

**A-Engrossed**  
**House Bill 3540**

Ordered by the House April 26  
Including House Amendments dated April 26

Sponsored by Representative MACPHERSON, Senator PROZANSKI

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Conforms Ballot Measure 37 (2004) to legislative form and style.]*

*[Declares emergency, effective on passage.]*

**Revises law relating to compensation of property owners for land use regulations.  
Continuously appropriates moneys in Compensation and Conservation Fund to Department of Land Conservation and Development to pay expenses incurred to review claims.**

**Refers Act to people for their approval or rejection at special election to be held on date specified in chapter \_\_\_\_\_, Oregon Laws 2007 (Enrolled \_\_\_\_\_ Bill \_\_\_\_\_).**

**A BILL FOR AN ACT**

1  
2 Relating to compensation for loss of value of private real property resulting from land use regu-  
3 lation; creating new provisions; amending ORS 93.040 and 197.352; appropriating money; limiting  
4 expenditures; and providing that this Act shall be referred to the people for their approval or  
5 rejection.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1. Sections 2, 3 and 5 to 22 of this 2007 Act are added to and made a part of**  
8 **ORS chapter 195.**

9 **SECTION 1a. ORS 197.352 is added to and made a part of sections 5 to 22 of this 2007 Act.**

**DEFINITIONS**

10  
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12  
13 **SECTION 2. As used in this section and sections 3 and 5 to 22 of this 2007 Act:**

14 (1) "Acquisition date" means the date described in section 21 of this 2007 Act.

15 (2) "Claim" means a written demand for compensation filed under:

16 (a) ORS 197.352, as in effect immediately before the effective date of this 2007 Act; or

17 (b) Sections 12 to 14 of this 2007 Act and ORS 197.352, as in effect on and after the ef-  
18 fective date of this 2007 Act.

19 (3) "Enacted" means enacted, adopted or amended.

20 (4) "Fair market value" has the meaning given the term "real market value" in ORS  
21 308.205.

22 (5) "Farming practice" has the meaning given that term in ORS 30.930.

23 (6) "Federal law" means:

24 (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state  
25 entity acting under authority delegated by the federal government;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

- 1       (b) A requirement contained in a plan or rule enacted by a compact entity; or  
2       (c) A requirement contained in a permit issued by a federal or state agency pursuant to  
3 a federal statute or regulation.

4       (7) "File" means to submit a document to a public entity.

5       (8) "Forest practice" has the meaning given that term in ORS 527.620.

6       (9) "Ground water restricted area" means an area designated as a critical ground water  
7 area or as a ground water limited area by the Water Resources Department or Water Re-  
8 sources Commission before the effective date of this 2007 Act.

9       (10) "High-value farmland" means:

10       (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use  
11 zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4)  
12 and (6) are the effective date of this 2007 Act.

13       (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils  
14 in Class III or IV or composed predominantly of a combination of the soils described in ORS  
15 215.710 (1) and the following soils:

16       (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay  
17 Loam;

18       (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt  
19 Loam; and

20       (C) Subclassification IVw, specifically Huffling Silty Clay Loam.

21       (c) Land that is within the place of use for a permit, certificate or decree for the use of  
22 water for irrigation issued by the Water Resources Department or that is within the  
23 boundaries of an irrigation district.

24       (d) Land that contains not less than five acres planted in wine grapes.

25       (e) Land that is in an exclusive farm use zone and that is at an elevation between 200  
26 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope  
27 between zero and 15 percent, and that is located within:

28       (A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

29       (B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89;

30       (C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90;

31       (D) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

32       (E) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74  
33 that is within the State of Oregon;

34       (F) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91  
35 that is within the State of Oregon; or

36       (G) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208  
37 that is within the State of Oregon.

38       (f) Land that is in an exclusive farm use zone and that is at an elevation between 200 and  
39 2,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope  
40 between zero and 15 percent, and that is located within the portion of the Columbia Gorge  
41 viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon.

42       (11) "High-value forestland" means land that is in a forest zone or a mixed farm and  
43 forest zone and that:

44       (a) Is located in western Oregon and composed predominantly of soils capable of  
45 producing more than 120 cubic feet per acre per year of wood fiber and 5,000 cubic feet per

1 year of commercial tree species; or

2 (b) Is located in eastern Oregon and composed predominantly of soils capable of produc-  
3 ing more than 85 cubic feet per acre per year of wood fiber and 4,000 cubic feet per year of  
4 commercial tree species.

5 (12) "Home site approval" means approval of the subdivision or partition of property or  
6 approval of the establishment of a dwelling on property.

7 (13) "Just compensation" means:

8 (a) Relief under sections 5 to 11 of this 2007 Act for land use regulations enacted before  
9 May 15, 2007; and

10 (b) Relief under sections 12 to 14 of this 2007 Act for land use regulations enacted on or  
11 after May 15, 2007.

12 (14) "Land use regulation" means:

13 (a) A statute that establishes a minimum lot or parcel size;

14 (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS  
15 chapter 215 that restricts the residential use of private real property;

16 (c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance  
17 that restricts the residential use of residentially zoned private real property;

18 (d) A provision of a county comprehensive plan, zoning ordinance or land division ordi-  
19 nance that restricts the residential use of private real property;

20 (e) An administrative rule of the State Board of Forestry that regulates a forest practice  
21 and that implements the Oregon Forest Practices Act;

22 (f) An administrative rule of the State Department of Agriculture that implements ORS  
23 561.191 or 568.900 to 568.933; or

24 (g) An administrative rule or goal of the Land Conservation and Development Commis-  
25 sion.

