

development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable development interests between the jurisdictions of the public entities that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

(9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or 9 of this 2007 Act and an authorization to use the property provided by a waiver under section 6, 7 or 9 of this 2007 Act:

(a) Is not affected by the death of the claimant if the death occurs on or after the effective date of this 2007 Act; and

(b) Passes to the person that acquires the property by devise or by operation of law. [2007 c.424 §11]

195.308 Exception to requirement for compensation. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693, 561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes. [2007 c.490 §1]

Note: 195.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

195.310 Claim for compensation; calculation of reduction in fair market value; highest and best use of restricted property; status of use authorized. (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to 195.314 after June 28, 2007, if:

(a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(b) The person's desired use of the property is a residential use or a farming or forest practice;

(c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are 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. 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. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. 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 this subsection. 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.

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

(4) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130. [2007 c.424 §12]

195.312 Procedure for processing claims; fees. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation.

(2) A claim filed under ORS 195.310 must be filed with the public entity that enacted the land use regulation that is the basis for the claim.

(3) Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim.

(4) A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

(5) A public entity that receives a claim filed under ORS 195.310 must issue a final determination on the claim within 180 days after the date the claim is complete, as described in subsection (9) of this section.

(6) If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111, the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the claim must be filed with the chief administrative office of the public entity, or with an individual designated by ordinance, resolution or order of the public entity.

(7) A claim filed under ORS 195.310 must be in writing and must include:

(a) The name and address of each owner;

(b) The address, if any, and tax lot number, township, range and section of the property;

(c) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(d) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the public entity to identify the specific land use regulation that is the basis for the claim;

(e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(f) An appraisal of the property that complies with ORS 195.310 (2).

(8) A claim filed under ORS 195.310 must include the fee, if any, imposed by the public entity with which the claim is filed pursuant to subsection (3) of this section.

(9) The public entity shall review a claim filed under ORS 195.310 to determine whether the claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the public entity shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by subsection (8) of this section and:

(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.

(10) If a public entity does not notify a claimant within 60 days after a claim is filed under ORS 195.310 that information or the fee is missing from the claim, the claim is deemed complete when filed.

(11) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice to the claimant under subsection (9) of this section and the claimant does not comply with the requirements of subsection (9) of this section. [2007 c.424 §13]

195.314 Notice of claim; evidence and argument; record on review; final determination. (1) A public entity that receives a complete claim as described in ORS 195.312 shall provide notice of the claim at least 30 days before a public hearing on the claim or, if there will not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

(a) All owners identified in the claim;

(b) All persons described in ORS 197.763 (2);

(c) The Department of Land Conservation and Development, unless the claim was filed with the department;

(d) Metro, if the property is located within the urban growth boundary of Metro;

(e) The county in which the property is located, unless the claim was filed with the county; and

(f) The city, if the property is located within the urban growth boundary or adopted urban planning area of the city.

(2) The notice required under subsection (1) of this section must describe the claim and state:

(a) Whether a public hearing will be held on the claim, the date, time and location of the hearing, if any, and the final date for submission of written evidence and arguments relating to the claim;

(b) That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the public entity; and

(c) That judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond.

(3) Except as provided in subsection (4) of this section, written evidence and arguments in proceedings on the claim must be submitted to the public entity not later than:

(a) The close of the final public hearing on the claim; or

(b) If a public hearing is not held, the date that is specified by the public entity in the notice required under subsection (1) of this section.

(4) The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

(5) A public entity shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections (3) and (4) of this section.

(6) A public entity shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The public entity shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located. [2007 c.424 §14]

195.316 Notice of Measure 37 permit. In addition to any other notice required by law, a county must give notice of a Measure 37 permit for property located entirely outside an urban growth boundary to:

(1) The county assessor for the county in which the property is located;

(2) A district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within one-half mile of the property; and

(3) The Department of Land Conservation and Development, the State Department of Agriculture, the Water Resources Department and the State Forestry Department. [2007 c.424 §15]

195.318 Judicial review. (1) A person that is adversely affected by a final determination of a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, may obtain judicial review of that determination under ORS 34.010 to 34.100, if the determination is made by Metro, a city or a county, or under ORS 183.484, if the determination is one of a state agency. Proceedings for review of a state agency determination under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, must be commenced in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue. A determination by a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is not a land use decision.

