 Claims under Measure 49

This rule sets forth the procedures for the supplemental review of Measure 37 claims. It also includes procedures for notice and comment. The rule references the process for creation of and response to a Preliminary Evaluation and a Final Decision on a claim. Notice and response times have been lengthened somewhat from the department's practice under Measure 37. Of note is communication with counties, which allows them to correct factual information related to the claim and to prepare to eventually receive an authorization for development. Another enhanced practice is sending comments from interested parties, based on the issuance of a Preliminary Evaluation, to the claimant and allowing the claimant to respond prior to the issuance of a Final Decision.

Proposed New Permanent Rules

660-041-0100: Submissions to DLCDC Regarding Supplemental Review of a Measure 37 Claim under Measure 49

This rule specifies procedures for submitting a Measure 49 election form, including the requirement that the form returned to the agency must have first been sent by the department.

660-041-0110: Determining What Was Lawfully Permitted on the Claimant's Acquisition Date

This rule clarifies how the department will evaluate whether a claimant could have divided the property or established a dwelling on the property on the claimant's acquisition date. Where the acquisition date precedes all land use regulations, the limitations on the number of land divisions or dwellings on the property will be only the limitations in Measure 49 (*i.e.*, three home sites, in most cases). Where the acquisition date precedes the effective date of Senate Bill (SB) 100 (1975), the number of home sites will be dependent primarily on any local ordinances that were in effect, as well as the limitations in Measure 49. State land use regulations (statutory provisions in ORS chapter 215) may apply in some cases (prime farmlands, and lands in an exclusive farm use zone prior to 1975).

For acquisition dates after the effective date of SB 100, both state and local land use regulations affect what was lawfully permitted in terms of land divisions and dwellings, in most cases. The department will use the first applicable local land use regulations acknowledged as complying with the Statewide Planning Goals as evidence of what would have complied with both local and state requirements during this time period.

After acknowledgement and until 1993, local land use regulations will control what was lawfully permitted at a claimant's acquisition date, in most cases. After 1993, when state law changed, a mix of local and state land use regulations affect what was lawfully permitted.

660-041-0120: Evaluation of Measure 37 Contiguous Property in Supplemental Review

This rule clarifies that property owned by the claimant that is contiguous to the Measure 37 Claim Property will be determined as of the date of the claimant's election, and that the role of the contiguous property will be limited to determining the Measure 49 benefit in terms of the number of lots, parcels and dwellings authorized.

660-041-0130: High-Value Farmland and High-Value Forestland

This rule defines high-value farm- and forestland consistent with Measure 49, related to the use of a web-based portal. The portal is managed by DLCDC in partnership with Oregon State University. The portal is a guide that claimants and others can use to determine whether

claim property could be restricted from consideration under the conditional option because it contains characteristics of high-value farm- and/or forestland, or is in a groundwater limited area, as specified in Measure 49.

660-041-0140: Groundwater Restricted Areas

This rule defines Groundwater Restricted Areas, consistent with Measure 49.

660-041-0150: Combining and Dividing Claims

This proposed rule specifies the purposes for combining and splitting claims, consistent with the requirements of Measure 49. In some cases, these (Measure 37) claims may have been previously combined or split by the Department of Administrative Services for the purpose of evaluation under Measure 37.

660-041-0160: Appraisals Under Section 7 of Measure 49

This rule resolves ambiguity in section 7(7) of Measure 49 (appraisals required for conditional claims). The ambiguity relates to a numerical reference in the section.

New Claim Rules

660-041-500: Purpose and Applicability

This rule identifies the purpose of OAR 660-041-0050 to 660-041-0530 to be the implementation of Measure 49 with regard to claims, filed after specified dates, against land use regulations adopted after January 1, 2007.

660-041-0510: Definitions

The definitions in this rule include important terms such as "Farming Practice," "Forest Practice," and "Measure 49 Claim," and contain references to definitions in OAR 660-041-0100.

660-041-0520: Procedures for Measure 49 claims

The procedures in this rule detail the required information and timelines for a Measure 49 claim submission. In particular, this section specifies how claims are to be treated when a Measure 37 claim was filed after June 28, 2007, and in some cases be processed as new Measure 49 claims. Claims are limited to a residential use or a Farming Practice or a Forest Practice. The timelines in this rule detail how the department responds to complete or incomplete claims, and allows an extension of time for claimants to complete their submission. The requirements for submission of a Measure 49 claim include an appraisal as required in section 12(2) of Measure 49.

660-041-0530: Coordinating with Other Regulating Entities

This rule explains how DLCD will coordinate with other entities, including state agencies, when other entities are wholly or partially responsible for the administration of the new land use regulation identified in a Measure 49 claim.

LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The Commission is authorized to adopt administrative rules under ORS 197.040. This statute contains certain requirements for rulemaking, including economic impact assessments. These assessments were completed initially as part of the notices submitted for publication in the Secretary of State Bulletin on January 2, 2008, and have been updated. *See* Attachment D. ORS 197.040 states:

“The Land Conservation and Development Commission shall: . . .

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. . . .” In designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

Additional sources of authority for the proposed rules are ORS 197.045 (LCDC authorized to “perform other functions required to carry out ORS chapters 195, 196 and 197”); 197.090 (coordinating land conservation and development functions with other government entities); 197.175 (comprehensive planning responsibilities of cities and counties); 197.180 (land use planning responsibilities of state agencies); and ORS 197.353(7) (authorizing state agencies to adopt procedures for filing claims under ORS 197.352).

ORS 183.335 provides general authorization for all agencies to adopt rules and provides requirements for notice of such rule adoption:

“Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action . . . in the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action.”

The Commission has adopted notice requirements for the adoption of rules, under OAR 660-001-0000(1). That rule is copied below. The department provided the required notice to interested parties (*See* Attachment D), in accordance with the rule, which states:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule;

(b) By mailing a copy of the notice and proposed rule(s) to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(c) By mailing a copy of the notice to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption;

(d) By mailing or furnishing a copy of the notice to the Associated Press and Capitol Press Room; [and]

(e) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.”

OVERALL CONCLUSION AND RECOMMENDATION

The department recommends that the Commission receive testimony on the proposed permanent rules and adopt the rules.

ATTACHMENTS

- A. Proposed rules,
- B. Current Temporary rules
- C. Measure 49 (ORS 195.300)
- D. Public Notices
- E. Comments Received

ATTACHMENT A
Proposed Rules

1 **as a Claim only if a corresponding Claim for the Measure 37 Claim Property was**
2 **filed prior to that date with the city or county with land use jurisdiction over the**
3 **Measure 37 Claim Property.**

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

5 **(4) "Contiguous Property" means any real property that shares a common**
6 **boundary (including across a road and common corner) with the real property that**
7 **is the subject of the Claim.**

8 ([4]5) "DAS" means the Department of Administrative Services.

9 ([5]6) "DLCD" means the Department of Land Conservation and Development.

10 ([6]7) "DLCD Measure 37 Waiver" means a decision by LCDC~~[the Land~~
11 ~~Conservation and Development Commission (LCDC)]~~ or DLCD that was made before
12 December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or
13 more DLCD Regulations to allow a Claimant to use the **Measure 37 Claim** Property for
14 a use that was permitted when the Claimant acquired the **Measure 37 Claim** Property.

