



# Measure 49 Guide

## Part 1: Overview

### 1. What Is Measure 49?

Measure 49 “modif[ies] Ballot Measure 37 (2004) 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 has two main parts: the first part concerns Measure 37 claims that were filed on or before June 28, 2007; the second part addresses new Measure 49 claims.

The first part of Measure 49 replaces the two alternate remedies of Measure 37 (a waiver of land use regulations or the payment of compensation) with an approval for claimants to establish a specific, but limited, number of home sites. This home site approval is provided as a form of compensation for land use regulations imposed after owners acquired their properties. It is available only for claimants who filed Measure 37 claims on or before June 28, 2007.

The second part of Measure 49 concerns the filing of new claims, which may be based on land use regulations enacted only after January 1, 2007. As with Measure 37, Measure 49 provides either compensation or waivers for new land use regulations. However, Measure 49 defines the category of land use regulations that are eligible for relief more narrowly, to include only those regulations that limit residential uses of property or that restrict farming or forest practices. In addition, under Measure 49, relief is provided only if the owner demonstrates that the new regulations have reduced the value of property. For claims based on regulation of residential uses, claimants are exempted from regulation only to the extent necessary to allow additional residential development of a value comparable to the value lost as a result of the regulation.

### 2. How Does Measure 49 Affect Measure 37 Claims?

The first part of Measure 49 applies to all Measure 37 claims that were filed on or before June 28, 2007, whether those claims were approved or pending. If a claimant elects to seek relief under Measure 49, the state must undertake a supplemental review of the relevant Measure 37 claim(s). The supplemental review will verify claimant ownership of the property, when the claimant acquired the property and the number of home sites that the claimant could have developed when the property was acquired. At the end of the supplemental review, the claimant will receive an order indicating what the claimant is approved for in terms of additional land divisions and/or dwellings. What claimants are approved for depends on where the property is located, when the claimant acquired the property and what the claimant asked for under Measure 37.

### **3. What Options Are There for Measure 37 Claims for Property Located Outside any Urban Growth Boundary (UGB) and any City?**

Most Measure 37 claims were filed for property located in rural parts of the state—land outside any UGB and any city. Claims for property located entirely outside any UGB and any city are eligible for relief under two options: an Express option that may allow up to three home sites, and a Conditional option that may allow up to 10 home sites. The Conditional option is not available for property with certain special designations and requires proof that the value of the claimant's property was reduced. Under both options, however, the claimant must have had the right to develop the additional home sites when the property was acquired. Verifying what claimants could have done when they acquired their property is the main focus of the supplemental review under Measure 49. These options are described in more detail in Part II below.

### **4. What Options Are There for Measure 37 Claims for Property Inside any UGB or any City?**

Claims for property located partially or completely inside any UGB or any city are eligible for up to 10 home sites if the property is residentially-zoned and if the claimant proves that the value of the property has been reduced by land use regulations. The number of home sites that may be approved will correspond to the amount of reduction in value shown. Under Measure 49, Metro or the city or county evaluates these claims, not the state.

### **5. What if I Have Already Completed or Started My Development Under Measure 37?**

A claimant with a Measure 37 waiver who has begun the development described in the waiver may proceed under Measure 37 if the use of the property complies with the waiver and the claimant has a common law vested right to complete and continue the use. In areas of the state outside a UGB, claimants must have waivers from both the local government and the state. Generally, claimants also will need to have received land use permits for their uses and to have at least begun construction of their uses, before they will have vested rights. Additional information concerning vested rights is contained in guidance from the state that is available on the DLCD website at <http://www.oregon.gov/LCD/MEASURE49>.

### **6. What About Measure 37 Claims for Non-Residential Uses of Property?**

Claims for non-residential uses filed under Measure 37 for property outside any UGB and any city may be amended to seek approval for residential uses under Measure 49. Other non-residential uses may continue only to the extent they are vested.