26 (15) "Measure 37 permit" means a final decision by a city or county to authorize the de-  
27 velopment, subdivision or partition or other use of property pursuant to a waiver.

28 (16) "Owner" means:

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

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

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

35 (17) "Property" means the private real property described in a claim and contiguous pri-  
36 vate real property that is owned by the same owner, whether or not the contiguous property  
37 is described in another claim, and that is not property owned by the federal government, an  
38 Indian tribe or a public body, as defined in ORS 192.410.

39 (18) "Protection of public health and safety" means a law, rule, ordinance, order, policy,  
40 permit or other governmental authorization that restricts a use of property in order to re-  
41 duce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease,  
42 crime or other natural or human disaster or threat to persons or property including, but not  
43 limited to, building and fire codes, health and sanitation regulations, solid or hazardous  
44 waste regulations and pollution control regulations.

45 (19) "Public entity" means the state, a county or a city.

1 (20) "Urban growth boundary" has the meaning given that term in ORS 195.060.

2 (21) "Waive" or "waiver" means an action or decision of a public entity to modify, remove  
3 or not apply one or more land use regulations under sections 5 to 22 of this 2007 Act or ORS  
4 197.352, as in effect immediately before the effective date of this 2007 Act, to allow the owner  
5 to use property for a use permitted when the owner acquired the property.

6 (22) "Zoned for residential use" means zoning that has as its primary purpose single-  
7 family residential use.

8  
9 **LEGISLATIVE POLICY**  
10 **ON FAIRNESS TO PROPERTY OWNERS**

11  
12 **SECTION 3.** (1) The Legislative Assembly finds that:

13 (a) In some situations, land use regulations unfairly burden particular property owners.

14 (b) To address these situations, it is necessary to amend Oregon's land use statutes to  
15 provide just compensation for unfair burdens caused by land use regulations.

16 (2) The purpose of sections 5 to 22 of this 2007 Act and the amendments to Ballot Meas-  
17 ure 37 (2004) is to revise Ballot Measure 37 (2004) to ensure that Oregon law provides just  
18 compensation for unfair burdens while retaining Oregon's protections for farm and forest  
19 uses and the state's water resources.

20  
21 **BALLOT MEASURE 37**

22  
23 **SECTION 4.** ORS 197.352 is amended to read:

24 197.352. *[The following provisions are added to and made a part of ORS chapter 197:]*

25 (1) If a public entity enacts *[or enforces a new land use regulation or enforces a land use regu-*  
26 *lation enacted prior to December 2, 2004, that restricts]* **one or more land use regulations that re-**  
27 **strict the residential use of private real property or *[any interest therein]* a farming or forest**  
28 **practice and *[has the effect of reducing]* that unfairly reduce** the fair market value of the property  
29 **as described in section 12 (2) of this 2007 Act,** *[or any interest therein,]* then the owner of the  
30 property shall be *[paid just compensation]* **entitled to just compensation from the public entity**  
31 **that enacted the land use regulation or regulations as provided in sections 12 to 14 of this**  
32 **2007 Act.**

33 (2) Just compensation **under sections 12 to 14 of this 2007 Act** shall be *[equal to]* **based on**  
34 the reduction in the fair market value of the *[affected]* property *[interest]* resulting from *[enactment*  
35 *or enforcement of]* the land use regulation *[as of the date the owner makes written demand for com-*  
36 *penetration under this section].*

37 (3) Subsection (1) of this section shall not apply to land use regulations **that were enacted**  
38 **prior to the claimant's acquisition date or to land use regulations:**

39 *[(A)]* (a) Restricting or prohibiting activities commonly and historically recognized as public  
40 nuisances under common law. *This subsection shall be construed narrowly in favor of a finding of*  
41 *compensation under this section];*

42 *[(B)]* (b) Restricting or prohibiting activities for the protection of public health and safety, *[such*  
43 *as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and*  
44 *pollution control regulations];*

45 *[(C)]* (c) To the extent the land use regulation is required to comply with federal law; **or**

1       [(D)] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography  
 2 or performing nude dancing. *[Nothing in this subsection, however, is intended to affect or alter rights*  
 3 *provided by the Oregon or United States Constitutions; or]*

4       [(E)] *Enacted prior to the date of acquisition of the property by the owner or a family member of*  
 5 *the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever*  
 6 *occurred first.*

7       [(4)] *Just compensation under subsection (1) of this section shall be due the owner of the property*  
 8 *if the land use regulation continues to be enforced against the property 180 days after the owner of the*  
 9 *property makes written demand for compensation under this section to the public entity enacting or*  
 10 *enforcing the land use regulation.*

11       [(5)] *For claims arising from land use regulations enacted prior to December 2, 2004, written de-*  
 12 *mand for compensation under subsection (4) shall be made within two years of December 2, 2004, or*  
 13 *the date the public entity applies the land use regulation as an approval criteria to an application*  
 14 *submitted by the owner of the property, whichever is later. For claims arising from land use regulations*  
 15 *enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made*  
 16 *within two years of the enactment of the land use regulation, or the date the owner of the property*  
 17 *submits a land use application in which the land use regulation is an approval criteria, whichever is*  
 18 *later.*

19       [(6)] *If a land use regulation continues to apply to the subject property more than 180 days after the*  
 20 *present owner of the property has made written demand for compensation under this section, the pres-*  
 21 *ent owner of the property, or any interest therein, shall have a cause of action for compensation under*  
 22 *this section in the circuit court in which the real property is located, and the present owner of the real*  
 23 *property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reason-*  
 24 *ably incurred to collect the compensation.*