15 ([7]8) "DLCD Regulation" means a Land Use Regulation that is also a state
16 statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or
17 an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was
18 enacted by the State of Oregon or adopted by LCDC with an effective date prior to
19 December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was
20 enacted by the State of Oregon or adopted by LCDC with an effective date of on or after
21 December 2, 2004.

22 ([8]9) "Elected" means **completed and** filed the form provided by DLCD as
23 required by section 8 of **Measure 49**~~[Chapter 424, Oregon Laws 2007].~~

24 ([9]10) "Land Use Application" means an application for a "land use decision," a
25 "limited land use decision," or an "expedited land division," as those terms are defined by
26 ORS 197.015 and 197.360, or an application for a permit or zone change under ORS
27 227.160 to 227.187 or under 215.402 to 215.437.

28 ([10]11) "Land Use Regulation" has the meaning provided by ORS 197.352(11)
29 (2005).

30 ([11]12) "LCDC" means the Land Conservation and Development Commission.

31 **(13) "Measure 37 Claim Property" means the private real property described**
32 **in a Measure 37 Claim.**

33 ([12]14) "Measure 37 Permit" means a final decision by a city, a county, or by
34 Metro to authorize the development, division or other use of **Measure 37 Claim** Property
35 pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a
36 limited land use decision, an expedited land use decision, a permit (as that term is defined
37 in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A
38 Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a
39 person has a vested right to complete or continue a use based on a Measure 37 Waiver.

40 ([13]15) "Measure 37 Waiver" means a decision by a city, a county, Metro or the
41 State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to
42 modify, remove or not apply one or more Land Use Regulations to allow a Claimant to
43 use the **Measure 37 Claim** Property for a use that was permitted when the Claimant
44 acquired the **Measure 37 Claim** Property.

45 ([14]16) **"Measure 49" means Chapter 424, Or Laws 2007.**

1 **(17) "Metro" means the elected regional government serving Multnomah,**
2 **Clackamas and Washington Counties.** [~~Portland Metropolitan Service District.~~]

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

5 ~~[(16)18) "Supplemental Information" means information needed by DLCDD, under~~
6 ~~section 8(3) of Measure 49[Chapter 424, Oregon Laws 2007], to proceed with the~~
7 ~~Supplemental Review of a Claim.~~

8 ~~[(17)19) "Supplemental Review" means review by DLCDD of a Claim under either~~
9 ~~section 6 or section 7 of [Chapter 424, Oregon Laws 2007]Measure 49.~~

10
11 Stat. Auth.: ORS 197.040~~[-&]~~, 197.065 &[~~;~~] Ch. 424, OL 2007

12 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 &[~~;~~] Ch. 424, OL 2007

13 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-
14 2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru
15 6-7-08; LCDD

16
17 **660-041-0020**

18 **Contents of a Measure 37 Claim Based on a DLCDD Regulation**

19 (1) When a Claim was[is] received by DAS after December 4, 2006 and was
20 based on one or more Existing DLCDD Regulations, then the Claim must:

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

25 (b) Include one of the following:

26 (A) A copy of the final written decision by a city, a county, or Metro on a Land
27 Use Application that included[s] the **Measure 37 Claim** Property and that requested[s]
28 authorization for the specific use that the Claim is based on, in which the city, county, or
29 Metro determined that one or more Existing DLCDD Regulations or city, county or Metro
30 Land Use Regulations that implement Existing DLCDD Regulations were approval criteria
31 for the decision; or

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

35 (2) When a Claim wa[is] based on one or more New DLCDD Regulations, then the
36 Claim must:

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

38 (A) The effective date of the New DLCDD Regulation[s]; or

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

41 (b) If the Claim wa[is] submitted more than two years after the effective date of
42 the New DLCDD Regulation[s], the Claim must include a copy of the final written
43 decision by a city, a county, or Metro on a Land Use Application that includes the
44 **Measure 37 Claim** Property and that requested[s] authorization for the specific use that
45 the Claim wa[is] based on, in which the city, county, or Metro determined that the New

1 DLCD Regulation[s] or city or county or Metro Land Use Regulation[s] that
2 **implemented** the New DLCD Regulation[s] were approval criteria for the decision.

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

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

13 (5) This rule applies only to Claims that were received by DAS after December 4,
14 2006, and that **were**[are] based on one or more DLCD Regulations.

15
16 Stat. Auth.: ORS 197.040, 197.065 & **Ch. 424, OL 2007**

17 Stats. Implemented: ORS 197.015, 197.040, 197.065 & **Ch. 424, OL 2007**

18 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007,
19 f. 2-5-07, cert. ef. 2-9-07

20
21 **660-041-0030**

22 **Notice of Applications and Decisions**

23 (1) Except for a building permit that is not a "land use decision" under ORS
24 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all
25 applications for a Measure 37 Permit, and all final written decisions on a Measure 37
26 Permit, filed with or made by the city, county or Metro after February 20, 2007.

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

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

34 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615,
35 197.763, 227.175 or 215.416;

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

38 (d) The terms of the State's Measure 37 Waiver as applicable criteria in the
39 subject **L**[H]and **U**[u]se **A**[a]pplication; and,

40 (e) The name of the present owner of the **Measure 37 Claim P**[p]roperty.

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

44
45 Stat. Auth.: ORS 197.040[&], 197.065[;] & Ch. 424, OL 2007

46 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[;] & Ch. 424, OL 2007

1 Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-
2 2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru
3 6-7-08; LCDD

4
5 **660-041-0040**

6 **When a DLCD Measure 37 Waiver Was[is] Required**

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

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

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

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

19
20 Stat. Auth.: ORS 197.040 & 197.065[, Ch. 424, OL 2007]

21 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[, Ch. 424, OL 2007]

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

24
25 [~~660-041-0050~~

26 ~~Applicability~~

27 ~~Rule suspended Dec 10, 2007 *Rule proposed for permanent repeal*~~

28 ~~OAR 660-041-0020 applies only to Claims that were received by DAS after~~
29 ~~December 4, 2006, and that are based on one or more DLCD Regulations. OAR 660-041-~~
30 ~~0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or~~
31 ~~after February 20, 2007. OAR 660-041-0040 takes effect upon the filing of these rules~~
32 ~~with the Oregon Secretary of State.~~

33
34 ~~Stat. Auth.: ORS 197.040 & 197.065~~

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

36 ~~Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; Suspended by LCDD 2-~~
37 ~~2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08]~~

38
39 **660-041-0060**

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

41 Any authorization for a Claimant to use Measure 37 Claim Property without
42 application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on
43 December 6, 2007, as did the effect of any order of DLCD denying a Claim. A Claimant
44 may continue an existing use of Measure 37 Claim Property that was authorized under
45 ORS 197.352 (2005), or complete a use of Measure 37 Claim Property that was begun
46 prior to December 6, 2007 (2005) only if the Claimant had a common law vested right to

1 complete and continue that use on December 6, 2007, and the use complies with the
2 terms of any applicable DLCD Measure 37 Waiver.