## **7. What About Measure 37 Claims That Were Filed After June 28, 2007?**

Fewer than 100 Measure 37 claims were filed after June 28, 2007. Measure 37 claims filed after June 28, 2007, are treated as new Measure 49 claims. Such claims are eligible for waivers or compensation under Measure 49 only if they are based on new land use regulations (those enacted after January 1, 2007) and only to the extent the claim demonstrates that the new regulation(s) has reduced the value of the property.

## **8. May I File a New Measure 49 Claim?**

As noted above, the second part of Measure 49 concerns new land use regulations (those enacted after January 1, 2007). You may file a new Measure 49 claim for a new land use regulation if it has reduced the value of your property. You have five years from the date the new regulation was enacted to file a new claim.

Like Measure 37, Measure 49 requires public entities to compensate claimants for the effect of new land use regulations or to waive those regulations. However, the types of regulations that trigger claims are more limited under Measure 49. They include the following:

- 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

## Part 2: The Express and Conditional Options

As noted above, Measure 37 claims for property located entirely outside any UGB and any city that were filed before June 28, 2007, may be eligible for relief through two options under Measure 49: an Express option (up to three home site approvals) or a Conditional option (up to 10 home site approvals).

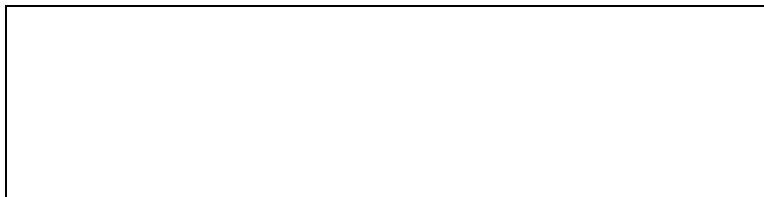
### 1. How Does the Express Option Work?

The number of lots, parcels or dwellings that may be approved under the Express option is limited to three. In addition, the number cannot exceed the number in the claimant's Measure 37 claim or waiver, if one was issued. If the property already contains one or more dwellings or more than one parcel, then neither the total number of dwellings nor parcels can exceed three.

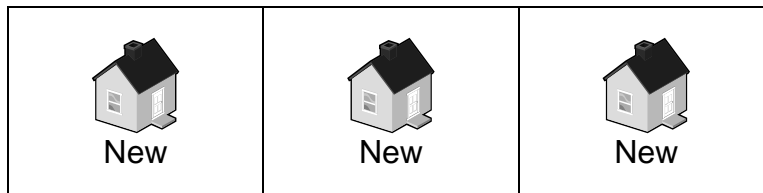
However, if a claimant's property already contains three or more parcels and three or more dwellings, the claimant may receive one more parcel and one more dwelling if the claimant otherwise qualifies under Measure 49. If a claimant's property already contains three parcels and has two or fewer dwellings, the claimant can receive only additional dwellings. The following diagrams illustrate some possibilities under the Express option.

### Express Option Example 1

**Before:** Claimant has one existing parcel and no dwellings



**After:** Claimant approved for three parcels and three dwellings

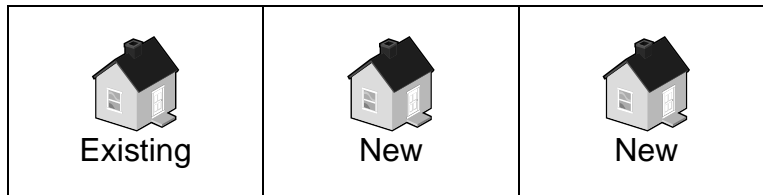


## Express Option Example 2

**Before:** Claimant has one existing parcel and one dwelling



**After:** Claimant approved for two additional parcels and two additional dwellings



## Express Option Example 3

**Before:** Claimant has three existing parcels and three existing dwellings



**After:** Claimant approved for one additional parcel and one additional dwelling



A claimant who has filed a claim or obtained a waiver for more than three lots, parcels or dwellings may amend the claim to proceed under the Express option by reducing the number of home sites sought to three or less. In addition, as noted above, a claimant who has filed a claim for a non-residential use (e.g., commercial or industrial use) also may amend the claim to seek up to three home site approvals under the Express option.

