

MEASURE 49 RULEMAKING ADVISORY COMMITTEE MEETING PACKET #1



TO: Measure 49 Rulemaking Advisory Committee Members
FROM: Sarah Marvin, Senior Planner & Measure 49 Specialist
SUBJECT: RAC Meeting Packet #1

Measure 49 Rulemaking Committee Members,

The Department of Land Conservation and Development (DLCD) thanks you for being willing and able to participate in a Rulemaking Advisory Committee (RAC) to advise staff in the establishment of a fee to cover the costs of reviewing new measure 49 claims.

Included in this packet are materials that will further describe the contextual background, purpose, operating principles, and timeline that will determine how the RAC will operate for the duration of the rulemaking process. Please review these documents prior to the first RAC meeting from **10am-12pm on September 2, 2020**.

RAC Meeting Packet #1 Materials List :		
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* We encourage you to carefully review the RAC Operating Principles document in order to better understand your role as either a primary or alternate member of this rulemaking body.

If you have any questions on the materials in this packet or about the legislation itself, please feel free to contact me via phone or email, my information is listed below. We are grateful for your participation in this important initiative and look forward to working with you!

Thank you,



Sarah Marvin, PhD

Pronouns: she/her

Senior Planner

Oregon Department of Land Conservation and Development

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Additional DLCD Staff Contacts for the Rulemaking Process:

Emma Land, Legislative Coordinator and Point of Contact for All RAC Logistics

Emma.Land@state.or.us

503-934-0627

Casaria Taylor, Rules, Records, and Policy Coordinator

Casaria.taylor@state.or.us

503-934-0065

Please note: email correspondence should be sent directly to Emma.Land@state.or.us who will then distribute to staff or advisory committee members as needed.

MEASURE 49 RULEMAKING ADVISORY COMMITTEE MEETING #1 PROPOSED AGENDA



10:00 am – 12:00 pm, September 2, 2020

Zoom

-
1. Introductions
 2. Operating principles: role of the committee and decision-making process, open meetings law
 3. Proposed Rulemaking Schedule
 4. Explanation of the need for a fee to cover the costs of reviewing Measure 49 claims (see Staff Report to LCDC Initiating Rulemaking)
 5. Discussion of costs to review Measure 49 claims (see Measure 49 New Claims Process Diagram and Estimated Cost of Reviewing New Measure 49 Claims)
 6. Discussion of the proposed rule revisions to establish the appropriate base fee and annual inflation adjustment (see Proposed Revisions to OAR 660-041-0520)
 7. Public comment
 8. Conclusion and next steps

MEASURE 49 RULEMAKING ADVISORY COMMITTEE OPERATING PRINCIPLES & GUIDELINES



For the advisory process to operate smoothly, it is helpful to agree at the outset on the purpose of the effort and the procedures the group will use to govern its work.

I. PURPOSE OF THE RULEMAKING ADVISORY COMMITTEE

At DLCD's request, the Land Conservation and Development Commission (LCDC) authorize rulemaking to set a review fee for state Measure 49 claims at its July 2020 meeting.

State and LCDC policy requires that the public be involved in the drafting of rules. State law (ORS 183) encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule, and authorizes agencies to appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

LCDC has established this Rulemaking Advisory Committee (RAC) to assist DLCD in drafting proposed rules for consideration by LCDC to achieve the objectives described above. By law, if an agency appoints an advisory committee for consideration of a rule, the agency must seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses.

II. ORGANIZATIONAL STRUCTURE

Membership. The members of the RAC were chosen because of the variety of their interests, land use expertise, and willingness to work together in a collaborative process. While most members of this RAC represent or have represented particular interests, organizations or local governments, in order to foster creative problem-solving, members are encouraged to voice their individual viewpoints and ideas.

DLCD. The RAC will have assistance from DLCD staff who will attend all meetings. While DLCD staff may sit at the table and participate in the RAC meetings, they are not

RAC members. Legal questions that need to be addressed will go through LCDC's legal counsel.

Other Agency Staff. Staff members of named state agencies are appointed to the RAC to represent the interests and responsibilities of those agencies.

Subcommittees. As necessary, DLCD or the RAC may choose to form subgroups of the committee as needed for certain anticipated tasks. Subcommittee members may develop draft products and make recommendations to the RAC. Subcommittees will not make recommendations on behalf of the committee. Any RAC member can be a member of a subcommittee. DLCD may also invite others to participate in subcommittee meetings when particular topics require expertise that is not available on the current committee.