3
4 Stat. Auth.: ORS 197.040[~~&~~], 197.065 &[₅] Ch. 424, OL 2007
5 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & [₅] Ch. 424, OL 2007
6 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08, LCDD

7
8 **660-041-0070**

9 **State Agency and Special District Land Use Coordination and DLCD Measure 37**
10 **Waivers**

11 After December 5, 2007, when a state agency or a special district is required to
12 take an action in a manner that complies with the Statewide Planning Goals and that is
13 compatible with comprehensive plans and land use regulations under ORS 197.180 (for a
14 state agency), or under ORS 195.020 (for a special district), the state agency or special
15 district must not take that action if it involves a use of **Measure 37 Claim** Property based
16 on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land
17 Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure
18 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or
19 195.020.

20
21 Stat. Auth.: ORS 197.040[~~&~~], 197.065[₅] & Ch. 424, OL 2007
22 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[₅] & Ch. 424, OL 2007
23 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08, LCDD

24
25 **660-041-0080**

26 **Supplemental Information for Supplemental Review of Measure 37 Claims under**
27 **Measure 49**

28 (1) DLCD may request Supplemental Information from a Claimant or the
29 Claimant's authorized agent if the record for the Claim does not include all the
30 information needed for DLCD to proceed with the Supplemental Review of the Claim.

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

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

36
37 Stat. Auth.: ORS 197.040, [~~&~~]197.065[₅] & Ch. 424, OL 2007
38 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[₅] & Ch. 424, OL 2007
39 Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08, LCDD

40
41 **660-041-0090**

42 [~~Notice and Comment~~]**Procedures for Supplemental Review of Measure 37 Claims**
43 **under Measure 49**

44 **(1) If a Claimant files an Election seeking relief under section 6 or section 7**
45 **of Measure 49, DLCD will review the Claim, as supplemented by the Election and**
46 **the Supplemental Information, and prepare a Preliminary Evaluation of the relief**

1 **that the Claimant may be entitled to. The Preliminary Evaluation will be based on**
2 **and include an initial preliminary assessment of the number of lots, parcels and**
3 **dwelling, if any, the Claimant lawfully was permitted to establish on the date the**
4 **Claimant acquired the Measure 37 Claim Property.**

5 **(2[1]) Prior to the issuance of the Preliminary Evaluation, DLCD will mail**
6 **written notice of [a]the Supplemental Review [to the Claimant or the Claimant's**
7 **authorized agent,]and a copy of any materials submitted by the Claimant to the [local**
8 **government]county with land use jurisdiction over the Measure 37 Claim Property, and**
9 **will provide that local government an opportunity to submit written comment on**
10 **the Supplemental Review. [to any person who is an owner of record of real property**
11 **located within 250 feet of the Property if the Property is not within a farm or forest zone**
12 **or within 750 feet of the Property if the Property is located in a farm or forest zone, and**
13 **to any neighborhood or community organization(s) whose boundaries include the**
14 **Property if the county in which the Property is located provides DLCD the name and**
15 **address of the organization(s).]DLCD will consider all comments from the county in**
16 **its preparation of the Preliminary Evaluation.**

17 **(3) DLCD will mail Notice of the Preliminary Evaluation to the Claimant, the**
18 **Claimant's authorized agent, the county with land use jurisdiction over the Measure**
19 **37 Claim Property, and to any person who is an owner of record of real property**
20 **located either within 250 feet of the Measure 37 Claim Property, if the Measure 37**
21 **Claim Property is not within a farm or forest zone, or within 750 feet of the**
22 **Measure 37 Claim Property if it is located in a farm or forest zone, and to any**
23 **neighborhood or community organization(s) whose boundaries include any portion**
24 **of the Measure 37 Claim Property or that has made a written request for a copy of**
25 **the Preliminary Evaluation.**

26 **([2]4) Any person may submit written comments, evidence or information in**
27 **response to the Preliminary Evaluation[To be considered by DLCD in its**
28 **Supplemental Review of a Claim, comments, evidence or information concerning that**
29 **Claim by a third party or local government must be filed] as provided in OAR 660-041-**
30 **0100 [with DLCD]within twenty-eight (28) days of the date the Preliminary**
31 **Evaluation is mailed[notice] under subsection (3[1]) of this rule[-is mailed].**

32 **(5[3]) DLCD will mail copies of [the-]any comments, evidence and[or]**
33 **information concerning the Preliminary Evaluation that are timely received[Claim]**
34 **under subsection (4) of this rule to the Claimant and the Claimant's authorized**
35 **agent.**

36 **(6[4]) The Claimant and[or] the Claimant's authorized agent may file a written**
37 **response to any comments, evidence or information filed by a third party or county. To**
38 **be considered by DLCD, the response must be filed as provided in OAR 660-041-0100**
39 **[with DLCD]within twenty-one (21) days after the date DLCD mailed the comments,**
40 **evidence and[or] information to the Claimant and the Claimant's authorized agent as**
41 **provided [for-]under subsection (5[3]) of this rule.**

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

1 **allow the number of home sites approved. The Final Decision may be subject to**
2 **conditions necessary to ensure compliance with applicable standards governing the**
3 **siting or development of the dwelling, lot or parcel.**

4 **(8) Following issuance of the Final Decision, upon application by the owner**
5 **of the Measure 37 Claim Property, the county with land use jurisdiction over the**
6 **Measure 37 Claim Property may approve a permit to divide the Measure 37 Claim**
7 **Property or to establish dwellings on the Measure 37 Claim Property, or both, as**
8 **specified in the Final Decision.**

9
10 Stat. Auth.: ORS 197.040, ~~[&]~~197.065[;] & Ch. 424, OL 2007
11 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[;] & Ch. 424, OL 2007
12 Hist: LCDD

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
18 under sections 5 to 11 of **Measure 49** [~~Chapter 424, Oregon Laws 2007 (2007 Oregon~~
19 ~~Ballet Measure 49)~~] only after receiving the notice and form from DLCD.

20 (2) All information filed with DLCD regarding the Supplemental Review of a
21 Claim must be 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
28 facsimile or electronically.

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

35
36 Stat. Auth.: ORS 197.040, ~~[&]~~197.065[;] & Ch. 424, OL 2007
37 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352[;] & Ch. 424, OL 2007
38 Hist.

39
40 **660-041-0110**

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

42 **(1) A Claimant lawfully was permitted to establish one or more lots, parcels**
43 **or dwellings on the Claimant's acquisition date if DLCD determines that the**
44 **characteristics of the Measure 37 Claim Property as it existed on that date,**
45 **including the size, soil quality and location of the Measure 37 Claim Property,**

1 would have allowed the Claimant to satisfy the standards and criteria for approval
2 of the lot, parcel or dwelling in effect on that date.

3 (2) Based on the Claimant's acquisition date, as determined under ORS
4 195.328, DLCD will apply the following standards and criteria to determine the
5 number of lots, parcels or dwellings that were lawfully permitted:

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

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

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

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
29 Contiguous Property will be determined and evaluated as of the date the Claimant
30 Elected Relief under section 6 or section 7 of Measure 49.

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

36
37 660-041-0130

38 High-Value Farmland and High-Value Forestland

39 (1) Measure 37 Claim Property is high-value farmland as described in ORS
40 195.300(10) if:

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

43 (b) All of the Measure 37 Claim Property meets the criteria in ORS
44 195.300(10)(c);

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

4 (d) All of the Measure 37 Claim Property meets the criteria in ORS
5 195.300(10)(e) or (f), or both ORS 195.300(10)(e) and (f).

