

**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**DIVISION 41  
MEASURE 49**

**Existing Claim Rules**

**(Measure 37 Claims, Including Supplemental Review Under Ballot Measure 49)**

**660-041-0000**

**Purpose and Applicability**

(1) The purpose of OAR 660-041-0000 to 660-041-0150 is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCDC Measure 37 Waiver was required in addition to a waiver from a city or county. Finally, these rules also explain the effect of Measure 49 on DLCDC Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCDC Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-0160, as well as to the Supplemental Review of Measure 37 Claims under OAR 660-041-0080 to 660-041-0160.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and before December 6, 2007, and that are based on one or more DLCDC Regulations.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0070 apply to all DLCDC Measure 37 Waivers.

(6) OAR 660-041-0080 to 660-041-0160 apply to the Supplemental Review of a Claim by DLCDC.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

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

**660-041-0010**

**Definitions**

The following definitions apply to OAR 660-041-0000 to 660-041-0160:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed with the State of Oregon before December 6, 2007. If the Claim was filed with the State of Oregon after June 28, 2007, it qualifies as a Claim only if a corresponding Claim for the Measure 37 Claim Property was filed prior to that date with the city or county with land use jurisdiction over the Measure 37 Claim Property.

(3) "Claimant" means a person who submitted a Claim.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCDC" means the Department of Land Conservation and Development.

(6) "DLCDC Measure 37 Waiver" means a decision by LCDC or DLCDC that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCDC Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(7) "DLCDC Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule.

1 An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the  
2 State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A

3 "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of  
4 Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

5 (8) "Elected" means signed and filed the form provided by DLCD with a box checked.

6 (9) "Land Use Application" means an application for a "land use decision," a "limited  
7 land use decision," or an "expedited land division," as those terms are defined by ORS  
8 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160  
9 to 227.187 or under 215.402 to 215.437.

10 (10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

11 (11) "LCDC" means the Land Conservation and Development Commission.

12 (12) "Measure 37 Claim Property" means the private real property described in a  
13 Measure 37 Claim.

14 (13) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to  
15 authorize the development, division or other use of Measure 37 Claim Property pursuant  
16 to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land  
17 use decision, an expedited land use decision, a permit (as that term is defined in ORS  
18 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure  
19 37 Permit also includes a final decision by a city, a county, or by Metro that a person has  
20 a vested right to complete or continue a use based on a Measure 37 Waiver.

21 (14) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of  
22 Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify,  
23 remove or not apply one or more Land Use Regulations to allow a Claimant to use the  
24 Measure 37 Claim Property for a use that was permitted when the Claimant acquired the  
25 Measure 37 Claim Property.

26 (15) "Measure 49" means Chapter 424, Oregon Laws 2007.

27 **(16) "Measure 49 Authorization" means a final order and authorization issued by**  
28 **the department under Measure 49 that authorizes a claimant to seek local approval**  
29 **of one or more home sites.**

30 (1~~6~~<sup>7</sup>) "Supplemental Information" means information needed by DLCD, under section  
31 8(3) of Measure 49, to proceed with the Supplemental Review of a Claim.

32 (1~~7~~<sup>8</sup>) "Supplemental Review" means review by DLCD of a Claim under either section  
33 6 or section 7 of Measure 49.

34 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

35 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
36 424, OL 2007

### 37 38 **660-041-0020**

#### 39 **Contents of a Measure 37 Claim Based on a DLCD Regulation**

40 (1) When a Claim was received by DAS after December 4, 2006 and was based on one or  
41 more Existing DLCD Regulations, then the Claim must:

42 (a) Demonstrate that a city, county, Metro, or an Agency applied one or more Existing  
43 DLCD Regulations, or applied one or more city, county or Metro land use regulations  
44 that implement Existing DLCD Regulations, as approval criteria to an application  
45 submitted by the Claimant; and

46 (b) Include one of the following:

1 (A) A copy of the final written decision by a city, a county, or Metro on a Land Use  
2 Application that included the Measure 37 Claim Property and that requested  
3 authorization for the specific use that the Claim is based on, in which the city, county, or  
4 Metro determined that one or more Existing DLCD Regulations or city, county or Metro  
5 Land Use Regulations that implement Existing DLCD Regulations were approval criteria  
6 for the decision; or

7 (B) A copy of the final written action by an Agency on a complete application to the  
8 Agency, in which the Agency determined that one or more Existing DLCD Regulations  
9 were approval criteria for the application.