III. MEETINGS

Attendance at Meetings. Members will make a good-faith effort to attend all meetings. The group will meet approximately twice during the month of September. Because of the collaborative nature of the meetings, it is important to have the members attend every meeting so that progress can be continued with the same group.

Alternates. Members may not appoint an individual to represent them or their interests (an alternate) as a member of the RAC in the RAC meetings. However, if members are unable to attend a meeting, they are encouraged to arrange for the attendance of their named alternate to participate in the meeting and, if requested, to provide comments to the RAC at such time as public comment is requested by the facilitator. Members may also provide comment to DLCD prior to meetings; such comments will be circulated at or before the meeting (depending on when received).

Public Meetings. Committee meetings are public meetings under Oregon's open meeting laws. Members of the public who wish to make their opinions known to the committee will be encouraged to submit written comments on the work of the committee, which will then be distributed to all members for consideration. The committee facilitator may also provide time for oral public comment at the end of committee meetings.

Agendas. Proposed meeting agendas will be drafted by DLCD and circulated in advance of meetings, and agreed to or revised at the beginning of each meeting.

Minutes. Audio recordings of the meetings will be made, which will serve as the official minutes of the meetings. Summary notes will be prepared by DLCD staff for the convenience of members. Any errors in the notes should be reported to DLCD staff.

IV. MEMBER EXPECTATIONS

Collaboration. Members will work together to achieve a mutually acceptable outcome that satisfies, to the greatest degree possible, the scope set by LCDC. All RAC members agree to:

1. Bring up concerns for discussion at the earliest point in the process;
2. Share all relevant information that will assist the group in achieving its goals;
3. Keep their organizations informed of potential decisions and actions;
4. Support the eventual product if they have concurred in it; and
5. Concur in decisions about the committee process, including overseeing the implementation of the operating principles.

Withdrawal from the committee: Any member may withdraw from the committee at any time. Communication about the reasons for withdrawing, if related to the process, would be appreciated. Good faith provisions (see below) apply to those who withdraw.

Good Faith. All members agree to act in good faith in all aspects of the collaborative effort. As such, members will consider the input and viewpoint of other participants and conduct themselves in a manner that promotes joint problem solving and collaboration. Acting in good faith also requires that:

1. Specific proposals made in open and frank problem-solving conversations not be used against any other member in the future
2. Personal attacks and prejudiced statements are not acceptable
3. Individuals not represent their personal or organization's views as views of the RAC
4. Individuals express consistent views and opinions in RAC meetings and in other forums, including contacts with the press, and
5. Individuals with process concerns will raise them with DLCD or the RAC and not via the press or other public forums.

Rights in Other Forums. Participation in the committee process does not limit the rights of any member. Members will make a good faith effort to notify one another in advance of actions outside this committee which could affect the proposals, recommendations, or agreements being discussed.

Press and Public Forums. All committee members agree to refrain from making negative comments about or characterizing the views of other committee members in contacts with the press. They also agree not to knowingly mischaracterize the positions and views of any other member, or their own, in public forums.

V. PROCESS SUGGESTIONS

Committee members agree to apply the following ground rules:

- Focus on the task at hand and stick to the agenda
- One person speaking at a time – Turn your name tent when you wish to speak
- Allow for a balance of speaking time and respect time limits
- Be tough on issues and questions, not on people and organizations
- Listen with respect, seeking to understand each other's perspectives
- As appropriate, discuss topics together rather than in isolation
- Seek to resolve differences and reach consensus
- Keep side conversations to a minimum
- Turn off or silence cell phones during meetings

VI. SCHEDULE

In developing its recommendations, the RAC will meet twice during the month of September 2020.