25       **(4) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just**  
 26 **compensation under this section. Nothing in subsection (3) of this section is intended to af-**  
 27 **fect or alter rights provided by the Oregon or United States Constitution.**

28       [(7)] **(5)** A *[metropolitan service district, city, or county, or state agency]* **public entity** may adopt  
 29 or apply procedures for the processing of claims under *[this section, but in no event shall these pro-*  
 30 *cedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section,*  
 31 *nor shall the failure of an owner of property to file an application for a land use permit with the local*  
 32 *government serve as grounds for dismissal, abatement, or delay of a compensation claim under sub-*  
 33 *section (6) of this section]* **sections 5 to 22 of this 2007 Act.**

34       [(8)] **(6)** *[Notwithstanding any other state statute or the availability of funds under subsection (10)*  
 35 *of this section, in lieu of payment of just compensation under this section, the governing body respon-*  
 36 *sible for enacting]* **The public entity that enacted** the land use regulation *[may modify, remove, or*  
 37 *not to apply the land use regulation or land use regulations to allow the owner to use the property for*  
 38 *a use permitted at the time the owner acquired the property]* **that gives rise to a claim under sub-**  
 39 **section (1) of this section shall provide just compensation as required under sections 5 to 22**  
 40 **of this 2007 Act.**

41       [(9)] **(7)** A decision by a *[governing body under this section shall not be considered a]* **public en-**  
 42 **tity that an owner qualifies for just compensation under sections 5 to 22 of this 2007 Act and**  
 43 **a decision by a public entity on the nature and extent of that compensation are not land use**  
 44 *[decision as defined in ORS 197.015 (11)]* **decisions.**

45       [(10)] *Claims made under this section shall be paid from funds, if any, specifically allocated by the*

1 legislature, city, county, or metropolitan service district for payment of claims under this section.  
2 Notwithstanding the availability of funds under this subsection, a metropolitan service district, city,  
3 county, or state agency shall have discretion to use available funds to pay claims or to modify, remove,  
4 or not apply a land use regulation or land use regulations pursuant to subsection (6) of this section.  
5 If a claim has not been paid within two years from the date on which it accrues, the owner shall be  
6 allowed to use the property as permitted at the time the owner acquired the property.]

7 [(11) Definitions - for purposes of this section:]

8 [(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother,  
9 brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle,  
10 niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate  
11 of any of the foregoing family members, or a legal entity owned by any one or combination of these  
12 family members or the owner of the property.]

13 [(B) "Land use regulation" shall include:]

14 [(i) Any statute regulating the use of land or any interest therein;]

15 [(ii) Administrative rules and goals of the Land Conservation and Development Commission;]

16 [(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and  
17 transportation ordinances;]

18 [(iv) Metropolitan service district regional framework plans, functional plans, planning goals and  
19 objectives; and]

20 [(v) Statutes and administrative rules regulating farming and forest practices.]

21 [(C) "Owner" is the present owner of the property, or any interest therein.]

22 [(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.]

23 [(12)] (8) The [remedy] **remedies** created by [this section is] **sections 5 to 22 of this 2007 Act**  
24 **are** in addition to any other remedy under the Oregon or United States [Constitutions]  
25 **Constitution**, and [is] **are** not intended to modify or replace any [other] **constitutional** remedy.

26 [(13) If any portion or portions of this section are declared invalid by a court of competent juris-  
27 diction, the remaining portions of this section shall remain in full force and effect.]

28 **SECTION 4a. The amendments to ORS 197.352 by section 4 of this 2007 Act apply to**  
29 **claims made under ORS 197.352 on or after May 15, 2007.**

30  
31 **BALLOT MEASURE 37 CLAIMS MADE**  
32 **BEFORE MAY 15, 2007**  
33 **(Generally)**  
34

35 **SECTION 5. A claimant that filed a claim under ORS 197.352 before May 15, 2007, is en-**  
36 **titled to just compensation as provided in:**

37 (1) **Section 6 or 7 of this 2007 Act, at the claimant's election, if the property described in**  
38 **the claim is located entirely outside any urban growth boundary and entirely outside the**  
39 **boundaries of any city;**

40 (2) **Section 9 of this 2007 Act if the property described in the claim is located, in whole**  
41 **or in part, within an urban growth boundary; or**

42 (3) **A waiver issued before the effective date of this 2007 Act to the extent that the**  
43 **claimant's use of the property complies with the waiver and the claimant has a common law**  
44 **vested right on the effective date of this 2007 Act to complete and continue the use described**  
45 **in the waiver.**

(Claims Relating to Property  
Outside Urban Growth Boundaries)

**SECTION 6. (1) A claimant that filed a claim under ORS 197.352 before May 15, 2007, is eligible for three home site approvals on the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.**

**(2) The number of lots, parcels or dwellings that may be approved for property under this section may not exceed the lesser of:**

**(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state; or**

**(b) Three, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed three.**

**(3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief under this section may establish at least one additional lot, parcel or dwelling on the property. In addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant may amend the claim to reduce the number to no more than three by filing notice of the amendment with the information required by section 8 of this 2007 Act.**

**(4) If a claim was for a use other than a subdivision or partition of property, or other than approval for establishing a dwelling on the property, the claimant may amend the claim to seek one or more home site approvals under this section. A person amending a claim under this subsection may not make a claim under section 7 of this 2007 Act.**

**(5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.**

**(6) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act, to qualify for a home site approval under this section the claimant must establish that:**

**(a) The claimant is an owner of the property;**

**(b) All owners of the property have consented in writing to the claim;**

**(c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;**

**(d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;**

**(e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3); and**

1 (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish  
2 at least the number of lots, parcels or dwellings on the property that are authorized under  
3 this section.