(2) A person is adversely affected under subsection (1) of this section if the person:

(a) Is an owner of the property that is the subject of the final determination; or

(b) Is a person who timely submitted written evidence, arguments or comments to a public entity concerning the determination.

(3) Notwithstanding subsection (1) of this section, judicial review of a final determination under ORS 195.305 or 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is:

(a) Limited to the evidence in the record of the public entity at the time of its final determination.

(b) Available only for issues that are raised before the public entity with sufficient specificity to afford the public entity an opportunity to respond. [2007 c.424 §16]

195.320 Ombudsman. (1) The Governor shall appoint an individual to serve, at the pleasure of the Governor, as the Compensation and Conservation Ombudsman.

(2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:

- (a) Analyze problems of land use planning, real property law and real property valuation; and
- (b) Facilitate resolution of complex disputes. [2007 c.424 §17]

195.322 Duties of ombudsman. (1) For the purpose of helping to ensure that a claim is complete, as described in ORS 195.312, the Compensation and Conservation Ombudsman may review a proposed claim if the review is requested by a claimant that intends to file a claim under ORS 195.305 and 195.310 to 195.314.

(2) At the request of the claimant or the public entity reviewing a claim, the ombudsman may facilitate resolution of issues involving a claim under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. [2007 c.424 §18]

195.324 Effect of certain applications or petitions on right to relief. (1) If an owner submits an application for a comprehensive plan or zoning amendment, or submits an application for an amendment to the Metro urban growth boundary, and Metro, a city or a county approves the amendment, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the application was filed.

(2) If an owner files a petition to initiate annexation to a city and the city or boundary commission approves the petition, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the petition was filed. [2007 c.424 §19]

195.326 Qualification of appraisers; review of appraisals. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. The Department of Land Conservation and Development is authorized to retain persons to review the appraisals. [2007 c.424 §20]

195.328 Acquisition date of claimant. (1) Except as provided in this section, a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

(2) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, by using the procedure provided in ORS 105.623 to 105.649.

(3) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.

(4) A default judgment entered after December 2, 2004, does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004. [2007 c.424 §21]

195.330 Filing date of documents. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, a document is filed on the date the document is received by the public entity. [2007 c.424 §21a]

195.332 Fair market value of property. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements. [2007 c.424 §21b]

195.334 Effect of invalidity. If any part of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, is held to be unconstitutional or otherwise invalid, all remaining parts of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, shall not be affected by the holding and shall remain in full force and effect. [2007 c.424 §21c]

195.336 Compensation and Conservation Fund. (1) The Compensation and Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on moneys in the Compensation and Conservation Fund shall be credited to the fund. The fund consists of moneys received by the Department of Land Conservation and Development under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and other moneys available to the department for the purpose described in subsection (2) of this section.

(2) Moneys in the fund are continuously appropriated to the department for the purpose of paying expenses incurred to review claims under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and for the purpose of paying the expenses of the Compensation and Conservation Ombudsman appointed under ORS 195.320. [2007 c.424 §22]

MISCELLANEOUS

195.850 Reporting local government boundary changes to certain mass transit districts. If changes in the urban growth boundary of a local government must be included in the boundaries of a mass transit district formed under ORS 267.107, the local government shall provide the mass transit district with a legal description of the urban growth boundary and changes to the urban growth boundary that consists of a series of courses in which the first course starts at a point of beginning and the final course ends at the point of beginning. [2001 c.138 §13b]

ATTACHMENT D
Public Notices

ATTACHMENT D

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Land Conservation and Development

OAR 660

Agency and Division

Administrative Rules Chapter Number

Sarah Watson

635 Capitol St. NE, Suite 150, Salem, OR 97301-2540

503.373.0050 x271

Rules Coordinator

Address

Telephone

RULE CAPTION

Permanent rules interpreting and implementing 2007 Ballot Measure 49, amending current rules, adopting additional rules

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action

May 1, 2008 Hearing begins at 1:00PM 635 Capitol Street NE, Basement Hearing Room, Salem LCDC

Hearing Date

Time

Location

Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

ADOPT: OAR 660-041-0060, 660-041-0070, 660-041-0080, 660-041-0090, 660-041-0100; 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530, 660-041-0540, 660-041-0550, and 660-041-0560.

AMEND: OAR 660-002-0010 and 660-002-0015; OAR 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, and 660-041-0040. The Commission may consider related amendments to other rules under OAR 660, divisions 2 and 41, based on advice from legal counsel and in response to testimony and comments received.

REPEAL: OAR 660-041-0050.