10 (2) When a Claim was based on one or more New DLCD Regulations, then the Claim  
11 must:

12 (a) Have been received by DAS within two years of:

13 (A) The effective date of the New DLCD Regulation; or

14 (B) Within two years of the date the Claimant submitted a Land Use Application in  
15 which the Land Use Regulations were approval criteria, whichever was later; and

16 (b) If the Claim was submitted more than two years after the effective date of the New  
17 DLCD Regulation, the Claim must include a copy of the final written decision by a city, a  
18 county, or Metro on a Land Use Application that includes the Measure 37 Claim Property  
19 and that requested authorization for the specific use that the Claim was based on, in  
20 which the city, county, or Metro determined that the New DLCD Regulation or city or  
21 county or Metro Land Use Regulation that implemented the New DLCD Regulation were  
22 approval criteria for the decision.

23 (3) When a Claim was based on both Existing and New DLCD Regulations, the  
24 requirements of section (1) of this rule must be met with respect to the Existing DLCD  
25 Regulation, and the requirements of section (2) of this rule must be met with respect to  
26 the New DLCD Regulation.

27 (4) A DLCD Regulation was applied as an approval criterion for purposes of this rule and  
28 ORS 197.352(5) (2005) when a city, county or Metro made a final written decision on a  
29 Land Use Application, or when an Agency took final written action on an application to  
30 that Agency, and that final written decision or final written action denied the application  
31 or conditioned the approval of the application on the basis (in whole or in part) of the  
32 DLCD Regulation.

33 (5) This rule applies only to Claims that were received by DAS after December 4, 2006,  
34 and that were based on one or more DLCD Regulations.

35 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

36 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
37 424, OL 2007

38  
39 **660-041-0030**

40 **Notice of Applications and Decisions**

41 (1) Except for a building permit that is not a "land use decision" under ORS  
42 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all  
43 applications for a Measure 37 Permit, and all final written decisions on a Measure 37  
44 Permit, filed with or made by the city, county or Metro after February 20, 2007.

45 (2) Notice of an application for a Measure 37 Permit required under section (1) of this  
46 rule must be mailed to DLCD's Salem office at least ten (10) calendar days before any

1 deadline for comment on the application for a Measure 37 Permit. If there is no  
2 opportunity for comment, then the notice must be sent ten (10) days before the decision  
3 becomes final. The notice must include:

- 4 (a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;
- 5 (b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763,  
6 227.175 or 215.416;
- 7 (c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);
- 8 (d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject Land  
9 Use Application; and,
- 10 (e) The name of the present owner of the Measure 37 Claim Property.

11 (3) Notice of a final decision on a Measure 37 Permit required under section (1) of this  
12 rule must be mailed to DLCDC's Salem office within ten (10) calendar days of the date of  
13 the final written decision. The notice must include a copy of the final written decision.  
14 Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007  
15 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
16 424, OL 2007

#### 17 18 **660-041-0040**

##### 19 **When a DLCD Measure 37 Waiver Was Required**

20 Before a Claimant could lawfully use Measure 37 Claim Property for a use under a  
21 Measure 37 Waiver, the Claimant must have obtained a DLCD Measure 37 Waiver for  
22 that use of the Measure 37 Claim Property in all cases where that use was restricted by a  
23 DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a  
24 DLCD Regulation. These cases include, but are not limited to, all cases where the use is a  
25 use of land, and the Measure 37 Claim Property includes:

- 26 (1) Land zoned for farm use under Goal 3;
- 27 (2) Land zoned for forest use under Goal 4; or
- 28 (3) Land outside of an acknowledged urban growth boundary where the Claimant's  
29 desired use of the Measure 37 Claim Property was an urban use under Goal 14, or that  
30 use included the establishment or extension of a sewer or water system restricted under  
31 Goal 11.

