

1 660-041-0180

2 County Implementation of Measure 49 Authorizations

3 (1) The county with land use jurisdiction over the Measure 37 Claim Property must  
4 approve an application for a county permit that has been submitted in accordance with  
5 OAR 660-041-0090(8), based on current local standards, if the county finds that:

6 (a) the approval of the proposed lots, parcels or dwellings is not prohibited by one or  
7 more current local siting or development standard(s) that the county finds are reasonably  
8 necessary in order to avoid or abate a nuisance, to protect public health or safety, or to  
9 carry out federal law; and

10 (b) the owner has not received county permits for more than a total of 20 home site  
11 approvals statewide pursuant to Measure 49 Authorizations.

12 (2) If the Measure 37 Claim Property is zoned for farm, forest or mixed farm and forest  
13 use, the county must also determine and find:

14 (a) if the property is located on high-value farm or forest land, or on land within a ground  
15 water restricted area, as defined in these rules, each new lot or parcel does not exceed two  
16 acres; or

17 (b) if the property is not located on high-value farm or forest land, and is not on land  
18 within a groundwater restricted area, as defined in these rules, each new lot or parcel does  
19 not exceed five acres; and

20 (c) all new lots or parcels are located on the property in a manner that maximizes  
21 suitability of the remnant lot or parcel for farm or forest use.

22 (3) If the owner has received Measure 49 Authorizations for more than one Measure 37  
23 Claim Property, and proposes to cluster some or all of the authorized lots, parcels or  
24 dwellings on one of the Measure 37 Claim Properties by transferring the right to develop  
25 one or more authorized home sites from one or more other Measure 37 Claim Properties  
26 the county must determine:

27 (a) if all affected properties are farm, forest, or mixed farm and forest zoned, the property  
28 on which the lots, parcels or dwellings are proposed to be clustered is less suitable than  
29 the other property or properties for farm or forest use;

30 (b) if one or more of the affected properties is zoned for rural residential use, the  
31 clustered lots, parcels or dwellings are located on a property zoned for rural residential  
32 use;

33 (c) that no home site approvals are transferred from a Measure 37 Claim Property that  
34 contains multiple dwellings on a single lot or parcel;

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2 County Implementation of Measure 49 Authorizations

3 (1) Following the claimant's receipt of the Final Decision and order authorizing  
4 development of one or more home sites, the owner of the Measure 37 Claim Property  
5 may file an application with the county with land use jurisdiction over the Measure 37  
6 Claim Property for a permit to establish home sites authorized or to establish an  
7 authorized dwelling, and unless the property includes a vacant lot or parcel, a lot or  
8 parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws  
9 2010.

10 (2) The county with land use jurisdiction over the Measure 37 Claim Property must  
11 approve an application for a county permit ~~that has been submitted in accordance with~~  
12 OAR 660-041-0090(8), based on current local standards, if the county finds that:

13 (a) the approval of the proposed lots, parcels or dwellings is not prohibited by one or  
14 more current local siting or development standard(s) that the county finds are reasonably  
15 necessary in order to avoid or abate a nuisance, to protect public health or safety, or to  
16 carry out federal law; and

17 (b) the owner has not received county permits for more than a total of 20 home site  
18 approvals statewide pursuant to Measure 49 Authorizations.

19 (3) If the Measure 37 Claim Property is zoned for farm, forest or mixed farm and forest  
20 use, the county must also determine and find:

21 (a) if the property is located on high-value farm or forest land, or on land within a ground  
22 water restricted area, as defined in these rules, each new lot or parcel does not exceed two  
23 acres; or

24 (b) if the property is not located on high-value farm or forest land, and is not on land  
25 within a groundwater restricted area, as defined in these rules, each new lot or parcel does  
26 not exceed five acres; and

27 (c) all new lots or parcels are located on the property in a manner that maximizes  
28 suitability of the remnant lot or parcel for farm or forest use.

29 (4) If the owner has received Measure 49 Authorizations for more than one Measure 37  
30 Claim Property, and proposes to cluster some or all of the authorized lots, parcels or  
31 dwellings on one of the Measure 37 Claim Properties by transferring the right to develop  
32 one or more authorized home sites from one or more other Measure 37 Claim Properties  
33 the county must determine:

1 (3) For the Claimant to obtain relief under section 7, the appraisal must show that the  
2 enactment of one or more Land Use Regulations that are the basis of the Claim, other  
3 than land use regulations described in ORS 197.352(3) (2005), caused a reduction in the  
4 fair market value of the Measure 37 Claim Property that is equal to or greater than the  
5 fair market value of the home site approvals that may be established on the property  
6 under section 7(2) of Measure 49. The reduction in fair market value of the Measure 37  
7 Claim Property must be measured as set forth in section 7(6) of Measure 49.

