

# Measure 49

## Frequently Asked Questions

Please note: Any information provided by DLCD is not legal advice.  
Consult an attorney for legal advice.

### **What is Measure 49?**

In 2004 Oregon voters approved Ballot Measure 37, which allowed some property owners to file a claim for compensation if regulations reduced their property value. In 2007, Oregon voters approved Ballot Measure 49, which modified Ballot Measure 37 “to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.” Measure 49 created two types of claims, former Measure 37 claims and new Measure 49 claims.

### **What is a former Measure 37 claim? What did Measure 49 do with these claims?**

Former Measure 37 claims were claims filed against land use regulations in effect before January 1, 2007. Measure 37 allowed claims for almost any type of development that the claimant could have gotten approval for on the date they acquired their property. These Measure 37 claims resulted in “waivers” to allow large subdivisions and commercial and industrial development in farm and forest lands and rural neighborhoods.

Measure 49 revised Measure 37 claims, limiting the relief to a smaller number of residential home sites. Measure 49 retroactively voided Measure 37 “waivers.” Claimants needed to go through the Measure 49 process to get home site approvals. DLCD mailed Measure 49 “election” forms to all eligible Measure 37 claimants between 2008 and 2010. The opportunity to return these Measure 49 forms ended in 2010. DLCD issued final orders for all of these claims between 2008 and 2011. If you are looking for information on Measure 49 for former Measure 37 claims, see Part 1, below.

### **What is a new Measure 49 claim?**

New Measure 49 claims are for new regulations enacted within the past five years that limit residential uses of property or that restrict farming or forest practices. New Measure 49 claims are valid only if the owner demonstrates through an appraisal that the new regulations have reduced the value of property. If you are looking for information on new Measure 49 claims, see Part 2, below.

### **Can I file a Measure 49 claim?**

You may file a new Measure 49 claim for a new land use regulation if it has reduced the fair market value of your property. You have five years from the date the regulation was enacted to file a claim. A claim must be filed with the government or agency that enacted the regulation. You can find more information on filing new claims on the [Measure 49 website](#).

As explained above, the Measure 49 program to review former Measure 37 claims ended in 2011.

### **Where can I find the Measure 49 laws?**

Multiple laws, rules, and case law govern Measure 49 claims. The most relevant are the original [Measure 49](#) ballot measure, [codified at chapter 424 Oregon Laws 2007](#), [chapter 8 Oregon Laws 2010](#), [chapter 855 Oregon Laws 2009](#), the current Oregon Revised Statutes (ORS) [195.300-336](#), and the current Oregon Administrative Rules (OAR) [660-029](#) and [660-041](#).

## **Part 1: Measure 49 for Former Measure 37 Claims**

### **Can I get a copy of a final order?**

Yes, visit our [Claim Information page](#) for links and instructions on how to find a final order online.

### **How do I find out if a property has a Measure 49 approval?**

You may interactively search for Measure 49 properties with home site approvals for most counties on our Measure 49 Analyzer. Visit our [Claim Information page](#) for a link and instructions for additional ways of searching for properties.

### **Can I record my final order?**

Yes. The county recorder is authorized to record a copy or original final order with the property deeds.

## **DOES MY MEASURE 49 APPROVAL EXPIRE? WHAT HAPPENS IF I TRANSFER OWNERSHIP?**

### **Buyer and seller “due diligence”**

If you are selling or buying a property that has a Measure 49 approval, make sure the home site approval is valid. There are several issues that could make a Measure 49 approval invalid or unbuildable. Consult an attorney with Measure 49 experience. DLCD and the local planning/development agencies cannot give legal advice.

### **Does my Measure 49 approval expire?**

There is no time limit on when the claimant may carry out the development of the property. However, a subsequent owner has 10 years to establish the development. For Measure 49 purposes, "owner" means:

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

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

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

**May a claimant sell the property with the Measure 49 approval?**

Yes, the Measure 49 home site authorization runs with the property. Unlike Measure 37, Measure 49 makes the home site approvals transferable to subsequent owners. After receiving an approval, a claimant is free to pass the property to a subsequent owner who must complete the development within 10 years. **Note: see definition of "owner" above.**

**How many times can a property be transferred?**

There is no limit to the number of subsequent owners who can use the Measure 49 home site authorization. The 10-year time limit begins with the first owner subsequent to the claimant.