32 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

33 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
34 424, OL 2007

#### 35 36 **660-041-0060**

##### 37 **Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers**

38 Any authorization for a Claimant to use Measure 37 Claim Property without application  
39 of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6,  
40 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue  
41 an existing use of Measure 37 Claim Property that was authorized under ORS 197.352  
42 (2005). A Claimant may complete a use of Measure 37 Claim Property that was begun  
43 prior to December 6, 2007, only if the Claimant had a common law vested right to  
44 complete and continue that use on December 6, 2007, and the use complies with the  
45 terms of any applicable DLCD Measure 37 Waiver.

1 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007  
2 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
3 424, OL 2007

4  
5 **660-041-0070**

6 **State Agency and Special District Land Use Coordination and DLCD Measure 37**  
7 **Waivers**

8 After December 5, 2007, when a state agency or a special district is required to take an  
9 action in a manner that complies with the Statewide Planning Goals and that is  
10 compatible with comprehensive plans and land use regulations under ORS 197.180 (for a  
11 state agency), or under ORS 195.020 (for a special district), the state agency or special  
12 district must not take that action if it involves a use of Measure 37 Claim Property based  
13 on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land  
14 Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure  
15 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or  
16 195.020. This rule does not apply to a use that was lawfully established or vested based  
17 on a DLCD Measure 37 Waiver on December 6, 2007.

18 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

19 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
20 424, OL 2007

21  
22 **660-041-0080**

23 **Supplemental Information for Supplemental Review of Measure 37 Claims under**  
24 **Measure 49**

25 (1) If the record for the Claim does not include the information needed for DLCD to  
26 proceed with the Supplemental Review of the Claim, DLCD will request Supplemental  
27 Information from a Claimant or the Claimant's authorized agent.

28 (2) Supplemental Information requested by DLCD must be filed with DLCD within fifty-  
29 six (56) days of the date the request is sent and must be filed in the manner described in  
30 OAR 660-041-0100.

31 (3) For good cause shown, DLCD may extend the period for filing Supplemental  
32 Information beyond fifty-six (56) days.

33 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

34 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
35 424, OL 2007

36  
37 **660-041-0090**

38 **Procedures for Supplemental Review of Measure 37 Claims under Measure 49**

39 (1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure  
40 49, DLCD will review the Claim, as supplemented by the Election and the Supplemental  
41 Information, and prepare a Preliminary Evaluation of the relief that the Claimant may be  
42 entitled to. The Preliminary Evaluation will be based on and include an initial preliminary  
43 assessment of the number of lots, parcels and dwellings, if any, the Claimant lawfully  
44 was permitted to establish on the date the Claimant acquired the Measure 37 Claim  
45 Property.

1 (2) Prior to the issuance of the Preliminary Evaluation, DLCD will mail written notice of  
2 the Supplemental Review and a copy of any materials submitted by the Claimant to the  
3 county with land use jurisdiction over the Measure 37 Claim Property, and will provide  
4 that county an opportunity to submit written comment on the Supplemental Review.

5 DLCD will consider all comments from the county in its preparation of the Preliminary  
6 Evaluation.

7 (3) DLCD will mail Notice of the Preliminary Evaluation to the Claimant, the Claimant's  
8 authorized agent, the county with land use jurisdiction over the Measure 37 Claim  
9 Property, and to any person who is an owner of record of real property located either  
10 within 250 feet of the Measure 37 Claim Property, if the Measure 37 Claim Property is  
11 not within a farm or forest zone, or within 750 feet of the Measure 37 Claim Property if it  
12 is located in a farm or forest zone, and to any neighborhood or community  
13 organization(s) whose boundaries include any portion of the Measure 37 Claim Property  
14 or that has made a written request for a copy of the Preliminary Evaluation.