Statutory Authority: ORS 195.300 to 195.336; ORS chapter 183, ORS chapter 197, and Chapter 424, Oregon Laws 2007.

Other Authority: Statewide Land Use Planning Goal 2.

Statutes Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.045, 197.065 197.090, 197.353, and Ch 424, Or Laws 2007.

RULE SUMMARY

These proposed permanent rules specify procedures and filing requirements for persons submitting a new 2007 Ballot Measure 49 claim. The rules address the effect 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. In addition, these rules amend the LCDC delegation of 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. These proposed rules establish the procedures for supplemental review of Measure 37 claims under Measure 49. The proposed rules also 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 they are entitled to. The interpretive rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. The proposed permanent rules replace, repeal, amend or supplement temporary rules to implement Measure 49 adopted in December of 2007 and February of 2008, which expire on June 7, 2008.

An advisory committee was not used to assist the agency in drafting the proposed rules due to the need to act quickly to clarify requirements for the large number of Measure 37 claims that must go through supplemental review by the department in order to carry out Measure 49 and the need to permanently adopt the temporary rules implementing and clarifying Measure 49 prior to the expiration of those rules on June 7, 2008. The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

May 1, 2008 (until close of public hearing)

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Printed name

Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless the deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

ATTACHMENT D

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Land Conservation and Development
Agency and Division

OAR chapter 660
Administrative Rules Chapter Number

In the Matter of: Permanent rules interpreting and implementing 2007 Ballot Measure 49 under OAR 660 divisions 2 and 41; amending current rules, adopting additional rules, and repealing a rule.

Rule Caption: Permanent rules interpreting and implementing Measure 49, amending current rules, adopting additional rules

Statutory Authority: ORS chapter 183, ORS chapter 195, ORS chapter 197, Chapter 424, Oregon Laws 2007

Other Authority: Statewide Land Use Planning Goal 2

Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.045, 197.065 197.090, 197.353, and Ch 424, Or Laws 2007.

Need for the Rules: These proposed permanent rules are necessary to specify procedures and filing requirements for persons submitting a new claim to the State of Oregon under ORS 195.300 to 195.336. These statutes took effect on December 6, 2007 and provide that an owner of property whose desired use of that property is restricted by a new state land use regulation enacted after January 1, 2007 may file a claim with DLCD seeking to have that regulation not apply to the owner's use of the property. Under these statutes, the responsibility for receipt and processing of claims is assigned to DLCD. The state must act on new claims (those filed after June 28, 2007) within 180 days after the claim is made. These permanent rules are required in order to ensure that claims contain the information necessary for the State to act on them within the 180-day time limit provided by statute. These rules are also required so that the director of DLCD may carry out the responsibilities and exercise the authorities of the LCDC and DLCD in responding to new claims under ORS 195.300 to 195.336.

These proposed permanent rules also are necessary to implement 2007 Ballot Measure 49 (chapter 424, Oregon Laws 2007) with respect to the supplemental review of 2004 Ballot Measure 37 claims for property outside of urban growth boundaries. There are approximately 6,500 of these claims, including both claims that already had been acted on under Measure 37 and those that had not been acted on. Under 2007 Ballot Measure 49, these Measure 37 claims are only eligible for relief if they proceed through a supplemental election and review process. The proposed rules are needed to establish the procedures for supplemental review of Measure 37 claims under Measure 49. The proposed rules also are needed to clarify how LCDC interprets these statutes for the purposes of determining whether Measure 37 claimants are entitled to relief under Measure 49 and, if so, what relief they are entitled to. The interpretive rules clarify how LCDC is directing DLCD to determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property for purposes of sections 6 and 7 of chapter 424, Oregon Laws 2007 (Measure 49). The proposed permanent rules also address the effect of 2007 Ballot Measure 49 on waivers that have already been approved by DLCD under 2004 Ballot Measure 37, including the effect of Measure 49 for purposes of state agency coordination requirements under ORS 197.180. Finally, the proposed permanent rules are needed to replace, amend and supplement the existing temporary rules implementing Measure 49 that will expire on June 7, 2008.