To qualify for relief under the Express option, a claimant must have filed a Measure 37 claim with both the state and the county on or before June 28, 2007, and must establish the following:

- The claimant owns<sup>1</sup> the property
- All owners of the property have consented in writing to the claim
- The property is located entirely outside any UGB and any city
- One or more land use regulations prohibit establishing the lot, parcel or dwelling
- Establishing the lot, parcel or dwelling is not prohibited by a regulation that was enacted before the claimant's acquisition date, or by a regulation that is required to protect public health or safety or that is required by federal law
- On the claimant's acquisition date,<sup>2</sup> the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are sought under the Express option

In addition, Measure 37 claims filed after December 4, 2006, must be accompanied by a local government decision denying or conditioning a land use application made by the claimant for the use requested.

## **2. How Does the Conditional Option Work?**

Up to 10 lots, parcels or dwellings may be approved under the Conditional option if the following standards are met:

- If the claim is based on a Measure 37 waiver for 10 or fewer lots, parcels or dwellings, the claimant is limited to the number approved in the waiver.
- If the claim is based on a pending Measure 37 claim (where no waiver has been issued) seeking 10 or fewer lots, parcels or dwellings, the claimant is limited to the number sought in the original Measure 37 claim.

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<sup>1</sup> "Owner" is defined in Measure 49 as the owner of fee title as shown by deed records, a purchaser under a recorded land sales contract, the settlor or trustee of a revocable trust or the trustee of an irrevocable trust. Oral and unrecorded agreements cannot be used to show ownership.

<sup>2</sup> "Acquisition date" means the date when the claimant became the owner of record. If the claimant is the surviving spouse of a person who was an owner, the claimant's acquisition date is the date of marriage to the owner or the date the claimant's deceased spouse acquired the property, whichever is later. This extends relief under Measure 49 to a class of surviving spouse claimants who were denied relief under Measure 37.

- If there are already dwellings on the property, or if the property contains more than one lot or parcel, the number of lots, parcels or dwellings that can be established under Measure 49 is limited to 10 total, including existing and new lots, parcels or dwellings.

The number of home site approvals allowed is proportional to the loss in value resulting from land use regulations. The value of the home sites approved cannot exceed the loss in value resulting from the regulation(s) on which the claim is based.

The property must not be more than 50 percent high-value farm- or forestland or in a ground water restricted area.<sup>3</sup>

To see if your property is affected by these special designations (high-value farm- or forestland and ground water restricted areas), see the DLCD website at <http://www.oregon.gov/LCD/MEASURE49>. If claimants have information showing that their property is not more than 50 percent high-value farm- or forestland as defined in Measure 49, they may submit such information during the supplemental review of their claim.

The other main requirement under the Conditional option is that the claimant must document a specific amount of loss in the value of the property caused by one or more land use regulations. This requires obtaining an appraisal that establishes the property's value one year before the land use regulation was enacted and the value one year after. The appraisal must be prepared by a certified appraiser and be received by DLCD within 180 days of the date DLCD receives the election form.

After determining the amount of loss, the reduction in value is then adjusted by any property taxes not paid on account of a special farm or forest assessment, plus interest, offset by severance taxes or recapture tax paid or payable if the property is disqualified from special assessment. The value also is adjusted to current value, using the

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<sup>3</sup> "High-value farmland" is defined by reference to the definition of "high-value farmland" under current law and also includes the following lands:

- certain lands in viticultural (wine growing) areas
- land that contains five acres or more of wine grapes
- land in an exclusive farm use or mixed farm-forest zone that, as of June 28, 2007, was within the place of use for an irrigation permit, certificate or decree or within the boundaries of an irrigation district, diking district, drainage district, water improvement district, water control district or a corporation organized under ORS chapter 554.
- and the Harbor Bench–lily-growing area in Curry County

"High-value forestland" is defined as land in a forest or mixed farm-forest zone that (1) in western Oregon, is capable of producing more than 120 cubic feet per acre per year of wood fiber and more than 5,000 cubic feet per year of commercial tree species; (2) in eastern Oregon, is capable of producing more than 85 cubic feet per acre per year of wood fiber and more than 4,000 cubic feet per year of commercial tree species.