4 (7) If the claim was filed after December 4, 2006, to issue a home site approval under this  
5 section, the Department of Land Conservation and Development must verify that the claim  
6 was filed in compliance with the applicable rules of the Land Conservation and Development  
7 Commission and the Oregon Department of Administrative Services.

8 (8) Except as provided in section 11 of this 2007 Act, if the Department of Land Conser-  
9 vation and Development has issued a final order with a specific number of home site ap-  
10 provals for a property under this section, the claimant may obtain other governmental  
11 authorizations required by law for the partition or subdivision of the property or for the  
12 development of any dwelling authorized, and a land use regulation enacted by the state or  
13 county that has the effect of prohibiting the partition or subdivision, or the dwelling, does  
14 not apply to those authorizations.

15 **SECTION 7.** (1) A claimant that filed a claim under ORS 197.352 before May 15, 2007, for  
16 property that is not high-value farmland or high-value forestland and that is not in a ground  
17 water restricted area is eligible for four to 10 home site approvals for the property if the  
18 requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure  
19 for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

20 (2) The number of lots, parcels or dwellings that may be established on the property un-  
21 der this section may not exceed the lesser of:

22 (a) The number of lots, parcels or dwellings described in a waiver issued by the state  
23 before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots,  
24 parcels or dwellings described in the claim filed with the state;

25 (b) 10, except that if there are existing dwellings on the property or the property contains  
26 more than one lot or parcel, the number of lots, parcels or dwellings that may be established  
27 is reduced, so that the combined number of lots, parcels or dwellings, including existing lots,  
28 parcels or dwellings located on or contained within the property, does not exceed 10; or

29 (c) The number of home site approvals with a total value that represents just compen-  
30 sation for the reduction in fair market value caused by the enactment of one or more land  
31 use regulations that were the basis for the claim, as set forth in subsection (6) of this sec-  
32 tion.

33 (3) If the number of lots, parcels or dwellings described in a waiver issued by the state  
34 before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots,  
35 parcels or dwellings described in the claim filed with the state is more than 10, the claimant  
36 may amend the claim to reduce the number to no more than 10 by filing notice of the  
37 amendment with the information required by section 8 of this 2007 Act.

38 (4) If multiple claims were filed for the same property, the number of lots, parcels or  
39 dwellings that may be established for purposes of subsection (2)(a) of this section is the  
40 number of lots, parcels or dwellings in the most recent waiver issued by the state before the  
41 effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with  
42 the state, but not more than 10 in any case.

43 (5) To qualify for a home site approval under this section, the claimant must have filed  
44 a claim for the property with both the state and the county in which the property is located.  
45 In addition, regardless of whether a waiver was issued by the state or the county before the

1 effective date of this 2007 Act to qualify for a home site approval under this section, the  
2 claimant must establish that:

3 (a) The claimant is an owner of the property;

4 (b) All owners of the property have consented in writing to the claim;

5 (c) The property is located entirely outside any urban growth boundary and entirely  
6 outside the boundaries of any city;

7 (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

8 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regu-  
9 lation described in ORS 197.352 (3);

10 (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish  
11 at least the number of lots, parcels and dwellings on the property that are authorized under  
12 this section; and

13 (g) The enactment of one or more land use regulations, other than land use regulations  
14 described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair  
15 market value of the property that is greater than the fair market value of the home site  
16 approvals that the claimant would otherwise be entitled to under section 6 (2) of this 2007  
17 Act, with the reduction in fair market value measured as set forth in subsection (6) of this  
18 section.

19 (6) The reduction in the fair market value of the property caused by the enactment of  
20 one or more land use regulations that were the basis for the claim is equal to the decrease,  
21 if any, in the fair market value of the property from the date that is one year before the  
22 enactment of the land use regulation to the date that is one year after the enactment, plus  
23 interest. If the claim is based on the enactment of more than one land use regulation enacted  
24 on different dates, the reduction in the fair market value of the property caused by each  
25 regulation shall be determined separately and the values added together to calculate the total  
26 reduction in fair market value. The reduction in fair market value shall be adjusted by any  
27 ad valorem property taxes not paid as a result of any special assessment of the property  
28 under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus  
29 interest, offset by any severance taxes paid by the claimant and by any recapture of potential  
30 additional tax liability that the claimant has paid or will pay for the property if the property  
31 is disqualified from special assessment under ORS 308A.703. Interest shall be computed under  
32 this subsection using the average interest rate for a one-year United States Government  
33 Treasury Bill on December 31 of each year of the period between the date the land use reg-  
34 ulation was enacted and the date the claim was filed, compounded annually on January 1 of  
35 each year of the period.

36 (7) For the purposes of subsection (6) of this section, a claimant must provide an ap-  
37 praisal showing the fair market value of the property one year before the enactment of the  
38 land use regulation that was the basis for the claim and the fair market value of the property  
39 one year after the enactment. The appraisal also must show the fair market value of each  
40 home site approval to which the claimant is entitled under section 6 (2) of this 2007 Act,  
41 along with evidence of any ad valorem property taxes not paid, any severance taxes paid and  
42 any recapture of additional tax liability that the claimant has paid or will pay for the prop-  
43 erty if the property is disqualified from special assessment under ORS 308A.703. The actual  
44 and reasonable cost of the appraisal, not to exceed \$5,000, may be added to the calculation  
45 of the reduction in fair market value under subsection (6) of this section. The appraisal must:

1 (a) Be prepared by a person certified or licensed under ORS chapter 674 or a person  
2 registered under ORS chapter 308;

3 (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized  
4 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

5 (c) Expressly determine the highest and best use of the property at the time the land use  
6 regulation was enacted.