8 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007  
9 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
10 424, OL 2007  
11 Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

12 **660-041-0170**

13 **Notice of County Applications and Decisions Under Measure 49**

14 (1) The county with land use jurisdiction over property for which a Measure 49  
15 Authorization has been issued must provide written notice to DLCD of any land use  
16 application that seeks approval of one or more home sites or of a dwelling, and lot or  
17 parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws  
18 2010 under the Measure 49 Authorization; and of all final written decisions on home site  
19 approvals or on a dwelling, and lot or parcel when applicable, for Claims described in  
20 section 5 or 6 of Chapter 8, Oregon Laws 2010 that are based on a Measure 49  
21 Authorization.

22 (2) Notice of **an land use** application for home site approval(s) or for a dwelling, and lot  
23 or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon  
24 Laws 2010 under a Measure 49 Authorization, required under section (1) of this rule,  
25 must be mailed to DLCD's Salem office at least ten (10) calendar days before any  
26 deadline for comment on the application ~~for a home site approval~~. If there is no  
27 opportunity for comment, then the notice must be sent ten (10) days before the decision  
28 becomes final. The notice must include:

29 (a) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763,  
30 227.175 or 215.416;

31 (b) The claim number of the Measure 49 Authorization issued by the State of Oregon;  
32 and

33 (c) The name of the present owner of the Measure 49 Claim Property.

34 Stat. Auth.: ORS 197.040 & 197.065  
35 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 &  
36 2007 OL Ch. 424  
37 Hist.: LCDD 1-2009, f. & cert. ef. 4-2-09

1 (d) that the number of lots, parcels or dwellings that may be established on the Measure  
2 37 Claim property to which additional home site approvals are transferred is reduced by  
3 the number of existing lots, parcels and dwellings on that Measure 37 Claim Property and  
4 on contiguous property in the same ownership in accordance with Section 6(2) of  
5 Measure 49; and

6 (e) that following completion of the development based on the Measure 49  
7 Authorizations, the net number of lots or parcels developed with dwellings on all the  
8 affected Measure 37 Claim Properties and contiguous properties in the same ownership  
9 will not exceed the number of home site approvals authorized for all affected properties.

10 (5) Prior to the final approval of clustered lots or parcels as provided in OAR 660-041-  
11 0180(3), the owner shall provide evidence that a Declaration of Use Restriction has been  
12 recorded with the county clerk of every county where a Measure 37 Claim Property from  
13 which home site approvals have been transferred is located.

14 (a) As depicted in Examples A and B, the Declaration of Use Restriction shall:

15 (A) identify the Measure 37 Claim Property on which the lots, parcels or dwellings are  
16 approved to be clustered;

17 (B) identify all the Measure 37 Claim Properties from which home site approvals are  
18 transferred; preclude on each Measure 37 Claim Property from which one or more home  
19 site approvals are transferred all future rights to establish new lots, parcels or dwellings  
20 other than any lot, parcel or dwelling established pursuant to a home site approval the  
21 owner did not transfer from the property; and

22 (C) state that the Declaration of Use Restrictions is irrevocable, unless a statement of  
23 release is signed by an authorized representative of the county or counties where the  
24 affected property is located, which verifies that no lot, parcel or dwelling has been  
25 established pursuant to any home site approval that was approved for transfer and the  
26 approval of the transfer and clustering has been revoked or expired.

27 (b) The county planning director or assignee shall maintain a copy of the Declaration of  
28 Use Restrictions and a map or other record depicting the Measure 37 Claim Property  
29 subject to the Declaration of Use Restrictions, filed in the county deed records. The map  
30 or other record required by this subsection shall be available to the public in the county  
31 planning office.

## Example A- Full Transfer

### Declaration of Property Use Restriction

The undersigned \_\_\_\_\_ (Declarant) is the owner of the Measure 37 claim property described in Exhibits A (Final Order and Authorization in claim Exxxxxx) and B (Final Order and Authorization in claim Exxxxxx); and

The Declarant obtained authorizations under Measure 49, which authorized [X] lots or parcels developed with dwellings on the claim property described in Exhibit A, and [Y] lots or parcels developed with dwellings on the claim property described in Exhibit B; and

The Declarant proposes to cluster on the property described in Exhibit A, all of the [X+Y] lots or parcels developed with dwellings described in Exhibits A and B, in accordance with ORS 195.305 Section 11(4).