A "ground water restricted area" means an area designated as a "critical ground water area" or a "ground water limited area" by the Oregon Water Resources Department or the Oregon Water Resources Commission before December 6, 2007.

average rate for one-year U.S. Treasury bills on December 31 of each year from the date the land use regulation was enacted to present, compounded annually.<sup>4</sup>

Furthermore, the appraisal also must show the current value of having a developable home site on the property. The value of the home sites approved cannot exceed the amount of loss the claimant experienced from the land use regulations. Finally, the appraisal also must show that residential use was the highest and best use of the property when the land use regulations were enacted. This ensures that the value of the property actually was reduced by land use regulations that restrict residential uses. Whether a particular property will meet this test will depend on its location, the time frame in question and other potential uses for which the property has been suited.

Finally, the claimant must establish the following:

- The claimant owns the property
- All owners of the property have consented in writing to the claim
- The property is located entirely outside any UGB and any city
- One or more land use regulations prohibit establishing the lot, parcel or dwelling
- Establishing the lot, parcel or dwelling is not prohibited by a regulation that was enacted before the claimant's acquisition date, or by a regulation that is required to protect public health or safety or that is required by federal law
- On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are sought under the Conditional option

### 3. What Is the Process for Express and Conditional Option Claims?

The DLCD election packet explains claimants' options under Measure 49 and identifies information needed for the supplemental review of claims. The packet also includes an Election Form for claimants to use in electing the relief they wish to seek under the measure.

Claimants have 90 days from the date of mailing of the packet to elect how they wish to proceed. ***If DLCD does not receive a completed election form within 90 days from the date of mailing, the claimant will not be eligible to relief under Measure 49.***

Claimants seeking up to 10 home site approvals under the Conditional option have 180 days from the date DLCD receives the election form to submit the required appraisal. Until the appraisal is submitted, claimants can change their election to proceed under

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<sup>4</sup> The Federal Reserve stopped selling one-year U.S. Treasury bills after June 30, 2000. The rate to use for calculations subsequent to that date is the one-year Constant Maturity Treasury (CMT) Index published by the Federal Reserve. Rates are available on the Federal Reserve's website at: <http://www.federalreserve.gov/releases/H15/data.htm>.

the Express option instead. Once an appraisal is filed, however, the election to proceed under the Conditional option is final and cannot be changed.

DLCD will review claims in the order the election forms are received. If DLCD determines that a claim is based exclusively on a county land use regulation, DLCD will transfer the claim to the appropriate county for processing.

DLCD is required to review claims “as quickly as possible, consistent with careful review of the claims,” and to report to the Joint Legislative Audit Committee by March 31, 2008, on its progress. If DLCD approves a claim, it must state the number of home site approvals and any other conditions of approval.

## **Part 3: Claims for Properties Inside any UGB or any City**

### **1. What About Claims for Properties Inside any UGB or any City?**

Claimants who filed a Measure 37 claim on or before June 28, 2007, for property located, in whole or in part, inside any UGB or any city may be eligible for up to 10 single-family dwellings. The number of dwellings that may be allowed is dependent upon the following conditions:

- If there is an approved Measure 37 waiver, the claimant is limited to the number approved in the waiver
- If there is no approved waiver, the claimant is limited to the number sought in the original claim
- Regardless of whether there is a Measure 37 waiver, the total number of dwellings on the property cannot exceed 10, including both new and existing dwellings
- The total value of any new dwellings approved cannot exceed the amount of the reduction in value caused by the enactment of a land use regulation, as determined by an appraisal

How property value is measured is discussed in more detail below. A claimant who has filed a claim or obtained a waiver for more than 10 dwellings may amend his or her claim to request not more than 10 dwellings.