**What will happen if I transfer my property to a trust?**

A claimant may transfer the property into a revocable trust in which the claimant is the settlor without starting the 10-year development clock. Upon the claimant's death, the revocable trust becomes irrevocable, and the subsequent owner has ten years to establish the parcels and dwellings. Transfer to the claimant's spouse does not trigger the ten year development clock.

**What happens if the claimant dies?**

If a claimant died before December 6, 2007, the subsequent owner does not receive the right to prosecute the claim.

If the claimant died on or after December 6, 2007, and before the final order is issued, the right to prosecute the claim and use home site approvals is unaffected by the death. The claim is processed with the claimant's facts, such as acquisition date, and the final order is issued to the claimant. The subsequent owner has 10 years from the date the final order was issued to establish the parcels and dwellings.

If the claimant dies after the final order is issued, the subsequent owner has 10 years from the date of death to establish the parcels and dwellings. Note: see definition of "owner" above.

**What is the status of a Measure 49 home site?**

New home sites approved under Measure 49 are treated as permitted uses even if they would not otherwise be allowed under the zoning for the property. This is different from developments completed under Measure 37, such as under a vested right.

**I don't want to develop my property. Can I sell or transfer my Measure 49 development rights?**

Possibly. Someone who owns two or more approved Measure 49 claim properties may "cluster" all or some of the home sites onto one of the properties if they meet the criteria. See [OAR 660-041-0180\(3\)](#) for details and ask your county planning department how to apply.

Also you may be able to transfer development credits to another property if your county adopts a Measure 49 Transfer of Development Credits (TDC) system. See the [Transfer of Development Credits Program webpage](#) for more information. There is also a separate Transfer of Development Rights (TDR) Pilot Program that your county may participate in. See the [Transfer Development Rights web page](#) for more information.

## WHAT DID I GET? WHAT IF I DISAGREE?

### **The final order is hard to understand. How do I figure out what I can do on my property?**

Review Section IV. HOME SITE AUTHORIZATION in your final order. This is near the end of the document, typically starting around page 5 or 6. This section tells you how many “home site approvals” the property qualified for and what that means in terms of new parcels and dwellings you may add to the claim property.

### **The final order says I can only have one more parcel and one more dwelling, but I qualify for three home sites. What gives?**

There are two “approvals” in the final order. The first is the number of “home site approvals” a claimant qualifies for. This is the total number of home sites existing on the property and contiguous property plus the number of new home sites that can be added. The second approval, or authorization, is the number of new parcels and dwellings that can be added to the property.

- “Home site approvals” = existing home sites + contiguous property under same ownership + new parcels and dwellings
- “Authorized new parcels and dwellings” = “home site approvals” – existing parcels and dwellings and contiguous property under same ownership

For example, if a claimant qualifies for three home sites on a claim property that already has one parcel and one dwelling and the claimant owns an adjacent parcel with a dwelling, then the claim property can get one more parcel and one more dwelling.

### **I heard that contiguous property must be counted against my approved home sites. What does this mean?**

In a Measure 49 final order Section III. CONCLUSION states whether the final order considered contiguous property in calculating the number of new parcels and dwellings that can be added to a claim property.

Contiguous property is any real property that shares a common boundary with the Measure 37 claim property and was under the same ownership as the claim property when the claim was filed. The number of home sites a claimant may establish is reduced by the number of existing lots, parcels and dwellings contained within the entire property, which includes both the Measure 37 claim property and any contiguous property in the same ownership. (OAR 660-041-0120)

### **Can a county approve more home sites than the number stated in Section IV. HOME SITE AUTHORIZATION?**

No. A county may not approve any more home sites than the number stated in Section IV. HOME SITE AUTHORIZATION. Your final order stipulates the maximum number of home sites you get, including any existing home sites on the claim property. See above for the distinction between “home site approvals” and “additional parcels and dwellings.”