6 (2) Measure 37 Claim Property is high-value forestland as described in ORS
7 195.300(11) if more than fifty percent of the Measure 37 Claim Property is located
8 in a forest or mixed farm-forest zone, and:

9 (a) If the Measure 37 Claim Property is located in western Oregon, is
10 composed predominantly of soils capable of producing more than 120 cubic feet per
11 acre per year of wood fiber and more than 5,000 cubic feet per year of commercial
12 tree species; or

13 (b) If the Measure 37 Claim Property is located in eastern Oregon, is
14 composed predominantly of soils capable of producing more than 85 cubic feet per
15 acre per year of wood fiber and more than 4,000 cubic feet per year of commercial
16 tree species.

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

23
24 660-041-0140

Groundwater Restricted Areas

25 (1) For purposes of ORS 195.300(9) and section 7 of Measure 49, critical
26 ground water areas designated by the Oregon Water Resources Department or the
27 Oregon Water Resources Commission before December 6, 2007 include the
28 following areas designated by:

29 (a) The Stage Gulch Area in Umatilla County, as described in the
30 Proclamation of the Director of the Oregon Water Resources Department dated
31 January 31, 1985;

32 (b) The Butter Creek Area in Morrow and Umatilla Counties, as described in
33 the order of the Director of the Oregon Water Resources Department dated August
34 18, 1986;

35 (c) The Dalles critical ground water area in Wasco County;

36 (d) The Cow Valley critical ground water area in Malheur County;

37 (e) The Ordinance critical ground water area in Morrow and Umatilla
38 Counties, as described in the order of the Director of the Oregon Water Resources
39 Department dated April 2, 1976.

40 (2) For purposes of ORS 195.300(9), ground water limited areas designated
41 by the Oregon Water Resources Department or the Oregon Water Resources
42 Commission before December 6, 2007 include:

43 (a) Main Stem Willamette River Subbasin designated in OAR 690-502-0050;

44 (b) Middle Fork Willamette River Subbasin designated in OAR 690-502-
45 0060;
46

- 1 (c) Coast Fork Willamette River Subbasin designated in OAR 690-502-0070;
2 (d) McKenzie River Subbasin designated in OAR 690-502-0080;
3 (e) Long Tom River Subbasin designated in OAR 690-502-0090;
4 (f) Coast Range Subbasin designated in OAR 690-502-0100;
5 (g) Santiam River-Calapooia River Subbasin designated in OAR 690-502-
6 0110;
7 (h) Molalla River-Pudding River Subbasin designated in OAR 690-502-0120;
8 (i) Tualatin River Subbasin designated in OAR 690-502-0130;
9 (j) Clackamas River Subbasin designated in OAR 690-502-0140;
10 (k) Columbia Subbasin designated in OAR 690-502-0150;
11 (l) Sandy-Boring Ground Water Limited Area designated in OAR 690-502-
12 0170;
13 (m) Damascus, Gladdidings, Kingston, Mt. Angel, Parrett Mountain, and
14 Stayton-Sublimity Ground Water Limited Areas designated in OAR 690-502-0180;
15 (n) Sherwood-Dammasch-Wilsonville Ground Water Limited Area
16 designated in OAR 690-502-0190; and
17 (o) Chehalem Mountain, Eola Hills and South Salem Hills Ground Water
18 Limited Areas designated in OAR 690-502-0200.
19 (3) Measure 37 Claim Property is in a Ground Water Restricted Area if the
20 Measure 37 Claim Property is located entirely within the boundaries of a Ground
21 Water Limited Area or Critical Ground Water Area, or both.

22
23 660-041-0150

24 Combining and Dividing Claims

25 To evaluate the relief, if any, to which each Claimant is entitled under section
26 6 or section 7 of Measure 49, DLCD will divide a single Claim into two or more
27 claims if the Measure 37 Claim Property contains multiple contiguous lots or
28 parcels that are not in the same ownership. In addition, DLCD will combine
29 multiple Claims into one claim if the Measure 37 Claim Property contains multiple
30 contiguous lots or parcels that are in the same ownership.

31
32 660-041-0160

33 Appraisals Under Section 7 of Measure 49

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

39 (2) The appraisal provided under this rule must also show the present fair
40 market value of each lot, parcel or dwelling that the Claimant is seeking under
41 section 7(2) of Measure 49. The appraisal must comply with all provisions of section
42 7(7) of Measure 49.

43 (3) For the Claimant to obtain relief under section 7, the appraisal must show
44 that the enactment of one or more Land Use Regulations that are the basis of the
45 Claim, other than land use regulations described in ORS 197.352(3), caused a
46 reduction in the fair market value of the Measure 37 Claim Property that is equal to

1 or greater than the fair market value of the home site approvals that may be
2 established on the property under section 7(2) of Measure 49. The reduction in fair
3 market value of the Measure 37 Claim Property must be measured as set forth in
4 section 7(6) of Measure 49.
5
6
7

8 **New Claim Rules**
9 **(Ballot Measure 49)**
10

11 **660-041-0500**

12 **Purpose and Applicability**

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

19 Stat. Auth.: ORS 195.300 to 195.336, 197.040~~[,]~~ & 197.065~~[,]~~ ~~& Chapter 424, Oregon~~
20 ~~Laws 2007]~~

21 Stats. Implemented: ORS 195.300 to 195.335, 197.015, 197.040, 197.065~~[,]~~ & 197.352~~[~~
22 ~~& Chapter 424 Oregon Laws 2007]~~

23 Hist.: LCDD 2-2007, f. 12-6-07, cert. ef. 12-10-07, LCDD
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~~
32 ~~2(14)(g) of Chapter 424, Oregon Laws 2007]~~ ORS 195.300(14)(a)-(b) and ORS
33 195.300(14)(g).

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

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

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

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

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

1 (10) "Measure 49 Claim" means:

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

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

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

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

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

15 (14) "Regulating Entity" means an Agency that has enacted, or has authority to
16 remove, modify or not [tø] apply, the Land Use Regulation(s) identified in the Measure
17 49 Claim.

18
19 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

20 Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Ch. 424, OL 2007

21 Hist.: LCDD 2-2007, f. 12-6-07, cert. ef. 12-10-07

22
23 **660-041-0520**

24 **Procedures for Measure 49 Claims**

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

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

31
32 Measure 49 Claims
33 635 Capitol St. NE, Suite 150
34 Salem 97301-2540

35
36 [~~Claims may not be submitted by facsimile or electronically.~~]

37
38 (3) If the Measure 37 Claim was Filed after June 28, 2007, but before December
39 6, 2007, **and if no corresponding claim was filed for the Property with the city or**
40 **county with land use jurisdiction over the Property prior to June 29, 2007, the**
41 **Measure 37 Claim** [it] is deemed Filed on December 6, 2007 for purposes of
42 [~~subsections 13(5) to 13(11) of Chapter 424, Oregon Laws 2007]~~ **ORS 195.312.**

43 (4) DLCD's form for a Measure 49 Claim will require at least the following
44 information:

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

ATTACHMENT A

Proposed Permanent rules
April 16, 2008, draft

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

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

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

8 (e) The location of the Property by reference to:

9 (A) The township, range, section and tax lot number for each Lot or Parcel that
10 makes up the Property;

11 (B) The street address of each Lot or Parcel that makes up the Property, if a street
12 address has been assigned;

13 (C) The county the Property is located in; and

14 (D) If the Property is located within a city, the name of that city.