15 (4) Any person may submit written comments, evidence or information in response to the  
16 Preliminary Evaluation as provided in OAR 660-041-0100 within twenty-eight (28) days  
17 of the date the Preliminary Evaluation is mailed under section (3) of this rule.

18 (5) DLCD will mail copies of any comments, evidence and information concerning the  
19 Preliminary Evaluation that are timely received under section (4) of this rule to the  
20 Claimant and the Claimant's authorized agent.

21 (6) The Claimant and the Claimant's authorized agent may file written comments,  
22 evidence or information in response to any materials filed by a third party or county. To  
23 be considered by DLCD, the response must be filed as provided in OAR 660-041-0100  
24 within twenty-one (21) days after the date DLCD mailed the comments, evidence and  
25 information to the Claimant and the Claimant's authorized agent as provided under  
26 section (5) of this rule.

27 (7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either  
28 will deny the authorization of home sites or will approve the specific number of home  
29 sites under section 6 or section 7 of Measure 49 to which the Claimant is entitled. If  
30 approved, the Final Decision will authorize the county with land use jurisdiction over the  
31 Measure 37 Claim Property to approve a permit to allow the number of home sites  
32 approved.

33 (8) Following issuance of the Final Decision, the owner of the Measure 37 Claim  
34 Property may file an application with the county with land use jurisdiction over the  
35 Measure 37 Claim Property for a permit to establish home sites authorized under the  
36 Final Decision.

37 (9) For good cause shown, DLCD may extend any time period under this rule.

38 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

39 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
40 424, OL 2007

41  
42 **660-041-0100**

43 **Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim**  
44 **under Measure 49**

1 (1) A Claimant may file the form electing how the Claimant wishes to proceed under  
2 sections 5 to 11 of Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49)  
3 only after receiving the notice and form from DLCDC.

4 (2) All information filed with DLCDC regarding the Supplemental Review of a Claim  
5 must be filed at: Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite  
6 150, Salem, Oregon 97301-2540

7 (3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or  
8 electronically.

9 (4) The date information is filed is the date the information is received by DLCDC, or the  
10 date it is mailed, provided it is mailed by registered or certified mail and the person filing  
11 the information has proof from the post office of such mailing date. If the date of mailing  
12 is relied upon as the date of filing, acceptable proof from the post office shall consist of a  
13 receipt stamped by the United States Postal Service showing the date mailed and the  
14 certified or registered number.

15 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

16 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
17 424, OL 2007

#### 18 19 **660-041-0110**

#### 20 **Determining What Was Lawfully Permitted on the Claimant's Acquisition Date**

21 (1) A Claimant lawfully was permitted to establish one or more lots, parcels or dwellings  
22 on the Claimant's acquisition date if DLCDC determines that the characteristics of the  
23 Measure 37 Claim Property as it existed on that date, including the size, soil quality and  
24 location of the Measure 37 Claim Property, would have allowed the Claimant to satisfy  
25 the standards and criteria for approval of the lot, parcel or dwelling in effect on that date.

26 (2) Based on the Claimant's acquisition date, as determined under ORS 195.328, DLCDC  
27 will apply the following standards and criteria to determine the number of lots, parcels or  
28 dwellings that were lawfully permitted:

29 (a) If the Claimant's acquisition date is prior to January 25, 1975, DLCDC will apply the  
30 applicable local land use regulations and comprehensive plan provisions, if any, along  
31 with any directly-applicable state statutes;