To qualify for relief for property inside any UGB or any city, a claimant also must show:

- The claimant owns the property
- All owners of the property have consented in writing to the claim
- The property is located wholly or in part inside a UGB or a city
- One or more land use regulations prohibit establishing the dwellings
- Establishing the dwellings is not prohibited by land use regulations that protect public health or safety, or by regulations required by federal law
- The land use regulation that is the basis of the claim was enacted after the property was brought inside a UGB (or Metro boundary, or the boundary of a city, as applicable)
- The highest and best use of the property at the time the regulation was enacted was residential use

For claims regarding property inside any UGB or any city, the reduction in fair market value caused by the enactment of a regulation must be shown by measuring the property's value one year before the land use regulation was enacted relative to the value one year after. This difference is then adjusted for interest from the date the land

use regulation was enacted to present, computed based on the average rate for one-year U.S. Treasury Bills on December 31, each year from the date of enactment of the land use regulation to the date the claim was filed, compounded annually.

The appraisal in support of a claim for urban property also must be done in accordance with the terms of the measure, by a certified appraiser, in compliance with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

In the case of Metro, if Metro and a city or county within Metro are reviewing a claim on the same property, they must coordinate their review and decisions.

## **2. What Is the Process for Claims Inside any UGB or any City?**

If a waiver was issued on a Measure 37 claim for property inside any UGB or any city before December 6, 2007, the entity that issued the waiver must review the claim on the record to determine if the claimant is entitled to relief under Measure 49. Certain time lines apply to the review.

If a waiver was not issued before December 6, 2007, the entity must send notice to the claimant within 90 days after the effective date of Measure 49. The claimant must then indicate within 120 days if the claimant intends to pursue the claim. If the claimant fails to respond or to provide any required information, the claimant abandons the right to proceed with that claim under Measure 49.

Claims for property inside any UGB or any city filed under Measure 37 after December 4, 2006, must have included a copy of a final land use decision by the city or county having jurisdiction that denied an application for the residential use requested. If a claimant did not include such a final decision with the claim, the claimant is not entitled to relief under Measure 49.

## **Part 4: Completing Development Based on a Measure 49 Approval**

### **1. When Can a Claimant Develop the Property?**

Once a claimant has received an approval under Measure 49, there is no time limit on when the claimant may carry out the development of the property. However, if the claimant sells the property, the *purchaser* then has 10 years to complete the development. The division of the property, and any dwellings, approved under Measure 49 are treated as permitted uses even if they would not otherwise be allowed under the zoning for the property.

### **2. May a Claimant Sell the Property With the Approval?**

Yes. Unlike Measure 37, Measure 49 makes the development approval transferable to a new owner. After receiving an approval, a claimant is free to sell the property and the new owner may use the approval within 10 years (see above).

### **3. What Development Standards Apply to Measure 49?**

Once a claimant has received a Measure 49 approval, the claimant will still need to apply for a subdivision or partition approval to divide the property, and for a building and development permit for any dwellings. Subdivisions, partitions and dwellings approved under Measure 49 must comply with all current applicable siting and development standards, except to the extent that the application of the development standards would prohibit the use. (There is an exception to this exception, in that standards that are “reasonably necessary to protect public health or safety or carry out federal law” must be applied even if the effect would be to prohibit the use.)

In addition, newly-created lots or parcels in an exclusive farm use (EFU), forest or mixed farm-forest zone may not exceed two acres, if located on land that is more than 50 percent high-value farm- or forestland or in a ground water restricted area; or five acres otherwise. In addition, if the property is in an EFU, forest or mixed farm-forest zone, 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.” A claimant with home site approvals on more than one property may cluster some or all of the dwellings, lots or parcels to which the claimant is entitled on one of the properties.