15 (f) Evidence of each Claimant's Acquisition Date, as provided in ~~[sections~~
16 ~~13(7)(e) and 21 of Chapter 424, Oregon Laws 2007]~~ **ORS 195.328**;

17 (g) A listing of each specific New Land Use Regulation that is alleged to restrict
18 the Claimant's desired use of the Property, and for each New Land Use Regulation listed,
19 a description of how that regulation restricts the Claimant's desired use of the property;

20 (h) An appraisal of the reduction in the fair market value of the Property caused
21 by the enactment of each listed New Land Use Regulation as provided in ~~[section 12(2)~~
22 ~~of Chapter 424, Oregon Laws 2007]~~ **ORS 195.310**.

23 (5) DLCD will review a Measure 49 Claim to determine whether it complies with
24 the requirements of ~~[sections 12 to 14 of Chapter 424, Oregon Laws 2007]~~ **ORS 195.310**
25 **to 195.312**. If the Measure 49 Claim is incomplete, within 60 days of receiving the
26 C[e]laim, DLCD will notify the person who filed the C[e]laim of the information that is
27 missing. The notification will be in writing. A Measure 49 Claim is complete when
28 DLCD receives:

29 (a) The missing information;

30 (b) Part of the missing information and written notice from the Claimant that the
31 remainder of the missing information will not be provided; or

32 (c) Written notice from the C[e]laimant that none of the missing information will
33 be provided.

34 (6) If a Claimant submits a request in writing for additional time to provide
35 missing information, DLCD may for good cause shown agree to provide such additional
36 time, which agreement must be in writing. An agreement to allow additional time has the
37 effect of abating the time requirements under ~~[sections 13 and 14 of Chapter 424, Oregon~~
38 ~~Laws 2007]~~ **ORS 195.312 and 195.314**, until the date specified in the agreement.

39 (7) If DLCD does not notify the Claimant within 60 days after a Measure 49
40 Claim is Filed that information is missing from the C[e]laim, the C[e]laim is deemed
41 complete when Filed.

42 (8) If the Claimant does not respond in writing to the written notification from
43 DLCD under subsection (5) of this rule within sixty (60) days of the date the written
44 notification was sent, the C[e]laim is deemed withdrawn.

45 (9) DLCD will provide notice of a Measure 49 Claim as provided by ~~[section 14~~
46 ~~of Chapter 424, Oregon Laws 2007]~~ **ORS 195.314**. The notice will describe the Measure

1 49 Claim and specify a deadline by which written evidence and arguments must be Filed.
2 The Claimant may respond to the written evidence and argument by Filing a written
3 response within fifteen (15) days of the date specified as the deadline for the initial
4 evidence and argument.

5 (10) DLCD will mail a copy of its final determination to the Claimant and to any
6 person who timely filed written evidence or arguments.

7
8 Stat. Auth.: ORS 195.300 to 195.336, 197.040[;] & 197.065[-& Chapter 424, Oregon
9 Laws 2007]

10 Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065[;] & 197.352[
11 & Chapter 424 Oregon Laws 2007]

12 Hist.: LCDD 2-2007, f. 12-6-07, cert. ef. 12-10-07
13

14 **660-041-0530**

15 **Coordinating with Other Regulating Entities**

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

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

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

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

34 (5) DLCD will issue the final order itself or jointly with one or more other
35 Regulating Entities.

36
37 Stat. Auth.: ORS 195.300 to 195.336, 197.040[;] & 197.065[-& Chapter 424, Oregon
38 Laws 2007]

39 Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065[;] & 197.352[
40 & Chapter 424 Oregon Laws 2007]

41 Hist.: LCDD 2-2007, f. 12-6-07, cert. ef. 12-10-07

ATTACHMENT A
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 2

DELEGATION OF AUTHORITY TO DIRECTOR

Proposed Permanent rules
April 17, 2008, draft

1 **660-002-0010**

2 **Authority to Director**

3 In addition to the other duties and responsibilities conferred on the Director by ORS
4 Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

5 (1) Assent to a modification of a planning extension or a compliance schedule of a city or
6 county in accordance with ORS 197.251(2);

7 (2) Condition a compliance schedule in accordance with ORS 197.252;

8 (3) Approve a planning assistance grant agreement with a city or county, including
9 modifications thereto; and

10 (4) Request that the Commission schedule a hearing to consider an enforcement order if
11 the Director has good cause to believe that any of the conditions exist as set forth in ORS
12 197.320(1) through (10);

13 (5) Execute any written order, on behalf of the Commission, which has been consented to
14 in writing by the parties adversely affected thereby;

15 (6) Prepare and execute written orders, on behalf of the Commission, implementing any
16 action taken by the Commission on any matter;

17 (7) Establish procedures by which the Director shall periodically review and report to the
18 Commission the status of comprehensive plans within each city and county;

19 (8) Carry out the responsibilities and exercise the authorities of the Commission and
20 DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and
21 Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

22 (a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;

23 (b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and

24 (c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except
25 that the Director may approve a claim only by not applying the land use regulations that
26 are the basis of the claim unless legislation is enacted that appropriates funds for the
27 payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

1 Stat. Auth.: ORS 183, 196 & 197, Ch. 424, OL 2007
2 Stats. Implemented: ORS 197.040, 197.045 & 197.090, Ch. 424, OL 2007
3 Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-
4 1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. &
5 ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83;
6 LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD
7 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-
8 13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef.
9 12-10-07 thru 6-7-08

10

11 **660-002-0015**

12 **Notice of Director's Actions**

13 (1) The Director shall establish procedures which shall be reasonably calculated to
14 provide notice to interested member of the public and other units of government of the
15 Director's actions taken pursuant to OAR 660-002-0010.

16 (2) The Director shall provide the Commission with a monthly report summarizing
17 actions taken by the Director during the preceding month pursuant to this rule and any
18 written public comments received by the Department which pertain to those actions.

19 Stat. Auth.: ORS 183 & 197
20 Stats. Implemented: ORS 197.040, 197.045 & 197.090
21 Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD
22 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-
23 12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

24

ATTACHMENT B
Current Temporary Rules

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 41

MEASURE 49

*Temporary rules adopted December 6, 2007
Amended and Readopted February 12, 2008
Effective Dec 10, 2007 through June 7, 2008*

660-041-0000

Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0100 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 required. 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 660-041-01060.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and on or before 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 660-041-0060 apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-0070 to 660-041-0100 apply to the Supplemental Review of a Claim by DLCD.

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

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

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

660-041-0010

Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0100:

ATTACHMENT B

- (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 on or before June 28, 2007.
- (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 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 Property for a use that was permitted when the Claimant acquired the Property.
- (7) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.
- (8) "Elected" means filed the form provided by DLCD as required by section 8 of Chapter 424, Oregon Laws 2007.
- (9) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.
- (10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).
- (11) "LCDC" means the Land Conservation and Development Commission.
- (12) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.
- (13) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify,

remove or not apply one or more Land Use Regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(14) "Metro" means the Portland Metropolitan Service District.

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

(16) "Supplemental Information" means information needed by DLCDC, under section 8(3) of Chapter 424, Oregon Laws 2007, to proceed with the Supplemental Review of a Claim.