32 (b) If the Claimant's acquisition date is on or after January 25, 1975 but before the date  
33 the county with land use jurisdiction over the Measure 37 Claim Property had its  
34 applicable comprehensive plan and land use regulations acknowledged by LCDC for  
35 compliance with the Statewide Planning Goals, DLCDC will **directly** apply the **Statewide**  
36 **Planning Goals, applicable state statutes and LCDC rules.** ~~first applicable~~  
37 ~~acknowledged local land use regulations, unless the Claimant establishes that **To**~~  
38 **determine** the number of lots, parcels or dwellings that ~~were would have been~~ lawfully  
39 permitted under the **Statewide Planning Goals, DLCDC will apply** the first applicable  
40 acknowledged local land use regulations, **unless the evidence in the record, including**  
41 **but not limited to, county Measure 37 waivers or local land use determinations**  
42 **issued at the time the property was acquired, establishes that a greater number of**  
43 **lots, parcels or dwellings would have been lawfully permitted.** ~~is smaller than the~~  
44 ~~number of lots, parcels or dwellings that would have been lawfully permitted under direct~~  
45 ~~application of one or more applicable state statutes, Statewide Planning Goals, or LCDC~~  
46 ~~rules; and~~

1 (c) If the Claimant's acquisition date is on or after the date the county with land use  
2 jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan  
3 and local land use regulations acknowledged by LCDC for compliance with the  
4 Statewide Planning Goals, DLCD will apply the applicable local land use regulations and  
5 comprehensive plan provisions along with any directly-applicable state statutes,  
6 Statewide Planning Goals, or LCDC rules.  
7 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007  
8 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
9 424, OL 2007

10  
11 **660-041-0120**

12 **Evaluation of Measure 37 Contiguous Property in Supplemental Review**

13 (1) For purposes of the Supplemental Review of a Claim, ownership of contiguous  
14 property will be determined and evaluated as of the date the Claimant Elected relief under  
15 section 6 or section 7 of Measure 49.

16 (2) In determining the relief to which a Claimant is entitled under section 6 or section 7  
17 of Measure 49, the number of home site approvals a Claimant is entitled to will be  
18 reduced by the number of existing lots, parcels and dwellings contained within the entire  
19 property, which includes both the Measure 37 Claim Property and any contiguous  
20 property in the same ownership.

21 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

22 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
23 424, OL 2007

24  
25 **660-041-0130**

26 **High-Value Farmland and High-Value Forestland**

27 (1) Measure 37 Claim Property is high-value farmland as described in ORS 195.300(10)  
28 if:

29 (a) The Measure 37 Claim Property meets the criteria in ORS 195.300(10)(a) or (b), or  
30 both ORS 195.300(10)(a) and (b);

31 (b) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(c);

32 (c) The Measure 37 Claim Property is greater than five acres in size and all of the  
33 Measure 37 Claim Property is planted in wine grapes, as provided by ORS  
34 195.300(10)(d); or

35 (d) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(e) or (f),  
36 or both ORS 195.300(10)(e) and (f).

37 (2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS  
38 195.300(11).

39 (3) To determine the cubic foot potential of Measure 37 Claim Property and whether it is  
40 high-value forestland as described in ORS 195.300(11), DLCD will use soil survey  
41 information from the U.S. Department of Agriculture's Natural Resources Conservation  
42 Service (NRCS), unless other information or data are made a part of the record for the  
43 Supplemental Review, in which case DLCD will consider such information or data along  
44 with any pertinent NRCS information.

1 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007  
2 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
3 424, OL 2007

4  
5 **660-041-0140**

6 **Groundwater Restricted Areas**

7 Measure 37 Claim Property is in a Ground Water Restricted Area if the Measure 37  
8 Claim Property is located entirely within the boundaries of a Ground Water Limited Area  
9 or Critical Ground Water Area, or both.

10 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

11 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
12 424, OL 2007

13  
14 **660-041-0150**

15 **Combining and Dividing Claims**

16 To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section  
17 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the  
18 Measure 37 Claim Property contains multiple lots or parcels that are not in the same  
19 ownership. In addition, DLCD will combine multiple Claims into one claim if the  
20 Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the  
21 same ownership.

22 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

23 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
24 424, OL 2007

25  
26 **660-041-0160**

27 **Appraisals Under Section 7 of Measure 49**

28 (1) A Claimant seeking relief under section 7 of Measure 49 must provide an appraisal  
29 for the Measure 37 Claim Property showing the fair market value one year before the  
30 enactment of the Land Use Regulation(s) that are the basis for the Claim, and the fair  
31 market value one year after the enactment of the Land Use Regulation(s).