7 (8) Relief may not be granted under this section if the highest and best use of the prop-  
8 erty was not residential use at the time the land use regulation was enacted.

9 (9) If the claim was filed after December 4, 2006, to issue a home site approval under this  
10 section, the Department of Land Conservation and Development must verify that the claim  
11 was filed in compliance with the applicable rules of the Land Conservation and Development  
12 Commission and the Oregon Department of Administrative Services.

13 (10) Except as provided in section 11 of this 2007 Act, if the Department of Land Con-  
14 servation and Development has issued a final order with a specific number of home site ap-  
15 provals for the property under this section, the claimant may obtain other governmental  
16 authorizations required by law for the subdivision or partition of the property or for the  
17 development of any dwelling authorized, and a land use regulation enacted by the state or  
18 county that has the effect of prohibiting the subdivision or partition, or the dwelling, does  
19 not apply to those authorizations.

20 SECTION 8. (1) A claimant that seeks home site approvals under section 6 or 7 of this  
21 2007 Act must elect the section under which the claimant wishes to seek relief. Not more  
22 than 120 days after the effective date of this 2007 Act, the Department of Land Conservation  
23 and Development shall send notice to each claimant that is eligible for one or more home  
24 site approvals under section 6 of this 2007 Act. The notice must:

25 (a) Explain that the claimant must elect whether to seek relief under section 6 or 7 of  
26 this 2007 Act if the claimant wishes to subdivide, partition or establish a dwelling on the  
27 property under sections 5 to 22 of this 2007 Act;

28 (b) Identify the information that the claimant must file; and

29 (c) Provide a form for the claimant's use in making the election and filing any required  
30 information.

31 (2) A claimant must make the election required by this section in writing, using the form  
32 provided by the department, and must file the election within 90 days after the date the de-  
33 partment mailed the notice and form required under subsection (1) of this section. In addi-  
34 tion, the claimant must file the information required in the notice. If the claimant fails to  
35 file the written election and required information within 90 days after the date the depart-  
36 ment mailed the notice required under subsection (1) of this section, the claimant is not  
37 entitled to relief under section 6 or 7 of this 2007 Act.

38 (3) The department shall review the claims in the order in which the department receives  
39 the information required under subsection (2) of this section. In addition to reviewing the  
40 claim, the department shall review the department's record on the claim, the information  
41 required under subsection (2) of this section, any new material from the claimant and any  
42 other information required by sections 5 to 22 of this 2007 Act to ensure that the require-  
43 ments of this section and section 6 or 7 of this 2007 Act are met. The department shall pro-  
44 vide a copy of the material submitted by the claimant to the county where the property is  
45 located and consider written comments from the county that are timely filed with the de-

1 **partment. If the department determines that the only land use regulations that restrict the**  
2 **claimant's use of the property are regulations that were enacted by the county, the depart-**  
3 **ment shall transfer the claim to the county where the property is located and the claim shall**  
4 **be processed by the county. The county must consider any written comments from the de-**  
5 **partment that are timely filed with the county.**

6 **(4) If the claimant elects to obtain relief under section 7 of this 2007 Act, the claimant**  
7 **must file an appraisal that establishes the reduction in the fair market value of the property**  
8 **as required by section 7 (6) of this 2007 Act. The actual and reasonable cost of the appraisal,**  
9 **not to exceed \$5,000, may be added to the calculation of the reduction in fair market value**  
10 **under section 7 (6) of this 2007 Act. The appraisal must be filed with the department or, if**  
11 **the claim is being processed by the county, with the county within 180 days after the date**  
12 **the claimant files the election to obtain relief under section 7 of this 2007 Act. A claimant**  
13 **that elects to obtain relief under section 7 of this 2007 Act may change that election to obtain**  
14 **relief under section 6 of this 2007 Act, but only if the claimant provides written notice of the**  
15 **change on or before the date the appraisal is filed. The department or the county may impose**  
16 **a fee for the review of a claim under section 7 of this 2007 Act in an amount not to exceed**  
17 **\$1,000.**

18 **(5) The department or the county shall review claims as quickly as possible, consistent**  
19 **with the resources available to the department or county for thorough review of the claims.**  
20 **The department shall report to the Joint Legislative Audit Committee on or before March**  
21 **31, 2008, concerning the department's progress and the counties' progress in completing re-**  
22 **view of claims under sections 6 and 7 of this 2007 Act.**

23 **(6) The department's final order and a county's final decision on a claim under section 6**  
24 **or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision**  
25 **approves the claim, the order or decision must state the number of home site approvals is-**  
26 **ssued for the property and may contain other terms that are necessary to ensure that the**  
27 **use of the property is lawful.**

28  
29 **(Claims Relating to Property Within**  
30 **Urban Growth Boundaries)**  
31

32 **SECTION 9. (1) A claimant that filed a claim under ORS 197.352 before the effective date**  
33 **of this 2007 Act for property located, in whole or in part, within an urban growth boundary**  
34 **may establish one to 10 single-family dwellings on the portion of the property located within**  
35 **the urban growth boundary.**

36 **(2) The number of single-family dwellings that may be established on the portion of the**  
37 **property located within the urban growth boundary under this section may not exceed the**  
38 **lesser of:**