Documents Relied Upon, and where they are available: Chapter 424, Oregon Laws 2007 (Measure 49); temporary Measure 49 rules adopted in November 2007 and February 2008 (OAR 660, divisions 2 and 41); Final DAS Registry of Measure 37 Claims); Portland State University, Institute of Portland Metropolitan Studies, Measure 37 Database Summary Tables (Dec. 12, 2007); All documents relied on are available at the Oregon Department of Land Conservation & Development, 635 Capitol Street NE, Suite 150 Salem, Oregon 97301-2540.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Based on available information, adoption of the proposed rules implementing and clarifying Measure 49 requirements for supplemental review of Measure 37 claims for property in areas outside of urban growth boundaries will require Measure 37 claimants to complete an election form and provide additional information to DLCD concerning the property the claim is for, the date they acquired the property, and the relief that they are seeking. For claimants seeking authorization to develop more than three homesites, an appraisal also is required under Measure 49. The costs of going through the supplemental review process under Measure 49 should range from several hundred dollars for a simple claim to tens of thousands for a complex claim where one or more appraisals are required. Most claimants seeking authorization for one to three homesites should expect to spend roughly a thousand dollars. The basic requirements for supplemental review are established by statute. These rules are not expected to significantly affect the cost of compliance for a Measure 37 claimant. The rules establish a notice and comment process for the supplemental review, and claimants may incur additional costs responding to comments provided by third parties.

ATTACHMENT D

The costs of preparing a new Measure 49 claim for a new land use regulation will include both the cost of completing the DLCD claim form, and the cost of completing an appraisal of the property that measures the fair market value of the property before and after the enactment of the land use regulation. The appraisal is likely to cost in the range of ten to twenty thousand dollars. The cost of preparing the forms for a new claim should be in the range of a thousand dollars. Again, these requirements are established by statute, and the proposed rules are not expected to significantly affect the cost of compliance for a Measure 49 claimant.

Approximately ten percent of the Measure 37 claims were filed by business entities, and most of these were by small businesses – resulting in an estimated 650 claims that will be subject to supplemental review under the proposed rules. The most common type of business that filed a Measure 37 claim is a small, closely-held entity formed for real estate investment or for farming or forestry purposes. The costs of administrative activities required for small businesses would be the same as those estimated for individuals in the preceding paragraphs. These costs could range from several hundred dollars for smaller claims to thousands of dollars for claims involving more than three homesite authorizations or complex ownership histories. Due to time constraints in developing permanent rules to implement Measure 49, the agency has not involved small businesses in the development of this rule, but is soliciting broad public and private input on the proposed rule.

Administrative Rule Advisory Committee consulted?: No.

The proposed rules are necessary to ensure that Measure 49 is implemented in a timely manner consistent with the statewide land use planning system and the Measure itself. Adopting the rules by early May of 2008 is necessary to allow DLCD to begin issuing orders providing relief by mid-summer of 2008. Some claimants have now been waiting for relief for over three years. The short time period allowed before temporary rules will expire does not provide sufficient time to appoint and consult an advisory committee.

Signature

Printed name

Date

ATTACHMENT D

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING A TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND. (ORS 183.534)
FOR ADMINISTRATIVE RULES

AGENCY NAME: Department of Land Conservation and Development
ADDRESS: 635 Capitol Street NE
CITY/STATE: Salem, Oregon 97301
PHONE: (503) 373-0050

HEARING DATE: May 1, 2008

TEMPORARY: No

EFFECTIVE DATE: Upon Filing

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance) Existing temporary rules are attached. These proposed permanent rules specify procedures and filing requirements for persons submitting a new 2007 Ballot Measure 49 claim. The rules address the effect 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. In addition, these rules amend the LCDC delegation of 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. Finally, these rules establish the procedures for supplemental review of Measure 37 claims under Measure 49. The proposed rules also 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 they are entitled to. The interpretive rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. The proposed permanent rules replace, amend and supplement temporary rules to implement Measure 49 adopted in December of 2007 and February of 2008, which expire on June 7, 2008.

Description of the need for, and objectives of the rule:

These rules are needed to establish and clarify the requirement for filing new claims for new land use regulations under 2007 Ballot Measure 49. The rules also clarify what effect 2007 Ballot Measure 49 had on prior orders issued by DLCD under 2004 Ballot Measure 37, and establish the procedures and submittal requirements for supplemental review of Measure 37 claims under Measure 49. The proposed rules are needed to delegate authority to the Director of DLCD to carry out the responsibilities and exercise the authorities of LCDC and DLCD in responding to claims under Ballot Measures 37 and 49. Finally, these permanent rules are needed to replace, amend and supplement temporary rules implementing Measure 49 that were adopted on November 2007 and February 2008, and must be adopted prior to the expiration of those rules on June 7, 2008.