(17) "Supplemental Review" means review by DLCDC of a Claim under either section 6 or section 7 of Chapter 424, Oregon Laws 2007.

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

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

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

660-041-0020

Contents of a Measure 37 Claim Based on a DLCDC Regulation

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

(a) Be received by DAS within two years of the date a city, county, Metro, or an Agency applied one or more Existing DLCDC Regulations, or applied city, county or Metro land use regulations that implement Existing DLCDC Regulations, as approval criteria to an application submitted by the Claimant; and

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCDC Regulations or city, county or Metro Land Use Regulations that implement Existing DLCDC Regulations were approval criteria for the decision; or

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

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

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

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

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

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

(3) When a Claim is based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulations, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulations.

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

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

Stat. Auth.: ORS 197.040 & 197.065

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

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0030

Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all

applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

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

- (a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;
- (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;
- (c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);
- (d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject land use application; and,
- (e) The name of the present owner of the property.

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

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0040

When a DLCD Measure 37 Waiver is Required

Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant must obtain a DLCD Measure 37 Waiver for that use of the Property in all cases where that use is restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Property includes:

- (1) Land zoned for farm use under Goal 3;
- (2) Land zoned for forest use under Goal 4; or

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

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0050

Applicability

Rule suspended Dec 10, 2007

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; Suspended by LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0060

Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

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

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0070

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

After December 5, 2007, when a state agency or a special district is required to take an

action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCDC Measure 37 Waiver has expired, and a DLCDC Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0080

Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49

- (1) DLCDC may request Supplemental Information from a Claimant or the Claimant's authorized agent if the record for the Claim does not include all the information needed for DLCDC to proceed with the Supplemental Review of the Claim.
- (2) Supplemental Information requested by DLCDC must be filed with DLCDC within fifty-six (56) days of the date the request is sent and must be filed in the manner described in OAR 660-041-0100.
- (3) For good cause shown, DLCDC may extend the period for filing Supplemental Information beyond fifty-six (56) days.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0090

Notice and Comment for Supplemental Review of Measure 37 Claims under Measure 49

- (1) DLCDC will mail written notice of a Supplemental Review to the Claimant or the Claimant's authorized agent, to the local government with land use jurisdiction over the Property, to any person who is an owner of record of real property located within 250 feet of the Property if the Property is not within a farm or forest zone or within 750 feet of the Property if the Property is located in a farm or forest zone, and to any neighborhood or

community organization(s) whose boundaries include the Property if the county in which the Property is located provides DLCD the name and address of the organization(s).

(2) To be considered by DLCD in its Supplemental Review of a Claim, comments, evidence or information concerning that Claim by a third party or local government must be filed as provided in OAR 660-041-0100 with DLCD within twenty-eight (28) days of the date the notice under subsection (1) of this rule is mailed.

(3) DLCD will mail copies of the comments, evidence or information concerning the Claim to the Claimant.

(4) The Claimant or Claimant's authorized agent may file a written response to any comments, evidence or information filed by a third party. To be considered by DLCD, the response must be filed as provided in OAR 660-041-0100 with DLCD within twenty-one (21) days after the date DLCD mailed the comments, evidence or information to the Claimant as provided for under subsection (3) of this rule.

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

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

Hist:

660-041-0100

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

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

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

Supplemental Measure 49 Claim Review

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

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

(4) The date information is filed is the date the information is received by DLCD, or the date it is mailed, provided it is mailed by registered or certified mail and the person filing

the information has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.:

New Claim Rules

(Ballot Measure 49)

660-041-0500

Purpose and Applicability

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

Stat. Auth.: ORS 197.040, 197.065 & Chapter 424, Oregon Laws 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424 Oregon Laws 2007
Hist.: LCDC 2-2007, f. 12-6-07, cert. ef. 12-10-07

660-041-0510

Definitions

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

- (1) "Agency" has the meaning provided by ORS 183.310.
- (2) "Claimant" means an Owner who filed a Measure 49 Claim.
- (3) "DLCD" means the Department of Land Conservation and Development.
- (4) "DLCD Regulation" has the meaning provided by section 2(14)(a)-(b) and 2(14)(g) of Chapter 424, Oregon Laws 2007.

(5) "Farming Practice" has the meaning provided by section 2(5) of Chapter 424, Oregon Laws 2007.

(6) "File" or "Filed" has the meaning provided by section 2(7) of Chapter 424, Oregon Laws 2007. The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by section 2(8) of Chapter 424, Oregon Laws 2007.

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

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

(10) "Measure 49 Claim" means a claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007, and a claim Filed with the State of Oregon under Chapter 424, Oregon Laws 2007 after December 5, 2007.

(11) "Owner" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

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

(13) "Property" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

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

Stat. Auth.: ORS 197.040, 197.065 & Chapter 424, Oregon Laws 2007

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424 Oregon Laws 2007

Hist.: LCDC 2-2007; f. 12-6-07, cert. ef. 12-10-07

660-041-0520

Procedures for Measure 49 Claims

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized

agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or from DLCD's website, and must contain all information required by the form.

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

Measure 49 Claims

635 Capitol St. NE, Suite 150

Salem 97301-2540

Claims may not be submitted by facsimile or electronically.

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, it is deemed Filed on December 6, 2007 for purposes of subsections 13(5) to 13(11) of Chapter 424, Oregon Laws 2007.

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

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

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

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

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

(e) The location of the Property by reference to:

(A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;

(C) The county the Property is located in; and

(D) If the Property is located within a city, the name of that city.

(f) Evidence of each Claimant's Acquisition Date, as provided in sections 13(7)(c) and 21 of Chapter 424, Oregon Laws 2007;

(g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;

(h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in section 12(2) of Chapter 424, Oregon Laws 2007.

(5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of sections 12 to 14 of Chapter 424, Oregon Laws 2007. If the Measure 49 Claim is incomplete, within 60 days of receiving the claim, DLCD will notify the person who filed the claim of the information that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(6) If a Claimant submits a request in writing for additional time to provide missing information, DLCD may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under sections 13 and 14 of Chapter 424, Oregon Laws 2007, until the date specified in the agreement.

(7) If DLCD does not notify the Claimant within 60 days after a Measure 49 Claim is Filed that information is missing from the claim, the claim is deemed complete when Filed.

(8) If the Claimant does not respond in writing to the written notification from DLCD under subsection (5) of this rule within sixty (60) days of the date the written notification was sent, the claim is deemed withdrawn.

(9) DLCD will provide notice of a Measure 49 Claim as provided by section 14 of Chapter 424, Oregon Laws 2007. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

(10) DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

Stat. Auth.: ORS 197.040, 197.065 & Chapter 424, Oregon Laws 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424 Oregon
Laws 2007
Hist.: LCDC 2-2007, f. 12-6-07, cert. ef. 12-10-07

660-041-0530

Coordinating with Other Regulating Entities

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the claim to that Agency.