32 (2) The appraisal provided under this rule must also show the present fair market value of  
33 each lot, parcel or dwelling that the Claimant is seeking under section 7(2) of Measure  
34 49. The appraisal must comply with all provisions of section 7(7) of Measure 49.

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

42 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

43 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
44 424, OL 2007

45

1 **660-041-0170**

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

3 **(1) The County with land use jurisdiction over property for which a Measure 49**  
4 **Authorization has been issued must provide written notice to DLCDC of any land use**  
5 **application that seeks approval of one or more home sites under the Measure 49**  
6 **Authorization, and all final written decisions on home site approvals based on a**  
7 **Measure 49 Authorization.**

8 **(2) Notice of an application for home site approval(s) under a Measure 49**  
9 **Authorization, required under section (1) of this rule, must be mailed to DLCDC's**  
10 **Salem office at least ten (10) calendar days before any deadline for comment on the**  
11 **application for a home site approval. If there is no opportunity for comment, then**  
12 **the notice must be sent ten (10) days before the decision becomes final. The notice**  
13 **must include:**

14 **(a) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763,**  
15 **227.175 or 215.416;**

16 **(b) The claim number of the Measure 49 Authorization issued by the State of**  
17 **Oregon;**

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

19  
20 **New Claim Rules (Ballot Measure 49)**  
21

22 **660-041-0500**

23 **Purpose and Applicability**

24 The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement ORS  
25 195.300 to 195.336 (2007 Oregon Ballot Measure 49) in terms of the requirements and  
26 procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49  
27 Claims filed with the State of Oregon.

28 Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065

29 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353  
30

31 **660-041-0510**

32 **Definitions**

33 The following definitions apply to OAR 660-041-0500 to 660-041-0530:

34 (1) "Agency" has the meaning provided by ORS 183.310.

35 (2) "Claimant" means an Owner who filed a Measure 49 Claim.

36 (3) "DLCDC" means the Department of Land Conservation and Development.

37 (4) "DLCDC Regulation" has the meaning provided by ORS 195.300(14)(a)-(b) and  
38 195.300(14)(g).

39 (5) "Farming Practice" has the meaning provided by ORS 195.300(5).

40 (6) "File" or "Filed" has the meaning provided by ORS 195.300(7). The date a document  
41 is Filed is the date that it is received by the Public Entity.

42 (7) "Forest Practice" has the meaning provided by ORS 195.300(8).

43 (8) "Land Use Regulation" has the meaning provided by ORS 195.300(14). A "New  
44 Land Use Regulation" means a Land Use Regulation that was enacted by the State of  
45 Oregon or adopted by an Agency on or after January 1, 2007.

1 (9) "Lot" means a single unit of land that is created by a subdivision of land as defined in  
2 ORS 92.010.

3 (10) "Measure 49 Claim" means:

4 (a) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after  
5 December 5, 2007; and

6 (b) A claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed  
7 between June 29, 2007 and December 5, 2007 if no corresponding claim was filed for the  
8 Property with the city or county with land use jurisdiction over the Property prior to June  
9 29, 2007.

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

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

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

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

16 Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007

17 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch.  
18 424, OL 2007

19  
20 **660-041-0520**

21 **Procedures for Measure 49 Claims**

22 (1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized  
23 agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from  
24 DLCD at the address provided in this rule, or from DLCD's website, and must contain all  
25 information required by the form. Claims may not be submitted by facsimile or  
26 electronically.

27 (2) A Measure 49 Claim must be Filed with DLCD at: Measure 49 Claims, 635 Capitol  
28 St. NE, Suite 150, Salem 97301-2540

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

33 (4) DLCD's form for a Measure 49 Claim will require at least the following information:

34 (a) The name and mailing address of each Claimant and each Owner of the Property.

35 (b) Evidence establishing that each Claimant is an Owner of the Property.