If a county approves a parcel or a dwelling on the claim property, that parcel or dwelling must be subtracted from the number of approvals in the final order.

**What if I disagree with the number of new parcels or new dwellings I should get?**

The county MAY adjust the number of new dwellings and parcels that may be added to the claim property up to the number of “home site approvals” in the final order. For example, a final order may say that the claimant qualifies for two “home site approvals” and that the property currently consists of two parcels. In this case the claimant was authorized for no additional parcels and up to two dwellings. However, DLCD often did not know the number of existing legal parcels and dwellings and had to go by the number of tax lots. It is possible that the property consists of two tax lots, but the two tax lots make up one legal parcel. In this case, the county may increase the number of new parcels approved to one to create the two home sites.

Section IV. HOME SITE AUTHORIZATION includes a term of approval that the county can use to make these adjustments:

The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in [Section 6\(2\)\(b\) and 6\(3\) of Measure 49](#). Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.

Note that this term also requires the county to *reduce* the number of new parcels or dwellings authorized if the numbers of existing parcels or dwellings in the final order are wrong.

**What if I disagree with the number of “home site approvals” in the final order?**

The time period for challenging the conclusions of Measure 49 final orders has passed. Every claimant had the right to appeal the number of home site approvals in the final order for a period of 60 days after it was issued.

**I think I qualify for the “bonus” dwelling. How do I get it?**

“Bonus” dwellings were only awarded by DLCD if a claimant already had three or more complete home sites on their claim property before Measure 37 was enacted. A home site consists of one parcel with one dwelling. “Bonus” dwellings were only issued by DLCD and were clearly specified in final orders. You may not get any more “home site approvals” than the number listed in the final order.

**Why can't I develop my property in the way I could when I acquired it?**

Measure 49 only authorizes residential use of a limited number of home sites. The final order and home site authorization states your acquisition date and the laws that were in effect then to determine *if* you qualify for Measure 49 relief. The relief is limited to the number of home site approvals stated in the final order Section IV. HOME SITE AUTHORIZATION. See above.

## HOW DO I USE A HOME SITE AUTHORIZATION?

### **How do I use a Measure 49 home site approval?**

An owner with a valid Measure 49 home site authorization can begin development by contacting the applicable county's planning or development office. An owner will not need to apply for any additional "waivers" with the county, but will need to go through the county's partition and/or building permit approval process.

### **Do any regulations still apply to my development?**

Subdivisions, partitions and dwellings approved under Measure 49 *must comply with all current applicable siting and development standards*, except to the extent that the development standards would prohibit the use. (There is an exception to this exception, in that standards that are "reasonably necessary to avoid or abate a nuisance, to protect public health or safety or carry out federal law" must be applied even if the effect would be to prohibit the use.)

### **The county says I cannot get a partition unless I put in access/wells/septic. Does this violate my Measure 49 rights?**

See above.

### **Are there other requirements I have to follow?**

The development must also comply with the terms of the Measure 49 final order which may include clustering and maximum parcel sizes. The terms of the final order run with the property. If the home sites are changed in a way that violates the terms of the final order, the home sites are no longer valid.

Under no circumstances is a claimant entitled to more than 20 home site approvals across the state of Oregon, regardless of how many properties the claimant owns or how many home site authorizations the claimant received.

### **The county says my new parcels cannot be larger than 2 (or 5) acres, why?**

If claim property is currently zoned for resource use (farm, forest or mixed farm/forest) or in a ground water restricted area, Measure 49 places some limits on how the proposed development must be located to protect and preserve that resource use. New lots or parcels may not exceed two acres if the property is high-value farm- or forestland or in a ground water restricted area; or five acres otherwise. The remnant lot or parcel may be larger. In addition, the new lots or parcels must be clustered "so as to maximize the suitability of the remnant lot or parcel for farm or forest use."

These requirements "run with the property" until it is no longer in a ground water restricted area or zoned Exclusive Farm Use, Forest Use, or Mixed Farm-Forest Use.

