Measure 49

Frequently Asked Questions

Background

On November 6, 2007, Oregon voters approved the legislatively referred Ballot Measure 49. Ballot Measure 49 modified Ballot Measure 37 (2004) and became effective December 6, 2007. Subsequently, the 2009 legislature amended Measure 49 through House Bill (HB) 3225 and the 2010 legislature again amended it through Senate Bill (SB) 1049. The Department of Land Conservation and Development (DLCD) has been tasked with implementing Measure 49, as amended, and has adopted administrative rules (OARs) toward that end. Links to the full text of Measure 49, HB 3225 and SB 1049 and the corresponding rules are available on DLCD's M49 website under "Legal Information."

Question 1: I received a notice in the mail with regard to a Measure 49 claim near my property. What does it mean?

Answer 1: As part of the Preliminary Evaluation process, DLCD sends out a short letter to all property owners who have property near the claim property. The letter is simply to notify you that a Measure 49 election is being processed in your area and to provide you with some information about how to learn more about the claim and how to comment on the claim if you so choose. If you would like a copy of the full Preliminary Evaluation, it is available on our website, organized by the date it was mailed.

Question 2: Are Measure 37 waivers still valid?

Answer 2: Measure 37 waivers expired on December 6, 2007 (See OAR 660-041-0060.) A claimant could complete a use of Measure 37 claim property that was begun prior to December

6, 2007 only if the claimant had a common law vested right to complete and continue that use on December 6, 2007 and the use complies with the terms of any applicable DLCD Measure 37 waiver. Depending on where the property is located, cities, counties and/or circuit courts have the authority to decide whether a use is vested at common law. For more information regarding Vested Rights Determinations, please contact the Measure 49 Ombudsman (503-373-0050 ext. 326).

Question 3: How do I file a new Measure 49 claim?

Answer 3: New Measure 49 claims (not the same as Measure 49 elections based on Measure 37 claims) can be filed with DLCD. New Measure 49 claims can only be made against land use regulations enacted after January 1, 2007 that limit residential development or a farming or forest practice and only to the extent that that the claim demonstrates that the new regulation(s) reduced the value of the property. Application forms and information are available on the Measure 49 website under "New Measure 49 Claim Information and Forms".

Question 4: What is the timeline for decisions on Measure 37 claims under Measure 49?

Answer 4: DLCD received approximately 4,500 completed Measure 49 Election forms and began issuing Measure 49 Preliminary Evaluations for individual Measure 37 claims at the end of July, 2008. DLCD completed processing all initial Measure 49 Final Orders on June 30, 2010. Copies of all Preliminary Evaluations and Final Orders issued by DLCD are available from our website.

House Bill 3225 (July 2009) expanded the number of Measure 37 claims that can be accepted for Measure 49 supplemental review and requires DLCD to finalize review of those claims by December 31, 2010.

Senate Bill 1049 (February 2010) further expanded the number of Measure 37 claims that can be accepted for limited supplemental review under Section 6 of Measure 49, and requires DLCD to finalize review of those claims by June 30, 2011.

Question 5: What about Measure 37 claims that were timely filed with the county but not with the state?

Answer 5: Claimants who did not file a Measure 37 claim with the state before December 6, 2007 were initially not eligible for any relief under Measure 49. As originally adopted, to qualify for relief under Measure 49 a claimant must have filed a Measure 37 claim for the property with either the state or the county in which the property is located on or before June 28, 2007 and must have filed a Measure 37 claim with both the state and the county before Measure 49 became effective on December 6, 2007. HB 3225 modified the filing requirements, and allowed some Measure 37 claimants that did not meet these criteria to seek supplemental review under Measure 49. SB 1049 further modified the filing requirements, allowing claimants who filed Measure 37 claims with the county but not with the State to seek approval for one additional dwelling, and if necessary a lot or parcel on which to develop that dwelling, under Section 6 of Measure 49. SB 1049 also allows claimants who elected relief under Section 7, but either did not file the required appraisal, or submitted an appraisal that did not meet the requirements of Measure 49 necessary to qualify for relief, to seek approval for one additional dwelling under Section 6 of Measure 49. For a brief description of the recent rule changes made to implement HB 3225 and SB 1049, see the short summary of rule changes.

For more complete information regarding the current law, see the current administrative rules, and the current Oregon Revised Statues.

Question 6: What is the "Supplemental Review"?

Answer 6: The "supplemental review" is the review of a Measure 37 claim under the criteria of Measure 49, as amended, which results in an order that can authorize residential lots, parcels or dwellings. The supplemental review takes into consideration both claim records filed under Measure 37 and new material submitted with the Measure 49 election. For claims that are proceeding under Section 7, the supplemental review also includes a review of the required appraisal. For more information regarding the supplemental review, see OAR 660-041-0080 to 0110.

Question 7: Why are Preliminary Evaluations not being issued in the same order the claims were filed?

Answer 7: Claims are being reviewed in the order in which the elections were received pursuant to ORS 195.305, Section 8(4). A record of all elections returned and the approximate order in which they were received is available on the M49 website under "Measure 49 Election Returns".