List of rules adopted or amended: OAR 660-002-0010, 660-002-0015; OAR 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, and 660-041-0040 are proposed to be amended; OAR 660-041-0050 is proposed to be repealed; and OAR 660-041-0060, 660-041-0070, 660-041-0080, 660-041-0090, 660-041-0100, 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530; 660-041-0540, 660-041-0550, and 660-041-0560 are proposed to be adopted. The Commission may consider related amendments to other rules under OAR 660, divisions 2 and 41, based on advice from legal counsel or in response to testimony and comments received. The proposed permanent rules replace, amend and supplement temporary rules implementing Measure 49 that were adopted on November 2007 and February 2008, and adopt additional new rules and new amendments to existing rules.

Materials and labor costs increase or savings: The proposed rules are not intended to or expected to result in increases or savings in materials or labor costs.

Estimated administrative, construction or other costs increase or savings: The proposed rules may result in some reduction in administrative costs to DLCD by ensuring that claims include the information required for the department to act. The proposed rules may result in increased costs to claimants, by clarifying that prior 2004 Ballot Measure 37 waivers no longer authorize the claimant to carry out a use of property that would otherwise not be allowed. The proposed rules also clarify what must be filed for supplemental review of Measure 37 claims under Ballot Measure 49, and what the process is for this supplemental review. For claimants electing to seek relief under section 6 of Measure 49, the costs of preparing the materials needed for supplemental review could be several thousand dollars. For claimants electing to seek relief under section 7 of Measure 49, an appraisal of the property will be required that may cost in the range of ten to twenty thousand dollars. That requirement is contained in statute, however, and the proposed rules are not expected to increase the cost relative to what is already required by statute. For new claims (for new land use regulations), the cost of filing a new claim under Measure 49 will vary depending on the claim, but may be several thousand dollars where the use a claimant desires to carry out is a typical 1,200 square foot dwelling on a 6,000 square foot parcel of land. An appraisal also is required for new claims for new land use regulations. The costs of the appraisal are expected to be similar to the range identified above. Again, these rules are not expected to increase costs above those already required by statute.

Land costs increase or savings:

The proposed rules are not anticipated to increase or decrease land costs.

Other costs increase or savings: NA

PREPARERS NAME: Bob Rindy **EMAIL ADDRESS:** bob.rindy@state.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

April 1, 2008

TO: The Honorable Peter Courtney, President of the Senate
The Honorable Jeff Merkley, Speaker of the House

FROM: Richard Whitman, Director
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Rulemaking Required by ORS 183.335

Enclosed is a notice indicating that the Land Conservation and Development Commission (LCDC) is considering the adoption of permanent administrative rules regarding Measure 49. As required by ORS 183.335, this rulemaking notice must be provided to the chairs and co-chairs of any interim committee with authority over the subject matter of the rules. The proposed permanent rules described in this notice would replace (and in some cases repeal, amend or supplement) permanent and temporary rules interpreting and implementing Measures 37 and 49 adopted by LCDC in December 2007 and February 2008. Those temporary rules expire on June 7, 2008, unless they are re-adopted as permanent rules.

The proposed permanent rules do several things. First, they specify procedures and filing requirements for persons submitting a new claim under Ballot Measure 49. Second, they address the effect 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 the procedures for 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 they are entitled to. Fourth, the rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. Finally, these 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.

LCDC will hold a public hearing to consider adoption of the proposed permanent rules, described above, at a meeting scheduled for May 1, 2008, at 1:00 PM, in the Agriculture Building, Basement Hearing Room, 635 Capitol St. NE, Salem. Interested persons may address the Commission concerning the proposed rules at this public hearing, or may provide written comments in advance of or at the hearing. The Commission will accept comments, including written comments, until the close of the public hearing on May 1. Address written comments to the Chair of the Land Conservation and Development Commission, care of Sarah Watson (see DLCD address above), or email to sarah.watson@state.or.us, or fax comments to 503-378-6033. If you have questions about this proposed rulemaking action, contact Michael Morrissey at (503) 373-0050 Ext. 229; email michael.morrissey@state.or.us.

If adopted, the permanent rules will be effective immediately upon filing with the Secretary of State in accordance with ORS 183.325(5). The proposed rules and related documents may be obtained from the DLCD website at <http://www.lcd.state.or.us>. To obtain a copy of the proposed rules through mail, email, or fax, please contact Sarah Watson at (503) 373-0050 Ext. 271, or email sarah.watson@state.or.us.