### **I got approval for a partition. Can I change the size and location of my home sites later?**

Yes, however the terms of approval (see the numbers at the end of the Final Order and Home Site Authorization) run with the property, so as long as the home sites comply with these terms, they can be changed.

### **Why does the final order talk about reconfiguring existing parcels?**

Sometimes a claim property must be reconfigured to allow the authorized home sites. This is often necessary when contiguous property is involved or the property contains multiple dwellings on a single parcel. Measure 49 allows the claimant to reconfigure existing lots, parcels or dwellings so that the number is equal to the number of home site approvals. Using a Measure 49 approval to reconfigure claim property is only authorized to the extent the final order says it is authorized.

### **Are Measure 37 waivers still valid?**

No. Measure 37 waivers expired on December 6, 2007 ([See OAR 660-041-0060.](#)) A claimant may complete and continue a use of claim property if the claimant had a vested right under Measure 49, Section (5)(3), on December 6, 2007, and the use complied with the state and local Measure 37 waivers. Measure 37 waivers to partition land and develop dwellings are personal to the claimant and not transferable.

### **Who do I contact if I have a question?**

You may contact the DLCD Measure 49 specialist at [sarah.marvin@dlcd.oregon.gov](mailto:sarah.marvin@dlcd.oregon.gov) or 503-559-1380. Make sure your message includes your name, the claimant's name, the property's election or claim number. You may also visit the [Measure 49 website](#).

## **Part 2: Measure 49 for New Claims**

As noted before, the second part of Measure 49 concerns new land use regulations (those enacted after January 1, 2007). Measure 49 requires public entities to compensate claimants for loss in property value caused by new land use regulations or to waive those regulations “to the extent necessary to offset the reduction in the fair market value of the property.” You may file a new Measure 49 claim for a new land use regulation if it meets the criteria stated in the law. You have five years from the date the new regulation was enacted to file a claim. Claims may be filed for the following types of regulations:

- State statutes that establish a minimum lot or parcel size
- State statutes in ORS chapter 215 (counties) and ORS chapter 227 (cities) that restrict the residential use of private real property
- Provisions in city comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property “zoned for residential use”
- Provisions in county comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property
- Certain statutes and rules that restrict forest practices or farming practices
- Statewide planning goals and administrative rules of the Land Conservation and Development Commission
- Provisions of a Metro functional plan that restrict the residential use of private real property

### **Are any regulations exempt from Measure 49?**

Yes. Measure 49 does not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:

- (a) That restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- (b) That restrict or prohibit activities for the protection of public health and safety;
- (c) To the extent the land use regulations are required to comply with federal law;
- (d) That restrict or prohibit the use of a property for the purpose of selling pornography or performing nude dancing;
- (e) That plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary; or
- (f) That plan and rezone land within an urban growth boundary to an industrial zoning classification.

### **What is fair market value?**

For the purposes of Measure 49, "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." ([ORS 195.332](#))

### **How do I prove that the fair market value of my property was reduced?**

The landowner must submit an appraisal that meets very specific requirements, including who is qualified to write the appraisal. See [ORS 195.310-336](#).

### **Where do I file a claim?**

A claim must be filed with the local government that enacted the land use regulation. If state government enacted the regulation, file with DLCD. Claim forms and additional information are available on [the Measure 49 website](#).

### **What do I get if my claim is approved?**

- (a) Compensation for the reduction in the fair market value of the property; or
- (b) Authorization for 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.

### **What is the status of a development under New Measure 49?**

A use authorized by a new Measure 49 claim has the legal status of a lawful nonconforming use and is subject to [ORS 215.130](#) including provisions for interruption and abandonment of the use (see [ORS 195.310\(7\)](#)).

### **Can a subsequent owner of the property use the Measure 49 development rights?**

New Measure 49 relief authorizes only the claimant to develop the use of the property (see [ORS 195.310\(5\) & \(6\)](#)). There is no provision for transfer of this authorization to a subsequent owner (note exception for forest practices, [ORS 195.310\(8\)](#)). Once the use has been lawfully established, it is subject to [ORS 215.130](#) (see above).

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