39 **(a) The number of single-family dwellings described in a waiver issued by the city or the**  
40 **county before the effective date of this 2007 Act or, if a waiver was not issued, the number**  
41 **described in the claim filed with the city or county;**

42 **(b) 10, except that if there are existing dwellings on the property, the number of single-**  
43 **family dwellings that may be established is reduced so that the maximum number of**  
44 **dwellings, including existing dwellings located on the property, does not exceed 10; or**

45 **(c) The number of single-family dwellings the total value of which represents just com-**

1    **pensation for the reduction in fair market value caused by the enactment of one or more**  
2    **land use regulations that were the basis for the claim, as set forth in subsection (6) of this**  
3    **section.**

4       **(3) If the number of single-family dwellings described in a waiver issued by the city or**  
5    **the county before the effective date of this 2007 Act or, if a waiver was not issued, the**  
6    **number described in the claim filed with the city or county is more than 10, the claimant**  
7    **may amend the claim to reduce the number to no more than 10 by filing notice of the**  
8    **amendment with the information required by section 10 of this 2007 Act.**

9       **(4) If multiple claims were filed for the same property, the number of single-family**  
10   **dwellings that may be established for purposes of subsection (2)(a) of this section is the**  
11   **number in the most recent waiver issued by the city or the county before the effective date**  
12   **of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the city or**  
13   **county, but not more than 10 in any case.**

14       **(5) To qualify for the relief provided by this section, the claimant must have filed a claim**  
15   **for the property with the city or county in which the property is located. In addition, re-**  
16   **gardless of whether a waiver was issued by the city or the county before the effective date**  
17   **of this 2007 Act, to qualify for relief under this section, the claimant must establish that:**

18       **(a) The claimant is an owner of the property;**

19       **(b) All owners of the property have consented in writing to the claim;**

20       **(c) The property is located, in whole or in part, within an urban growth boundary;**

21       **(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish**  
22   **at least the number of dwellings on the property that are authorized under this section;**

23       **(e) The property is zoned for residential use;**

24       **(f) One or more land use regulations prohibit establishing the single-family dwellings;**

25       **(g) The establishment of the single-family dwellings is not prohibited by a land use reg-**  
26   **ulation described in ORS 197.352 (3);**

27       **(h) The land use regulation described in paragraph (f) of this subsection was enacted af-**  
28   **ter the date the property, or any portion of the property, was brought into the urban growth**  
29   **boundary;**

30       **(i) If the property is located within a city, the land use regulation that is the basis for**  
31   **the claim was enacted after the date the property was annexed to the city; and**

32       **(j) The enactment of one or more land use regulations, other than land use regulations**  
33   **described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair**  
34   **market value of the property, as determined under subsection (6) of this section, that is**  
35   **greater than the fair market value of the single-family dwellings the claimant would other-**  
36   **wise be entitled to under subsection (2) of this section.**

37       **(6) The reduction in the fair market value of the property caused by the enactment of**  
38   **one or more land use regulations that were the basis for the claim is equal to the decrease,**  
39   **if any, in the fair market value of the property from the date that is one year before the**  
40   **enactment of the land use regulation to the date that is one year after the enactment, plus**  
41   **interest. If the claim is based on the enactment of more than one land use regulation enacted**  
42   **on different dates, the reduction in the fair market value of the property caused by each**  
43   **regulation shall be determined separately and the values added together to calculate the total**  
44   **reduction in fair market value. The reduction in fair market value shall be adjusted by any**  
45   **ad valorem property taxes not paid as a result of any special assessment of the property**

1 under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus  
 2 interest, offset by any severance taxes paid by the claimant and by any recapture of potential  
 3 additional tax liability that the claimant has paid or will pay for the property if the property  
 4 is disqualified from special assessment under ORS 308A.703. Interest shall be computed under  
 5 this subsection using the average interest rate for a one-year United States Government  
 6 Treasury Bill on December 31 of each year of the period between the date the land use reg-  
 7 ulation was enacted and the date the claim was filed, compounded annually on January 1 of  
 8 each year of the period.

9 (7) For the purposes of subsection (6) of this section, a claimant must provide an ap-  
 10 praisal showing the fair market value of the property one year before the enactment of the  
 11 land use regulation that was the basis for the claim and the fair market value of the property  
 12 one year after the enactment. The appraisal also must show the fair market value of each  
 13 single-family dwelling to which the claimant is entitled under subsection (2) of this section,  
 14 along with evidence of any ad valorem property taxes not paid, any severance taxes paid and  
 15 any recapture of additional tax liability that the owner has paid or will pay for the property  
 16 if the property is disqualified from special assessment under ORS 308A.703. The actual and  
 17 reasonable cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the  
 18 reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

19 (a) Be prepared by a person certified or licensed under ORS chapter 674 or a person  
 20 registered under ORS chapter 308;

21 (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized  
 22 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

23 (c) Expressly determine the highest and best use of the property at the time the land use  
 24 regulation was enacted.

25 (8) Relief may not be granted under this section if the highest and best use of the prop-  
 26 erty was not residential use at the time the land use regulation was enacted.

27 (9) When a city or county has issued a final decision authorizing one or more single-  
 28 family dwellings under this section on the portion of the property located within the urban  
 29 growth boundary, the claimant may obtain other governmental authorizations required by  
 30 law for that use, and a land use regulation enacted by the city or county that has the effect  
 31 of prohibiting the use does not apply to those authorizations, except as provided in section  
 32 11 of this 2007 Act.