MEASURE 49 RULEMAKING ADVISORY COMMITTEE MEMBER LIST



Alissa Hansen, City of Eugene

Katherine Banz, Powell Banz Valuation, LLC

Sid Friedman, Friends of Yamhill County

Mike Eliason, Oregon Forest & Industries Council

Jim Johnson, Oregon Department of Agriculture

Lauri Segal-Vaccher, Landwatch Lane County

Dave Hunnicutt, Oregon Property Owners Association

Ralph Bloemers, Crag Law Center



MEASURE 49 RULEMAKING ADVISORY COMMITTEE STAFF REPORT TO LCDC INITIATING RULEMAKING

July 9, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
 Matthew Crall, Planning Services Division Manager
 Sarah Marvin, Measure 49 Specialist
 Hilary Foote, Farm/Forest Specialist

SUBJECT: **Agenda Item 13, July 23-24, 2020, LCDC Meeting**

RULEMAKING INITIATION FOR MEASURE 49 CLAIM REVIEW FEE

I. AGENDA ITEM SUMMARY

Purpose. This agenda item explains the need for the Land Conservation and Development Commission (LCDC or commission) to initiate rulemaking to establish a fee for the Department of Land Conservation and Development (DLCD or department) to review claims for just compensation under Oregon Revised Statutes 195.300 through 195.336, commonly known as Measure 49 claims. When a landowner files a claim that is based on a new land use regulation enacted or administered by the department, the department must review the claim. State statute permits the department to establish a fee to cover the costs of reviewing claims. The fee must be established through minor amendments to Oregon Administrative Rule (OAR) 660-041-0520.

Amendments to the “forest template dwelling” provisions in ORS 215 enacted by the legislature in 2019 and effective January 1, 2020 may prompt landowners to file claims with the department causing direct and indirect costs. This agenda item outlines the schedule and plans for rulemaking.

Objective. Initiate rulemaking to establish a claim review fee, provide guidance on interests to serve on the Rulemaking Advisory Committee (RAC), review and comment on the draft RAC, and appoint a commission liaison to the RAC if desired.

For further information about this report, please contact Matt Crall, Planning Services Division Manager, at 503-934-0050 or matthew.crall@state.or.us; or Sarah Marvin, Measure 49 Specialist, at (503) 934-0001 or sarah.marvin@state.or.us.

II. **BACKGROUND**

A. **INTRODUCTION TO BALLOT MEASURE 49**

Oregon voters passed Ballot Measure 37 (2004), which was later modified by the Oregon legislature and approved by the voters in 2007 as Ballot Measure 49. This measure provides that if a public entity enacts a land use regulation that restricts a residential use, or a farm or forest practice, and reduces the fair market value of a property, then the landowner may qualify for compensation.

Ballot Measure 49 provided that “new” claims are those filed for land use regulations enacted after January 1, 2007. A landowner may file a new claim within five years of the date the land use regulation was enacted. The claim is valid only if the new regulation restricts a residential use or a farm or forest practice for which the claimant could have been approved prior to the regulation. The claim must also include appraisals showing that the regulation reduced the fair market value of the property. If the claim is valid, the public entity that enacted or is responsible for administering the land use regulation must compensate or authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the loss in fair market value.

B. **DLCD RESPONSIBILITY**

When a landowner files a claim that is based on an administrative rule adopted by the commission or a state statute administered by the department, the department must review the claim. The department must follow the procedures described in ORS 195.310 through 195.314 and OAR 660-041-0500 through 0530. DLCD staff shall:

- 1) Determine if the claim submittal is complete within 60 days of filing;
- 2) Seek legal advice and review from the Department of Justice to determine if the legal claims are valid;
- 3) Retain an appraiser to review the two appraisals required to show the difference in fair market value before and after enactment;
- 4) Send required notices 30 days prior to the decision;
- 5) Determine if the claim is valid;
- 6) Determine the appropriate relief;
- 7) Write legally sufficient findings;
- 8) Mail decisions within 180 days of the claim’s filing date.

ORS 195.312(4) enables the department to "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." The department has not established a fee for new claims.

C. ENACTMENT OF HOUSE BILL 2225 AND POTENTIAL FOR CLAIMS

In response to controversy and litigation, the Oregon legislature enacted House Bill (HB) 2225 in 2019. This bill amended the requirements for allowing “forest template” dwellings under ORS 215.750. Conforming rules became effective on March 3, 2020.

HB 2225 changes certain requirements for “template dwelling” reviews. Template dwellings are permitted in forest zones within areas that already had a certain number of existing dwellings and parcels on January 1, 1993. HB 2225 changes the following requirements in ORS 215.750 as follows:

- ORS 215.750 previously required the 160 acre template to be centered on the tract but did not provide a method for determining the center. HB 2225 specifies that the template must be centered on the “mathematical centroid of the tract.”
- HB 2225 prohibits using property line adjustments to relocate parcels from areas where they would not qualify for a template dwelling to areas where they would qualify.
- ORS 215.750 previously did not allow template dwelling approval on a tract that has an existing dwelling. “Tract” means one or more contiguous lots or parcels under the same ownership. The HB 2225 amendments do not allow template dwelling approval if a parcel was part of a tract on January 1, 2019, and another parcel that was part of the tract on that date has a dwelling.

These new provisions are phased in for counties between 2020 and 2023 to reduce the Ballot Measure 56 noticing costs to the State of Oregon. Implementation is delayed in counties with fewer forest template dwelling applications in recent years.

Some of the provisions of HB 2225 and the conforming rules could have the potential to result in claims for loss of property value. Because the department is responsible for administering these provisions, it would have to review and determine the validity of the claims.

The review will include consulting with lawyers at the Oregon Department of Justice, and a paying a licensed appraiser to review appraisals submitted with the claim. As occurred when Measure 37 was in effect, the department could receive numerous claims, both valid and invalid. A fee would help prevent filing of more frivolous claims. With a fee to support thorough analysis and review, DLCD will be able to conduct a careful professional review and authorize development only on valid claims.

D. RULEMAKING PROCESS TO ESTABLISH CLAIM REVIEW FEE

Staff propose to form a rulemaking advisory committee (RAC) to provide advice on setting the review fee. A preliminary list of interest groups is included in Attachment A. Staff would like commission feedback on this preliminary list.

Staff have drafted a preliminary rulemaking schedule included in Attachment B. The timeline is short due to the potential for claims being filed beginning January, 2021. The schedule includes two RAC meetings. The department anticipates this will be sufficient to discuss the details of a fee and the proposed amended rule. The department will report progress to the commission at the September meeting and propose adoption of the amendments at the November 2020 commission meeting.

RAC Membership and Charge

Staff recommends the RAC include people who represent stakeholders potentially affected by Measure 49 and jurisdictions who have recent experience reviewing claims. Members of the committee shall provide guidance to agency staff to determine an appropriate fee to cover the reasonable and actual cost of reviewing claims and to develop the rule amendments.

Draft Charge: a Rulemaking Advisory Committee will be established to advise agency staff on the setting of a fee for claims under ORS 195.300 through 195.336, commonly known as Measure 49 claims, and to provide comments on a Fiscal Impact Statement for the proposed rules.

A preliminary draft rule is included in Attachment C.

Adoption

The department's target for commission consideration and potential adoption is in November of 2020.

III. **RECOMMENDED ACTION/CONCLUSION**

The department recommends that the commission initiate rulemaking and direct the department to prepare amended rules to establish a claim review fee.

Staff recommends the commission delegate to the director the appointment of a RAC to assist the department in developing well-informed recommendations. While ideal, consensus among RAC members will not be required. The committee is advisory to staff.

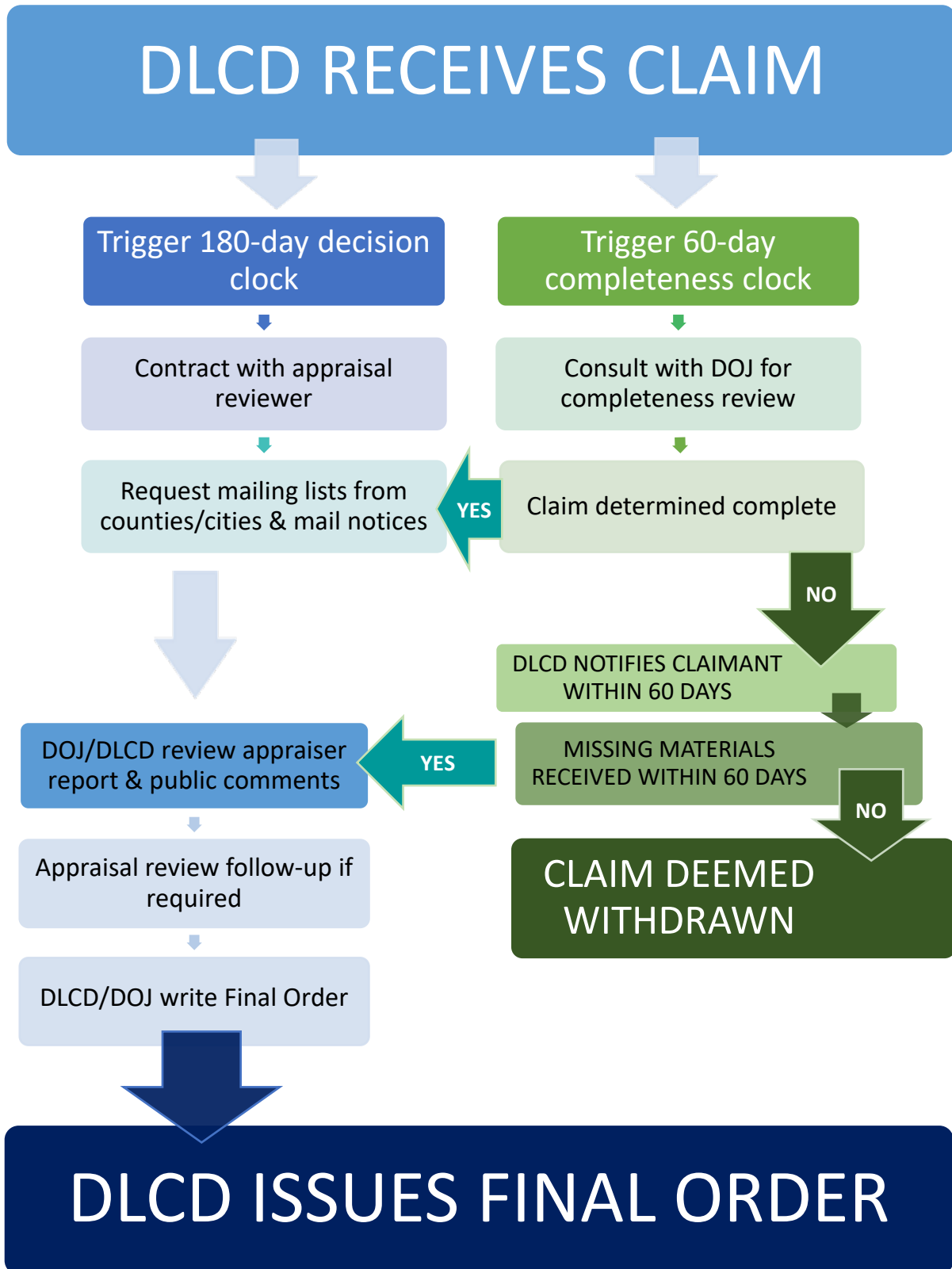
Recommended motion: I move the commission initiate rulemaking and authorize the director to appoint a rulemaking advisory committee consistent with the recommendations in the staff report.

Optional motion: I move the commission delay initiation of the proposed rulemaking project to [insert duration of delay and the reason].

IV. **ATTACHMENTS**

- A. **LIST OF RECOMMENDED INTERESTS FOR RULEMAKING ADVISORY COMMITTEE**
- B. **RULEMAKING SCHEDULE**
- C. **DRAFT PROPOSED AMENDMENTS TO OAR 660-041-0520**

MEASURE 49 NEW CLAIMS PROCESS DIAGRAM



MEASURE 49 RULEMAKING ADVISORY COMMITTEE

ESTIMATED COST OF REVIEWING NEW MEASURE 49 CLAIMS



RANGE OF COST PER CLAIM REVIEW

ESTIMATED COST	HIGH	AVERAGE	LOW
	\$20,000	\$12,500	\$5,000
FACTORS THAT INFLUENCE RANGE IN COSTS	<ul style="list-style-type: none"> • Complex legal issues • Multiple land use regulations • Multiple properties & owners • Complex or errors in appraisal • Legal follow-up required • Appraisal follow-up required • Complex compensation 		<ul style="list-style-type: none"> • No legal issues • Simple land use regulation clearly does or does not qualify • Simple property configuration/ownership clearly does or does not qualify • Simple appraisal • No follow-up required • Clear compensation or denial

DATA SOURCES TO ESTIMATE COSTS PER CLAIM

- **DLCD staff costs:** Estimated average Section 7 “Conditional Path” Measure 49 claims processed 2009-2010 adjusted for inflation. Based on documented average cost per Section 6 “express path” claim and ratio of Section 6 to Section 7 DOJ costs.
- **DLCD materials costs:** Actual average of Measure 49 claims processed 2009-2010 adjusted for inflation.

- **DEPARTMENT OF JUSTICE costs:** Actual average of Section 7 “Conditional Path” Measure 49 claims processed 2009-2010 adjusted for inflation. Does not include litigation.
- **Appraisal review costs:**
 - Actual average Section 7 “Conditional Path” Measure 49 claims processed 2010 adjusted for inflation
 - Appraisal review quotes for new Measure 49 claims 2018-2020
- **Lowest Possible Claim** estimate is not based on a real claim, but on the sum of each of the lowest known or estimated cost in each category.

MEASURE 49 RULEMAKING ADVISORY COMMITTEE PROPOSED REVISIONS TO OAR 660-041-0520



New Claim Rules

(Ballot Measure 49)

Statutory/Other Authority: ORS 197.040 & 2010 OL Ch. 8

Statutes/Other Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353. 2007 OL Ch. 855 & 2010 OL Ch. 8

History:

LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0500

Purpose and Applicability

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement ORS 195.300 to 195.336 (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.

Statutory/Other Authority: ORS 195.300 - 195.336, 197.040 & 197.065

Statutes/Other Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353

History:

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0510

Definitions

The following definitions apply to OAR 660-041-0500 to 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 ORS 195.300(14)(a)–(b) and 195.300(14)(g).
- (5) "Farming Practice" has the meaning provided by ORS 195.300(5).
- (6) "File" or "Filed" has the meaning provided by ORS 195.300(7). 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 ORS 195.300(8).

(8) "Land Use Regulation" has the meaning provided by ORS 195.300(14). 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) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after December 5, 2007; and

(b) A claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007 if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007.

(11) "Owner" has the meaning provided by ORS 195.300(16).

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

(13) "Property" has the meaning provided by ORS 195.300(17).

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

Statutory/Other Authority: ORS 197.040, 197.065 & 2007 OL Ch. 424

Statutes/Other Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424

History:

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

LCDD 2-2007(Temp), f. & cert. ef.

[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 and the fee.

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

Measure 49 Claims

635 Capitol St. NE, Suite 150

Salem 97301-2540

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, and if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007, the Measure 37 Claim is deemed Filed on December 6, 2007 for purposes of ORS 195.312.

(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 ORS 195.328;

(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 ORS 195.310.

(5) For calendar year 2021, a Claimant shall submit a fee of [\$10,000-14,000] to cover DLCD's actual and reasonable cost of reviewing the Measure 49 Claim.

(6) (a) The fee specified in section (5) of this rule shall be adjusted by DLCD annually for inflation, as provided in paragraph (b) of this section.

ALTERNATIVE 1: Oregon Minimum Wage statute

(b) No later than December 31 of each year, DLCD shall calculate an adjustment of the fee amount specified in section (5) of this rule based upon the increase (if any) from December of the preceding year to December of the year in which the calculation is made in the U.S. City Average Consumer Price Index

for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

(c) The new fee will become effective on January 1 of the following year

ALTERNATIVE 2: Oregon Department of Water Resources hydroelectric Rule OAR 690-051-0400(7)

(b) The fee shall be adjusted using the “GDP-IPD”, Gross Domestic Product - Implicit Price Deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business (See Table 1.1.9 line 1.) for September of each year. If this index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted. If the base year for GDP-IPD is changed or if publication of the index is discontinued, DLCD shall make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.

(c) The new fee will become effective on January 1 of the following year.

ALTERNATIVE 3: Oregon Department of State Lands Rule OAR 141-085-0545(9)

(b) By December 1 of each year DLCD will consult the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor to determine the appropriate annual fee adjustment. If the index shows an increase, DLCD will then revise the fee in accordance with the CPI and post the fee on DLCD’s website.

(c) The new fee will become effective on January 1 of the following year.

(7) (5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of ORS 195.310 to 195.312. If the Measure 49 Claim is incomplete, within sixty (60) days of receiving the Claim, DLCD will notify the person who filed the Claim of the information or fee that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives the fee required by section (5)-(6) 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.

(8) (6) If a Claimant submits a request in writing for additional time to provide missing information or the fee, 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 ORS 195.312 and 195.314, until the date specified in the agreement.

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

(10) (8) If the Claimant does not respond in writing to the written notification from DLCD under section (7) (5) of this rule within sixty (60) days of the date the written notification was sent, the Claim is deemed withdrawn.

(11) (9) DLCD will provide notice of a Measure 49 Claim as provided by ORS 195.314. 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.

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

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 ORS 195.300 to 195.336 and if so what form of relief to grant under ORS 195.310(5) with respect to those regulations.

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

Statutory/Other Authority: ORS 195.300 - 195.336, 197.040 & 197.065

Statutes/Other Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353

History:

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08