However, once the supplemental review process begins, some claims may take longer to process and issue a Preliminary Evaluation than others. There are many factors that can cause a delay in the review and issuance of a Preliminary Evaluation. For example, additional information may be needed from the claimants, the county or other sources. When these types of delays occur DLCD attempts to resolve them as quickly as possible, but DLCD does not delay the processing of other claims while waiting for the resolution. This may result in some Preliminary Evaluations being issued "out of order."

Question 8: In what situations will claims be separated or combined?

Answer 8: During the claim review process, DLCD may divide a single claim into two or more claims if the Measure 37 claim property contains multiple non-contiguous lots or parcels or multiple lots or parcels under different ownership. Conversely, DLCD may combine multiple claims into one claim if the Measure 37 claim contains multiple contiguous lots or parcels under the same ownership. (OAR 660-041-0150)

Question 9: What is contiguous property and how is it treated?

Answer 9: Contiguous property is any real property that shares a common boundary with the Measure 37 claim property and is under the same ownership as the claim property. The development a claimant may establish pursuant to an authorization of home site approvals 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)

Question 10: Where do I call if I have a question?

Answer 10: You can call the DLCD M49 hotline at 503-373-0050 x324 and leave a message with your name, claim number, contact information, including a telephone number where you may be reached and your specific question. Staff will research your question and strive to respond within 24 hours. You can also send your question via email to measure49.info@state.or.us.

Question 11: I'm with a neighborhood or community organization. How can my group get notified of Measure 37/49 reviews for property in our area?

Answer 11: DLCD currently attempts to notify any neighborhood or community organization that the agency has record of whenever there is a Preliminary Evaluation for property in the organization's area. If you would like DLCD to send your organization notice of claims in your area, please contact the Measure 49 Services Division (503-373-0050 x324) to be added to the applicable notification lists.

Question 12: How are Measure 49 Elections filed under Section 6 processed?

Answer 12: The supplemental review for Section 6 Measure 49 Elections begins with an analysis of the facts of the claim and an evaluation of potential relief. This analysis is issued as a Preliminary Evaluation of the claim, and copies are sent to the claimant and to the county. Notices of the Preliminary Evaluation are also mailed to nearby property owners and neighborhood organizations in accordance with OAR 660-041-0090. Following issuance of the Preliminary Evaluation, DLCD will accept comments on the Preliminary Evaluation from any interested parties. Following the Preliminary Evaluation comment period (28 days) DLCD will forward to the claimant any comments received. The claimant then has an opportunity to respond

to the comments. If no response is sent within 21 days after mailing the comments to the claimant, DLCD will prepare a final order on the claim, taking into account any comments or response to comments that have been received in a timely manner. For more information on the comment process, please see OAR 660-041-0090. This final order is mailed to the claimant, the county, and anyone who commented on the Preliminary Evaluation.

Question 13: What should I do if I see a problem with my Preliminary Evaluation?

Answer 13: If you have substantive concerns or issues regarding an evaluation, you must submit your comments in writing to the DLCD so that there is complete documentation of the issue and your specific concern. DLCD cannot accept for consideration a comment via telephone, facsimile, or electronically. Please reference the claim number and claimant name on any comments submitted and clearly mark your comments as 'Preliminary Evaluation Comments'.

Mail or hand deliver comments, evidence and information in response to the Preliminary Evaluation and all responses to materials filed by a third party or a county to: Supplemental Measure 49 Claims Review, 635 Capitol Street NE, Suite 150, Salem, OR 97301-2540. Comments received will be deemed timely filed: (1) if actually delivered to DLCD before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day. DLCD will consider all timely comments prior to issuing a final order for the claim.

It is important to note that if there appears to be a mistake in the Preliminary Evaluation, these issues should be raised with DLCD before a final order is issued. Once DLCD issues a final order, the only means to remedy any mistake or error is through the reconsideration process or through litigation.

Question 14: What can I do if I receive a final order with a mistake or error in it?

Answer 14: Within 60 days of DLCD mailing a final order, a claimant may request reconsideration of the decision. If DLCD grants the reconsideration request, DLCD will notify

the claimant that the request has been granted within 60 days of receiving the request. Once it has reconsidered the decision, DLCD will then issue an amended final order on reconsideration. If DLCD does not respond to a reconsideration request within 60 days of receiving the request, the request is deemed denied.

Question 15: Many Preliminary Evaluations state that new parcels must be 5 acres or less and must be "clustered." Why is that?

Answer 15: If claim property is currently zoned for resource use (farm, forest or mixed farm/forest), Measure 49 places some limits on how the proposed development must be located to protect and preserve that resource use. There are additional limitations if the property consists of high-value farm or forestland as those terms are defined in Measure 49. The applicable county will consider these limitations in more detail during any partition and building permit approval process.

Question 16: What is the process under Measure 49 once a claimant has received a final order of approval for new home sites?

Answer 16: An owner with a valid Measure 49 final order of approval can begin development by contacting the applicable county's planning or community development office. A claimant with an authorization 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. It is important to note that while a Measure 49 authorization allows a county to approve home sites, each specific development proposal will still need to comply with applicable local siting standards, including, for example, health and safety regulations.