33 (10) The only types of land use that are authorized by this section are the subdivision or  
 34 partition of land for one or more single-family dwellings, or the establishment of one or more  
 35 single-family dwellings on land on which the dwellings would not otherwise be allowed.

36 **SECTION 10.** (1) A city or county that issued a waiver before the effective date of this  
 37 2007 Act for property located, in whole or in part, within an urban growth boundary must  
 38 review the claim, the city's or county's record on the claim and the waiver to determine  
 39 whether the claimant is entitled to relief under section 9 of this 2007 Act. If the city or  
 40 county lacks information needed to determine whether the claimant is entitled to relief, the  
 41 city or county shall issue a written request to the claimant for the required information. The  
 42 claimant must file the required information within 90 days after receiving the request. If the  
 43 claimant does not file the information, the city or county shall review the claim based on the  
 44 information that is available. A tentative review must be completed no later than 240 days  
 45 after the effective date of this 2007 Act. The city or county must provide written notice to

1 the claimant, the Department of Land Conservation and Development and any other person  
2 entitled to notice of the tentative determination as to whether the claimant qualifies for re-  
3 lief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings  
4 that the city or county proposes to authorize. The notice must state that the recipient has  
5 15 days to submit evidence or arguments in response to the tentative determination, after  
6 which the city or county shall make a final determination. A city or county must make the  
7 final determination within 300 days after the effective date of this 2007 Act.

8 (2) A city or county that did not make a final decision before the effective date of this  
9 2007 Act on a claim filed for property located, in whole or in part, within an urban growth  
10 boundary shall send notice to the claimant within 90 days after the effective date of this 2007  
11 Act. The notice must explain that the claimant is entitled to seek relief under section 9 of  
12 this 2007 Act, identify the information that the claimant must file and provide a form for the  
13 claimant's use in filing any required information. Within 120 days after the date the city or  
14 county sends notice, a claimant must notify the city or county if the claimant intends to  
15 continue the claim and must file the information required in the notice. If the claimant fails  
16 to file the notice and required information with the city or county within 120 days, the  
17 claimant is not entitled to relief under section 9 of this 2007 Act.

18 (3) A city or county that receives a notice from a claimant under subsection (2) of this  
19 section shall review the claim, the city's or county's record on the claim, the notice received  
20 from the claimant and the information required under subsection (2) of this section to de-  
21 termine whether the claim demonstrates that the requirements of section 9 of this 2007 Act  
22 are satisfied. The city or county shall complete a tentative review no later than 120 days  
23 after receipt of the notice from the claimant and shall provide written notice to the claimant,  
24 the department and any other person entitled to notice of the tentative determination as to  
25 whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the spe-  
26 cific number of single-family dwellings that the city or county proposes to authorize. The  
27 notice provided by the city or county must state that the recipient has 15 days to submit  
28 evidence or arguments in response to the tentative determination, after which the city or  
29 county shall make a final determination. A city or county must make the final determination  
30 within 180 days after receipt of the notice from the claimant.

31 (4) If a claimant filed a claim that is subject to this section after December 4, 2006, the  
32 claim must have included a copy of a final land use decision by the city or county with land  
33 use jurisdiction over the property that denied an application by the claimant for the resi-  
34 dential use described in the claim. If the claim was filed after December 4, 2006, and did not  
35 include a final land use decision denying the residential use described in the claim, the  
36 claimant is not entitled to relief under section 9 of this 2007 Act.

37  
38 (Development Standards; Transferability)  
39

40 **SECTION 11.** (1) A subdivision or partition of property, or the establishment of a dwelling  
41 on property, authorized under sections 5 to 11 of this 2007 Act must comply with all appli-  
42 cable standards governing the siting or development of the dwelling, lot or parcel including,  
43 but not limited to, the location, design, construction or size of the dwelling, lot or parcel.  
44 However, the standards must not be applied in a manner that has the effect of prohibiting  
45 the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007

1 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect  
2 public health or safety or to carry out federal law.

3 (2) Before beginning construction of any dwelling authorized under section 6 or 7 of this  
4 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in  
5 an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

6 (3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling  
7 authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in  
8 an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:

9 (A) Two acres if the lot or parcel is located on high-value farmland, on high-value  
10 forestland or on land within a ground water restricted area; or

11 (B) Five acres if the lot or parcel is not located on high-value farmland, on high-value  
12 forestland or on land within a ground water restricted area.

13 (b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and  
14 forest zone, the new lots or parcels created must be clustered so as to maximize suitability  
15 of the remnant lot or parcel for farm or forest use.

16 (4) If an owner is authorized to subdivide or partition more than one property, or to es-  
17 tablish dwellings on more than one property, under sections 5 to 11 of this 2007 Act and the  
18 properties are in an exclusive farm use zone, a forest zone or a mixed farm and forest zone,  
19 the owner may cluster some or all of the dwellings, lots or parcels on one of the properties  
20 if that property is less suitable than the other properties for farm or forest use. If one of  
21 the properties is zoned for residential use, the owner may cluster some or all of the  
22 dwellings, lots or parcels that would have been located in an exclusive farm use zone, a forest  
23 zone or a mixed farm and forest zone on the property zoned for residential use.

24 (5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11  
25 of this 2007 Act, regardless of how many properties that person owns or how many claims  
26 that person has filed.