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

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

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it administers as provided in Chapter 424, Oregon Laws 2007 and if so what form of relief to grant under subsection 12(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

Stat. Auth.: ORS 197.040, 197.065 & Chapter 424, Oregon Laws 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352 & Chapter 424 Oregon
Laws 2007
Hist.: LCDC 2-2007, f. 12-6-07, cert. ef. 12-10-07

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 2

DELEGATION OF AUTHORITY TO DIRECTOR

Temporary rule amendments adopted by LCDC December 6, 2007

Amendments Readopted by LCDC February 12, 2008

Effective Dec 10, 2007 through June 7, 2008

660-002-0010

Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

- (1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);
- (2) Condition a compliance schedule in accordance with ORS 197.252;
- (3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and
- (4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);
- (5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;
- (6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;
- (7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;
- (8) Carry out the responsibilities and exercise the authorities of the Commission and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:
 - (a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;
 - (b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and
 - (c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except that the Director may approve a claim only by not applying the land use regulations that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 183, 196, 197 & Chapter 424, Oregon Laws 2007.

Stats. Implemented: ORS 197.040, 197.045, 197.090 & Chapter 424, Oregon Laws 2007.

660-002-0015

Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested member of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

ATTACHMENT C
Measure 49 (ORS 195.300)

Note: See note under 195.250.

195.263 [1999 c.1103 §5; repealed by 2003 c.141 §2]

195.266 [1999 c.1103 §6; repealed by 2003 c.141 §2]

195.270 [1999 c.1103 §7; repealed by 2003 c.141 §2]

195.275 [1999 c.1103 §9; repealed by 2003 c.141 §2]

JUST COMPENSATION FOR LAND USE REGULATION

195.300 Definitions for ORS 195.300 to 195.336. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007:

- (1) "Acquisition date" means the date described in ORS 195.328.
- (2) "Claim" means a written demand for compensation filed under:
 - (a) ORS 195.305, as in effect immediately before December 6, 2007; or
 - (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.
- (3) "Enacted" means enacted, adopted or amended.
- (4) "Fair market value" means the value of property as determined under ORS 195.332.
- (5) "Farming practice" has the meaning given that term in ORS 30.930.
- (6) "Federal law" means:
 - (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government;
 - (b) A requirement contained in a plan or rule enacted by a compact entity; or
 - (c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.
- (7) "File" means to submit a document to a public entity.
- (8) "Forest practice" has the meaning given that term in ORS 527.620.
- (9) "Ground water restricted area" means an area designated as a critical ground water area or as a ground water limited area by the Water Resources Department or Water Resources Commission before December 6, 2007.
- (10) "High-value farmland" means:
 - (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.
 - (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and the following soils:
 - (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;
 - (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and
 - (C) Subclassification IVw, specifically Huffling Silty Clay Loam.
 - (c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:
 - (A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;
 - (B) Within the boundaries of a district, as defined in ORS 540.505; or
 - (C) Within the boundaries of a diking district formed under ORS chapter 551.

(d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

(11) "High-value forestland" means land:

(a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

(12) "Home site approval" means approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.

(13) "Just compensation" means:

(a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, for land use regulations enacted on or before January 1, 2007; and

(b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

(a) A statute that establishes a minimum lot or parcel size;

(b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;

(c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;

(d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;

(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

(15) "Measure 37 permit" means a final decision by Metro, a city or a county to authorize the

development, subdivision or partition or other use of property pursuant to a waiver.

(16) “Owner” means:

(a) The owner of fee title to the property as shown in the deed records of the county where the property is located;

(b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(c) 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.

(17) “Property” means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.

(18) “Protection of public health and safety” means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.

(19) “Public entity” means the state, Metro, a county or a city.

(20) “Urban growth boundary” has the meaning given that term in ORS 195.060.

(21) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property.

(22) “Zoned for residential use” means zoning that has as its primary purpose single-family residential use. [2007 c.424 §2]

195.301 Legislative findings. (1) The Legislative Assembly finds that:

(a) In some situations, land use regulations unfairly burden particular property owners.

(b) To address these situations, it is necessary to amend Oregon’s land use statutes to provide just compensation for unfair burdens caused by land use regulations.

(2) The purpose of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and the amendments to Ballot Measure 37 (2004) is to modify 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. [2007 c.424 §3]

195.305 Compensation for restriction of use of real property due to land use regulation. (1) If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in ORS 195.310 to 195.314.

(2) Just compensation under ORS 195.310 to 195.314 shall be based on the reduction in the fair market value of the property resulting from the land use regulation.

(3) Subsection (1) of this section shall not apply to land use regulations that were enacted prior to the claimant’s acquisition date or to land use regulations:

(a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

(b) Restricting or prohibiting activities for the protection of public health and safety;

ATTACHMENT C

(c) To the extent the land use regulation is required to comply with federal law; or

(d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just compensation under this section. Nothing in subsection (3) of this section is intended to affect or alter rights provided by the Oregon or United States Constitution.

(b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection of human health and safety.

(c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the public entity enacting the regulation has no discretion under federal law to decline to enact the regulation.

(5) A public entity may adopt or apply procedures for the processing of claims under ORS 195.310 to 195.336.

(6) The public entity that enacted the land use regulation that gives rise to a claim under subsection (1) of this section shall provide just compensation as required under ORS 195.310 to 195.336.

(7) A decision by a public entity that an owner qualifies for just compensation under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and a decision by a public entity on the nature and extent of that compensation are not land use decisions.

(8) The remedies created by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, are in addition to any other remedy under the Oregon or United States Constitution, and are not intended to modify or replace any constitutional remedy.

(9) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [Formerly 197.352]

(Temporary provisions relating to previously filed claims)

Note: Sections 5, 6, 7, 8, 9, 10 and 11, chapter 424, Oregon Laws 2007, provide:

Sec. 5. A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is entitled to just compensation as provided in:

(1) Section 6 or 7 of this 2007 Act, at the claimant's election, if the property described in the claim is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(2) Section 9 of this 2007 Act if the property described in the claim is located, in whole or in part, within an urban growth boundary; or

(3) A waiver issued before the effective date of this 2007 Act [December 6, 2007] to the extent that the claimant's use of the property complies with the waiver and the claimant has a common law vested right on the effective date of this 2007 Act to complete and continue the use described in the waiver. [2007 c.424 §5]

Sec. 6. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is eligible for three home site approvals on the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be approved for property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the

effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state; or

(b) Three, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed three.

(3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief under this section may establish at least one additional lot, parcel or dwelling on the property. In addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant may amend the claim to reduce the number to no more than three by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If a claim was for a use other than a subdivision or partition of property, or other than approval for establishing a dwelling on the property, the claimant may amend the claim to seek one or more home site approvals under this section. A person amending a claim under this subsection may not make a claim under section 7 of this 2007 Act.

(5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.

(6) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act, to qualify for a home site approval under this section the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

(e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)]; and

(f) 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 authorized under this section.

(7) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(8) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for a property under this section, the claimant may seek other governmental authorizations required by law for the partition or subdivision of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §6]

Sec. 7. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property that is not high-value farmland or high-value forestland and that is not in a ground water restricted area is eligible for four to 10 home site approvals for the property if the

requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be established on the property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state;

(b) 10, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed 10; or

(c) The number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than 10 in any case.