Because the lots or parcels developed with dwellings described in Exhibit B have been transferred to the property described in Exhibit A, recording this document establishes a restriction on the property described in Exhibit B prohibiting the establishment of any additional lots, parcels or dwellings on that property.

This restriction cannot be removed unless a statement of release is signed by an authorized representative of the county or counties where the property described in Exhibit A is located, which verifies that lots, parcels or dwellings authorized to be clustered have not been established and the approval of the clustering has been revoked or expired; or until a change in zoning or other land use regulations renders the restrictions imposed by current zoning moot; the legislature provides by statute that this restriction can be removed; and or the authorizations granted through Exxxxxx and Exxxxxx are otherwise determined to be no longer applicable.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[signature and notary]

## Example B – Partial Transfer

### Declaration of Property Use Restriction

The undersigned \_\_\_\_\_ (Declarant) is the owner of the Measure 37 claim property described in Exhibits A (Final Order and Authorization in claim Exxxxxx) and B (Final Order and Authorization in claim Exxxxxx); and

The Declarant obtained authorizations under Measure 49, which authorized [X] lots or parcels developed with dwellings on the claim property described in Exhibit A, and [Y] lots or parcels developed with dwellings on the claim property described in Exhibit B; and

The Declarant proposes to cluster on the property described in Exhibit A, [X + M] of the [X+Y] lots or parcels developed with dwellings described in Exhibits A and B, in accordance with ORS 195.305 Section 11(4).

Because [M] of the [Y] lots or parcels developed with dwellings described in Exhibit B have been transferred to the property described in Exhibit A, [Y-M] lots or parcels developed with dwellings are authorized on the property described in Exhibit B. Recording this document, therefore, establishes a restriction on the property described in Exhibit B prohibiting the establishment of any lots, parcels or dwellings that would result in more than [Y-M] lots or parcels developed with dwellings on that property.

This restriction cannot be removed unless a statement of release is signed by an authorized representative of the county or counties where the property described in Exhibit A is located, which verifies that lots, parcels or dwellings authorized to be clustered have not been established and the approval of the clustering has been revoked or expired; or until a change in zoning or other land use regulations renders the restrictions imposed by current zoning moot; the legislature provides by statute that this restriction can be removed; and or the authorizations granted through Exxxxxx and Exxxxxx are otherwise determined to be no longer applicable.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[signature and notary]

-----Original Message-----

From: Gustafson Virginia L [mailto:virginia.l.gustafson@state.or.us]  
Sent: Thursday, July 22, 2010 5:23 PM  
To: MOORE Judith  
Subject: RE: Covenants and Un-Recording them

yes

-----Original Message-----

From: Moore, Judith [mailto:moorej@dlcd.state.or.us] On Behalf Of Moore, Judith  
Sent: Thursday, July 22, 2010 5:13 PM  
To: GUSTAFSON Virginia L  
Cc: MAY Kristin E  
Subject: FW: Covenants and Un-Recording them

Ginny:

Should I provide Polk County Planning Director's comments since he does not mind the covenant?

-Judith

-----Original Message-----

From: AUSTIN MCGUIGAN [mailto:MCGUIGAN.AUSTIN@co.polk.or.us]  
Sent: Thursday, July 22, 2010 5:00 PM  
To: Judith Moore  
Subject: Re: Covenants and Un-Recording them

Judith,

Glad to hear you have a new job. I have been meaning to call you but I have been crazy busy. I will try tomorrow. For the record, I do not mind the covenant, we utilize them regularly, it is the unfunded tracking that I disapprove of. And, I wish I did not comment because I was smart. But I didn't because I have been too busy to focus on M49. I do understand that it will come back and bite me later and I appreciate the heads up skillfully provided. You rock.  
Austin

>>> "Moore, Judith" <judith.moore@state.or.us> 7/22/2010 4:40 PM >>>  
Dave,

As I understand it, there's process to 'un-record' covenants although rare in occurrence.  
I appreciate the conversation - you confirmed what I thought.

Thanks again, Dave.

Judith Moore | Division Manager  
Measure 49 Development Services Division  
Oregon Department of Land Conservation and Development  
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