Under no circumstances is a claimant entitled to more than 20 home site approvals, regardless of how many properties the claimant owns or how many claims the claimant has filed.

#### **4. What Happens if a Claimant Dies While a Measure 49 Claim Is Pending?**

If a claimant dies while action on a Measure 49 claim is pending, the right to pursue the claim and use the property under an approval is not affected if the death occurs on or after December 6, 2007. The right passes to the person who acquires the property by devise or operation of law. Additionally, House Bill 3546, which was incorporated into Measure 49, states that the ability of a claimant to pursue a claim is not affected by the claimant's death provided the claim was filed *after* November 1, 2006, and the claimant dies following submission of the claim.

## **Part 5: Additional Resources**

There are a number of resources to assist claimants in better understanding Measure 49. Among them are:

Oregon Department of Land Conservation and Development. <http://www.oregon.gov/LCD>

Oregon Department of Justice. [http://www.doj.state.or.us/hot\\_topics/measure37.shtml](http://www.doj.state.or.us/hot_topics/measure37.shtml)

League of Oregon Cities. <http://www.orcities.org>

Association of Oregon Counties. <http://www.aocweb.org>

1000 Friends of Oregon. <http://www.friends.org>

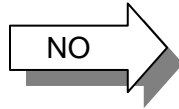
Oregonians in Action. <http://www.oia.org>

# ELECTION PROCESS

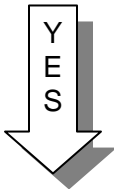
Proceeding under  
Measure 49



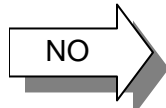
1) Is the property entirely outside any UGB or city?



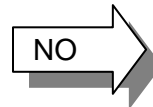
Contact city, county or Metro



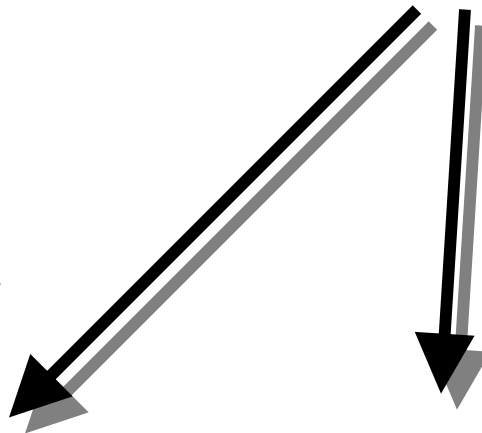
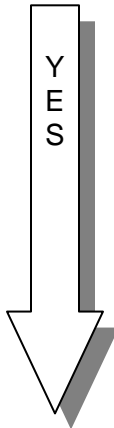
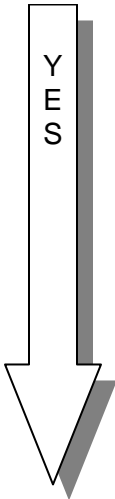
2) Is the property more than 50 percent high-value farm- or forestland, or in a ground water restricted area?



3) Was the claim/waiver for 3 or fewer homesites or exclusively for non-residential use?



4) CHOICE  
Eligible for either the Conditional or Express option



## EXPRESS

1. The property is entirely outside any UGB or city; **AND**
2. The property is more than 50 percent high-value farm- or forestland or within a ground water restricted area; **AND/OR**
3. The claim or waiver was for 3 or fewer homesites or exclusively for a non-residential use; **AND/OR**
4. The choice under Measure 49 is for 3 or fewer new homesites.

## CONDITIONAL

1. The property is entirely outside any UGB or city; **AND**
2. The property is not more than 50 percent high-value farm- or forestland and is not within a ground water restricted area; **AND**
3. The claim or waiver was for residential use of 4 or more homesites; **AND**
4. The choice under Measure 49 is for 4 to 10 homesites.