Cc: Beth Patrino; Representatives Dingfelder, Roblan, Burley, Cannon, Boquist, Clem
Members of the 2007 Joint Land Use Fairness Committee



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

April 1, 2008

TO: Interested Persons

FROM: The Department of Land Conservation and Development

RE: **Notice of Administrative Rules Regarding Measure 49**

The Land Conservation and Development Commission (LCDC) is considering the adoption of permanent administrative rules regarding Measure 49. The proposed permanent rules described in this notice would replace (and in some cases repeal, amend or supplement) temporary rules interpreting and implementing Measures 37 and 49 adopted by LCDC in December 2007 and February 2008. Those temporary rules expire on June 7, 2008, unless they are re-adopted as permanent rules. The proposed rules would do several things:

First, the rules specify procedures and filing requirements for persons submitting a new claim under Ballot Measure 49. Second, the rules address the effect 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 the procedures for 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 they are entitled to. Fourth, the rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. Finally, these 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.

LCDC will hold a public hearing to consider adoption of the proposed permanent rules, described above, at a meeting scheduled for May 1, 2008, at 1:00 PM, in the Agriculture Building, Basement Hearing Room, 635 Capitol St. NE, Salem. Interested persons may address the Commission concerning the proposed rules at this public hearing, or may provide written comments in advance or at the hearing. The Commission will accept comments, including written comments, until the close of the public hearing on May 1. Address written comments to the Chair of the Land Conservation and Development Commission, care of Sarah Watson (see DLCD address above), or email to sarah.watson@state.or.us, or fax comments to 503-378-6033. If you have questions about this proposed rulemaking action, contact Michael Morrissey at (503) 373-0050 Ext. 229; email michael.morrissey@state.or.us.

If adopted, the permanent rules will be effective immediately upon filing with the Secretary of State in accordance with ORS 183.325(5). The proposed permanent rules and related documents, including documents required by ORS 183.335 may be obtained from the DLCD website at <http://www.lcd.state.or.us>. To obtain a copy of the proposed rules through mail, email, or fax, please contact Sarah Watson at (503) 373-0050 Ext. 271, or email sarah.watson@state.or.us.

ATTACHMENT E
Comments Received

ATTACHMENT E

>>> "Mark David Haneberg" <MDHattorney@ashlandhome.net> 4/8/2008 11:03 AM >>>

Sarah,

In dealing with an annexation to a livestock district, our Jackson County Board of Commissioners was adamant that a property that "touched" the existing district at a corner could not be annexed into the district because it was not contiguous. The County Surveyor confirmed that a point has no dimension so that properties at a corner do not touch. If you draw a + on a sheet of paper, you can see that it is impossible to pass from the upper right quadrant into the lower left quadrant without trespassing an intervening quadrant. Since you have to pass from the upper right through either the lower right or upper left before you can arrive at the lower left, the upper right cannot be contiguous with the lower left. If the properties were contiguous, you could step directly from one into the other without entering a third property.

There is no actual connection between the two. Contiguous means connected. This is the common-sense meaning of the term and the one most likely intended by the voters when they approved Measure 49.

I do not believe the context of Measure 49 is different from the context of an annexation. The proposed permanent rule definition of "Contiguous Property" (660-041-0010(4)) correctly identifies properties that share a common boundary as contiguous. But then it defines contiguous to include a common corner--a dimensionless point. I do not believe the voters embraced this unexpected and expanded definition of contiguous when they approved the measure. In any case where Mary owns two pieces of property and has to pass through John's property to move from one of her properties into the other, the properties are separate and not contiguous.

I'm sure the voters would agree with the analysis performed by our Board of Commissioners that properties that do not touch but share a common corner are not contiguous.

Measure 49 severely limited the development that might have occurred under Measure 37 but allows a maximum of 20 homesites to any owner. If the ordinary meaning of this provision is to be given effect, an owner of non contiguous property must be able to get homesite approvals on more than one property. The voters approving these new restrictions did not agree to an artificial and unnecessarily restrictive definition of contiguous. The campaign for Measure 49 emphasized that compensation would be reasonable.

Properties separated at a corner are separated by an intervening parcel even though the distance that must be traversed in trespass to move from one to the other is small. Therefore, I urge the DLCDC to remove properties separated by a corner from its definition of "Contiguous Property."

Sincerely,
Mark Haneberg
OSB# 05061