(5) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act to qualify for a home site approval under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

(e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

(f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels and dwellings on the property that are authorized under this section; and

(g) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under

ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each home site approval to which the claimant is entitled under section 6 (2) of this 2007 Act, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under subsection (6) of this section. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(10) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for the property under this section, the claimant may seek other governmental authorizations required by law for the subdivision or partition of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the subdivision or partition, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §7]

Sec. 8. (1) No later than 120 days after the effective date of this 2007 Act [December 6, 2007], the Department of Land Conservation and Development shall send notice to all the following claimants that filed a claim for property outside an urban growth boundary:

(a) A claimant whose claim was denied by the state before the effective date of this 2007 Act, but who may become eligible for just compensation because of section 21 (2) of this 2007 Act [195.328 (2)] or any other provision of sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act];

(b) A claimant whose claim was approved by the state before the effective date of this 2007 Act; and

(c) A claimant whose claim has not been approved or denied by the state before the effective date of this 2007 Act.

(2) The notice required by subsection (1) of this section must:

(a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a

dwelling on the property under sections 5 to 22 of this 2007 Act;

(b) Identify any information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by filing the form provided by the department within 90 days after the date the department mails the notice and form required under subsection (1) of this section. In addition, the claimant must file any information required in the notice. If the claimant fails to file the form within 90 days after the date the department mails the notice, the claimant is not entitled to relief under section 6 or 7 of this 2007 Act.

(4) The department shall review the claims in the order in which the department receives the forms required under subsection (3) of this section. In addition to reviewing the claim, the department shall review the department's record on the claim, the form required under subsection (3) of this section, any new material from the claimant and any other information required by sections 5 to 22 of this 2007 Act to ensure that the requirements of this section and section 6 or 7 of this 2007 Act are met. The department shall provide a copy of the material submitted by the claimant to the county where the property is located and consider written comments from the county that are timely filed with the department. If the department determines that the only land use regulations that restrict the claimant's use of the property are regulations that were enacted by the county, the department shall transfer the claim to the county where the property is located and the claim shall be processed by the county in the same manner as prescribed by this section for the processing of claims by the department. The county must consider any written comments from the department that are timely filed with the county.

(5) If the claimant elects to obtain relief under section 7 of this 2007 Act, the claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7 (6) of this 2007 Act. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must be filed with the department or, if the claim is being processed by the county, with the county within 180 days after the date the claimant files the election to obtain relief under section 7 of this 2007 Act. A claimant that elects to obtain relief under section 7 of this 2007 Act may change that election to obtain relief under section 6 of this 2007 Act, but only if the claimant provides written notice of the change on or before the date the appraisal is filed. If a county is processing the claim, the county may impose a fee for the review of a claim under section 7 of this 2007 Act in an amount that does not exceed the actual and reasonable cost of the review.

(6) The department or the county shall review claims as quickly as possible, consistent with careful review of the claim. The department shall report to the Joint Legislative Audit Committee on or before March 31, 2008, concerning the department's progress and the counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.

(7) The department's final order and a county's final decision on a claim under section 6 or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision approves the claim, the order or decision must state the number of home site approvals issued for the property and may contain other terms that are necessary to ensure that the use of the property is lawful. [2007 c.424 §8]

Sec. 9. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the lesser of:

ATTACHMENT C

(a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;

(b) 10, except that if there are existing dwellings on the property, the number of single-family dwellings that may be established is reduced so that the maximum number of dwellings, including existing dwellings located on the property, does not exceed 10; or

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the information required by section 10 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of single-family dwellings that may be established for purposes of subsection (2)(a) of this section is the number in the most recent waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but not more than 10 in any case.

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located, in whole or in part, within an urban growth boundary;

(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;

(e) The property is zoned for residential use;

(f) One or more land use regulations prohibit establishing the single-family dwellings;

(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted

by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) When Metro, a city or a county has issued a final decision authorizing one or more single-family dwellings under this section on the portion of the property located within the urban growth boundary, the claimant may seek other governmental authorizations required by law for that use, and a land use regulation enacted by a public entity that has the effect of prohibiting the use does not apply to the review of those authorizations, except as provided in section 11 of this 2007 Act. If Metro is reviewing a claim for a property, and a city or a county is reviewing a claim for the same property, Metro and the city or county shall coordinate the review and decisions and may:

(a) Provide that one of the public entities be principally responsible for the review; and

(b) Provide that the decision of each of the public entities is contingent on the decision of the other public entity.

(10) The only types of land use that are authorized by this section are the subdivision or partition of land for one or more single-family dwellings, or the establishment of one or more single-family dwellings on land on which the dwellings would not otherwise be allowed. [2007 c.424 §9]

Sec. 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act [December 6, 2007] for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public entity shall complete a tentative review no later than 240 days after the effective date of this

2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

(2) If Metro, a city or a county has not made a final decision before the effective date of this 2007 Act on a claim filed for property located, in whole or in part, within an urban growth boundary, the public entity with which the claim was filed shall send notice to the claimant within 90 days after the effective date of this 2007 Act. The notice must:

- (a) Explain that the claimant is entitled to seek relief under section 9 of this 2007 Act;
- (b) Identify the information that the claimant must file; and
- (c) Provide a form for the claimant's use.

(3) Within 120 days after the date the public entity mails notice under subsection (2) of this section, a claimant must notify the public entity if the claimant intends to continue the claim and must file the information required in the notice. If the claimant fails to file the notice and required information with the public entity within 120 days after the date the public entity mails the notice, the claimant is not entitled to relief under section 9 of this 2007 Act.

(4) A public entity that receives a notice from a claimant under subsection (3) of this section shall review the claim, the record on the claim, the notice received from the claimant and the information required under subsection (3) of this section to determine whether the claim demonstrates that the requirements of section 9 of this 2007 Act are satisfied. The public entity shall complete a tentative review no later than 120 days after receipt of the notice from the claimant and shall provide written notice to the claimant, the department and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 180 days after receipt of the notice from the claimant.

(5) If a claimant filed a claim that is subject to this section after December 4, 2006, the claim must have included a copy of a final land use decision by the city or county with land use jurisdiction over the property that denied an application by the claimant for the residential use described in the claim. If the claim was filed after December 4, 2006, and did not include a final land use decision denying the residential use described in the claim, the claimant is not entitled to relief under section 9 of this 2007 Act. [2007 c.424 §10]

Sec. 11. (1) A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.

(2) Before beginning construction of any dwelling authorized under section 6 or 7 of this 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

(3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:

(A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or on land within a ground water restricted area; or

(B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.

(b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.

(4) If an owner is authorized to subdivide or partition more than one property, or to establish dwellings on more than one property, under sections 5 to 11 of this 2007 Act and the properties are in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of the properties if that property is less suitable than the other properties for farm or forest use. If one of the properties is zoned for residential use, the owner may cluster some or all of the dwellings, lots or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on the property zoned for residential use.

(5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11 of this 2007 Act, regardless of how many properties that person owns or how many claims that person has filed.

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of this 2007 Act runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

(a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 of this 2007 Act remains a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law; and

(b) A dwelling or other residential use of the property based on an authorization under section 6, 7 or 9 of this 2007 Act is a permitted use and may be established or continued by the claimant or a subsequent owner, except that once the claimant conveys the property to a person other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner must establish the dwellings or other residential use authorized under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance.

(7) When relief has been claimed under sections 5 to 11 of this 2007 Act:

(a) Additional relief is not due; and

(b) An additional claim may not be filed, compensation is not due and a waiver may not be issued with regard to the property under sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act] or ORS 197.352 [renumbered 195.305] as in effect immediately before the effective date of this 2007 Act [December 6, 2007], except with respect to a land use regulation enacted after January 1, 2007.

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable