



Department of Land
Conservation and Development
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Salem, Oregon 97301-2540
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Measure 49 Claim Instruction Packet

MEASURE 49

Measure 49 provides that if a public entity enacts one or more land use regulations that restrict the residential use of private real property, or a farming or forest practice, and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations.

A person may file a Measure 49 claim for just compensation if: (1) the person is an owner of the property, and all other owners consent to the filing of the claim; (2) the person's desired use of the property is a residential use or a farming or forest practice; (3) the person's desired use is restricted by one or more land use regulations enacted after January 1, 2007; and (4) the land use regulation (other than an exempt regulation under ORS 195.305(3)) has reduced the fair market value of the property. Oregon Revised Statutes (ORS) 195.310.

The claim must be filed within five years of the date of enactment of the land use regulation that is the basis for the claim. The claim must be filed with the public entity (Metro, city, county or the Department of Land Conservation and Development (DLCD)) that enacted the land use regulation.

The claim must be filed with DLCD in the manner set forth in this Measure 49 Claim Packet.

CLAIM PROCEDURE

Completing and Submitting a DLCD Measure 49 Claim Form

Follow the directions for each section of the Claim Form as outlined below. If you need additional space, you may attach additional sheets. On each attached sheet, please identify the section of the claim form to which it relates.

Mail or deliver your completed claim, with all required attachments, to:

New Measure 49 Claims
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2450

Claims may not be submitted by facsimile or electronically.

Claim Review Process

Claims are deemed filed on the date received by DLCD. Once a claim is received, DLCD will review the claim to ensure that it is complete. All portions of the Claim Form must be completed, and all documents and information identified in this Measure 49 Claim Packet must be submitted with the claim.

If the claim is incomplete, the claimant will be notified in writing. The claimant will have 60 days from the date of notice that the claim is incomplete to provide the missing information.

The claim is deemed complete on the date DLCD receives the missing information, part of the missing information and a written statement from claimant that the remainder of the missing information will be not be provided, or a written statement from the claimant that none of the missing information will be provided. Once the claim is deemed complete, DLCD will provide written notice of the claim to all owners of the property, all persons described in ORS 197.763(2) (neighboring property owners), and the local government in which the property is located. DLCD will accept public comment on the claim prior to issuing a final determination. The state is required to issue a final determination within 180 days of the date the claim is deemed complete.

SECTION I. NAME AND CONTACT INFORMATION OF THE CLAIMANT(S)

Who is an Owner?

A claimant must be an “owner” of the real property that is the subject of the claim. ORS 195.310(18) defines an owner as:

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

Each person or entity (such as a corporation or partnership) must be identified separately, even if ownership is jointly held (e.g., married couples must be identified individually). If an owner is an entity, the claim form must be executed by an individual who has the authority to act on behalf of the entity. If the property has been placed in trust, the claimant should be the trustee(s) of the trust.

Each owner must decide whether he, she or it wants to be a claimant. In deciding whether or not to be a claimant, owners should be aware that *only one claim* may be filed for the same property regarding the same regulation. Therefore, if an owner chooses not to be a claimant, that owner will not be able to file another claim for the same property regarding the same regulation.

SECTION II: NAME AND CONTACT INFORMATION OF ALL NON-CLAIMANT OWNERS

All owners of the property must be identified on the claim form. Use this section to identify all additional owners of the property that choose not to be a claimant.

In addition to providing the name and contact information of all non-claimant owners of the property, all non-claimant owners must execute a Non-Claimant Owner Consent Form. A Non-Claimant Owner Consent Form for each non-claimant owner must be submitted with the claim. Under Measure 49 all non-claimant owners of the property are required to consent to the filing of a claim, even if the owner does not wish to be a claimant or otherwise participate in the claim.

SECTION III: NAME AND CONTACT INFORMATION OF PRIMARY CONTACT OR AGENT

If the claim is submitted by two or more claimants that are not represented by an agent, designate one of the claimants as the primary contact. If the claim is submitted by an agent on behalf of the claimant(s), please identify the name and contact information of the agent. If the claim is submitted by an agent on behalf of the claimant(s), a written notarized statement or a Power of Attorney signed by all claimants authorizing the agent to act on behalf of each claimant must be attached.

SECTION IV: IDENTIFICATION OF PROPERTY AND ACQUISITION

ORS 195.300(20) defines “property” as “the private real property described in a claim and **contiguous** private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.311.”

In this Section of the claim form, identify the private real property that is the subject of the claim and all contiguous real property owned by the same owner(s). Contiguous real property is any real property that shares a common boundary (including across a road and common corner) with the real property that is the subject of the claim.

In addition to the information required in Section IV of the claim form, you must also submit with your claim a title report, a deed card, and an assessor’s map of the property, consistent with the following requirements:

Title Report:

The claim must include a title report prepared by a title insurer holding a certificate of authority issued by the Director of the Department of Consumer and Business Affairs. The title report must:

1. Identify all owners of fee title and all purchasers under a land sale contract, if any, as of the date of the report as shown in the deed records of the county where the property is located; and
2. Identify the date that each claimant acquired fee title or the date each claimant became a purchaser under a land sale contract, if any, as shown in the deed records of the county where the property is located; and
3. Include a chain of title from the date of the enactment of each land use regulation identified in the claim to the date of the title report, as shown in the deed records of the county where the property is located.

The title report must be accompanied by copies of all deeds, land sale contracts, and other recorded documents that establish the fee title of all owners or the owner as a purchaser under a land sale contract, that establish the date that each claimant acquired fee title or the date each claimant became a purchaser under a land sale contract, and that are referred to in the chain of title. If the claim involves more than one tax lot, the title report must identify and include the information required above as to each tax lot.

Deed Card or Plat Card:

The claim must include a copy of the deed card or plat card maintained by the county in which the property is located for each tax lot that is the subject of the claim. A deed card or plat card is a written or electronic record maintained by the county for each tax lot containing references to recorded transactions affecting ownership of the tax lot. You may obtain a copy of the deed card or plat card from the assessor of the county in which the property is located.

SECTION V: DESIRED USE

Describe succinctly the desired use for the property that has been restricted by the land use regulation or regulations on which the claim is based. The desired use must be a residential use, or a “farming practice” or “forest practice”. A “farming practice” is defined in ORS 30.930. A “forest practice” is defined in ORS 527.620.

SECTION VI: STATE LAND USE REGULATIONS RESTRICTING DESIRED USE

The Measure 49 Claim must be based on one or more new land use regulations enacted after January 1, 2007, that restrict the desired use of the property. Claims must be filed within 5-years of the date of enactment of the land use regulation.

Identify each state land use regulation that restricts the use of the property and the date each regulation was enacted. Describe how each regulation restricts the desired use of the property.

Attach additional sheets if you need more space.

ORS 195.300(14) defines "land use regulation" to mean:

- (a) A statute that establishes a minimum lot or parcel size;
- (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS Chapter 215 that restricts the residential use of private real property;
- (c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;
- (d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;
- (e) A provision, enacted or adopted on or after January 1, 2010, of:
 - (A) The Oregon Forest Practices Act;
 - (B) An administrative rule of the State Board of Forestry; or
 - (C) Any other law enacted, or rule adopted, solely for the purpose of regulating a forest practice;
- (f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;
- (g) An administrative rule or goal of the Land Conservation and Development Commission; or
- (h) A provision of a Metro functional plan that restricts the residential use of private real property.

SECTION VII. REDUCTION IN FAIR MARKET VALUE OF THE PROPERTY

In this Section, state the amount of reduction in fair market values of the property caused by the state land use regulations that restrict the desired use of the subject property.

ORS 195.310 provides, in part:

"[t]he 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."

ORS 195.332 provides, in part:

"[t]he 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."

The reduction in fair market value must be established by a written appraisal consistent with requirements of ORS 195.310, 195.326, and 195.332. The written appraisal must be submitted with the claim.

SECTION VIII. SIGNATURE

All claimants or the agent of the claimant(s) must execute the claim form.

APPLICATION REQUIREMENTS (CHECKLIST)

Before submitting your claim, please use this section to ensure that the claim includes the following:

- A completed Measure 49 Claim Form. The form must be completed in ink or completed and printed electronically.
- Owner Consent Forms completed by each non-claimant owner of the property.
- A report from a title company consistent with the requirements discussed in Section IV, above.
- County Deed Card as described in Section IV, above.
- An appraisal meeting the requirements of ORS 195.310, 195.326, AND 195.332.
- Copy of cited land use regulation corresponding to Section VI of the claim form.
- If an agent is submitting the claim, a notarized statement or Power of Attorney signed by all claimants authorizing the agent to act.