36 (c) The consent to the Measure 49 Claim by each Owner of the Property if there are  
37 Owners of the Property other than the Claimant, which consent must be notarized.

38 (d) A description of the Claimant's specific desired use of the Property, which use must  
39 be a residential use or a Farming Practice or a Forest Practice. The description must be  
40 sufficiently specific to establish that each Land Use Regulation listed under paragraph (g)  
41 of this rule applies to and restricts the Claimant's desired use.

42 (e) The location of the Property by reference to:

43 (A) The township, range, section and tax lot number for each Lot or Parcel that makes up  
44 the Property;

45 (B) The street address of each Lot or Parcel that makes up the Property, if a street address  
46 has been assigned;

- 1 (C) The county the Property is located in; and  
2 (D) If the Property is located within a city, the name of that city.  
3 (f) Evidence of each Claimant's Acquisition Date, as provided in ORS 195.328;  
4 (g) A listing of each specific New Land Use Regulation that is alleged to restrict the  
5 Claimant's desired use of the Property, and for each New Land Use Regulation listed, a  
6 description of how that regulation restricts the Claimant's desired use of the property;  
7 (h) An appraisal of the reduction in the fair market value of the Property caused by the  
8 enactment of each listed New Land Use Regulation as provided in ORS 195.310.  
9 (5) DLCD will review a Measure 49 Claim to determine whether it complies with the  
10 requirements of ORS 195.310 to 195.312. If the Measure 49 Claim is incomplete, within  
11 sixty (60) days of receiving the Claim, DLCD will notify the person who filed the Claim  
12 of the information that is missing. The notification will be in writing. A Measure 49  
13 Claim is complete when DLCD receives:  
14 (a) The missing information;  
15 (b) Part of the missing information and written notice from the Claimant that the  
16 remainder of the missing information will not be provided; or  
17 (c) Written notice from the Claimant that none of the missing information will be  
18 provided.  
19 (6) If a Claimant submits a request in writing for additional time to provide missing  
20 information, DLCD may for good cause shown agree to provide such additional time,  
21 which agreement must be in writing. An agreement to allow additional time has the effect  
22 of abating the time requirements under ORS 195.312 and 195.314, until the date specified  
23 in the agreement.  
24 (7) If DLCD does not notify the Claimant within sixty (60) days after a Measure 49  
25 Claim is Filed that information is missing from the Claim, the Claim is deemed complete  
26 when Filed.  
27 (8) If the Claimant does not respond in writing to the written notification from DLCD  
28 under section (5) of this rule within sixty (60) days of the date the written notification  
29 was sent, the Claim is deemed withdrawn.  
30 (9) DLCD will provide notice of a Measure 49 Claim as provided by ORS 195.314. The  
31 notice will describe the Measure 49 Claim and specify a deadline by which written  
32 evidence and arguments must be Filed. The Claimant may respond to the written  
33 evidence and argument by Filing a written response within fifteen (15) days of the date  
34 specified as the deadline for the initial evidence and argument.  
35 (10) DLCD will mail a copy of its final determination to the Claimant and to any person  
36 who timely filed written evidence or arguments.  
37 Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065  
38 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353  
39

#### 40 **660-041-0530**

#### 41 **Coordinating with Other Regulating Entities**

- 42 (1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation  
43 that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a  
44 state statute that is administered by an Agency other than DLCD, DLCD will forward the  
45 Claim to that Agency.

1 (2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use  
2 Regulation for which there is no Regulating Entity, DLCD will forward the Claim to the  
3 Department of Administrative Services.

4 (3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49  
5 Claim, that Regulating Entity will process the Claim using the procedures set forth in  
6 OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for  
7 review.

8 (4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49  
9 Claim, DLCD will coordinate the review of the Claim under the procedures set forth in  
10 OAR 660-041-0520. However, the other Regulating Entity will decide whether the  
11 Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted  
12 or that it administers as provided in ORS 195.300 to 195.336 and if so what form of relief  
13 to grant under ORS 195.310(5) with respect to those regulations.

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

16 Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065

17 Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353

PROPOSED