27 (6) An authorization to partition or subdivide the property, or to establish dwellings on  
28 the property, granted under section 6, 7 or 9 of this 2007 Act runs with the property and  
29 may be either transferred with the property or encumbered by another person without af-  
30 fecting the authorization. There is no time limit on when an authorization granted under  
31 section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who ob-  
32 tained the authorization conveys the property to a person other than the owner's spouse or  
33 the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of  
34 the property must create the lots or parcels and establish the dwellings authorized by a  
35 waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

36 (a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 of  
37 this 2007 Act remains a discrete lot or parcel, unless the lot or parcel lines are vacated or  
38 the lot or parcel is further divided, as provided by law; and

39 (b) A dwelling or other residential use of the property based on an authorization under  
40 section 6, 7 or 9 of this 2007 Act is a permitted use and may be established or continued by  
41 the claimant or a subsequent owner, except that once the claimant conveys the property to  
42 a person other than the claimant's spouse or the trustee of a revocable trust in which the  
43 claimant is the settlor, the subsequent owner must establish the dwellings or other residen-  
44 tial use authorized under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance.

45 (7) When relief has been claimed under sections 5 to 11 of this 2007 Act:

1 (a) Additional relief is not due; and

2 (b) An additional claim may not be filed and a waiver may not be issued with regard to  
3 the property under sections 5 to 22 of this 2007 Act or ORS 197.352 as in effect immediately  
4 before the effective date of this 2007 Act, except with respect to a land use regulation en-  
5 acted on or after May 15, 2007, Act as set forth in sections 12 to 14 of this 2007 Act and ORS  
6 197.352.

7 (8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the  
8 rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a  
9 willing seller in the manner provided by ORS 271.715 to 271.795.

10 (9) If a claimant is an individual, the entitlement to prosecute the claim under section  
11 6, 7 or 9 of this 2007 Act and an authorization to use the property provided by a waiver under  
12 section 6, 7 or 9 of this 2007 Act:

13 (a) Is not affected by the death of the claimant if the death occurs on or after the ef-  
14 fective date of this 2007 Act; and

15 (b) Passes to the person that acquires the property by devise or by operation of law.

16  
17 **BALLOT MEASURE 37 CLAIMS MADE**  
18 **ON OR AFTER MAY 15, 2007**  
19 **(Generally)**  
20

21 **SECTION 12.** (1) A person may file a claim for just compensation under sections 12 to  
22 14 of this 2007 Act and ORS 197.352 if:

23 (a) The person is an owner of the property and all owners of the property have consented  
24 in writing to the filing of the claim;

25 (b) The person's desired use of the property is a residential use or a farming or forest  
26 practice;

27 (c) The person's desired use of the property is restricted by one or more land use regu-  
28 lations enacted on or after May 15, 2007; and

29 (d) The enactment of one or more land use regulations, other than land use regulations  
30 described in ORS 197.352 (3), has unfairly reduced the fair market value of the property, as  
31 described in subsection (2) of this section.

32 (2) The enactment of one or more land use regulations has the effect of unfairly reducing  
33 the fair market value of property if the regulation or regulations cause:

34 (a) A reduction of 10 percent or more in the fair market value of the property by reason  
35 of the enactment of one land use regulation; or

36 (b) A reduction of 25 percent or more in the fair market value of the property by reason  
37 of the enactment of more than one land use regulation during any five-year period.

38 (3) For purposes of subsection (2) of this section, the reduction in the fair market value  
39 of the property caused by the enactment of one or more land use regulations that are the  
40 basis for the claim is equal to the decrease, if any, in the fair market value of the property  
41 from the date that is one year before the enactment of the land use regulation to the date  
42 that is one year after the enactment, plus interest. A claim may be based on more than one  
43 land use regulation only if all of the land use regulations relied on by the claimant were en-  
44 acted within a five-year period. If the claim is based on the enactment of more than one land  
45 use regulation enacted on different dates, the reduction in the fair market value of the

1 property caused by each regulation shall be determined separately and the values added to-  
2 gether to calculate the total reduction in fair market value. Interest shall be computed un-  
3 der this subsection using the average interest rate for a one-year United States Government  
4 Treasury Bill on December 31 of each year of the period between the date the land use reg-  
5 ulation was enacted and the date the claim was filed, compounded annually on January 1 of  
6 each year of the period. A claimant must provide an appraisal showing the fair market value  
7 of the property one year before the enactment of the land use regulation and the fair market  
8 value of the property one year after the enactment. The actual and reasonable cost of the  
9 appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair  
10 market value under this subsection. The appraisal must:

11 (a) Be prepared by a person certified or licensed under ORS chapter 674 or a person  
12 registered under ORS chapter 308;

13 (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized  
14 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

15 (c) Expressly determine the highest and best use of the property at the time the land use  
16 regulation was enacted.

17 (4) Relief may not be granted under this section if the highest and best use of the prop-  
18 erty was not residential use at the time the land use regulation was enacted.

19 (5) If the claimant establishes that the requirements of subsection (1) of this section are  
20 satisfied and the land use regulation was enacted by a city or a county, the city or county  
21 must either:

22 (a) Compensate the claimant for the reduction in the fair market value of the property;  
23 or

24 (b) Grant a waiver to the claimant so the land use regulation does not apply to the  
25 claimant's use of the property.

26 (6) If the claimant establishes that the requirements of subsection (1) of this section are  
27 satisfied and the land use regulation was enacted by state government, as defined in ORS  
28 174.111, the state agency that is responsible for administering the statute, statewide land use  
29 planning goal or rule must authorize the claimant to use the property without application  
30 of the land use regulation. If a state agency is not responsible for administering the land use  
31 regulation, the Oregon Department of Administrative Services is authorized to allow the  
32 claimant to use the property without application of the land use regulation.

33 (7) A use authorized by this section has the legal status of a lawful nonconforming use  
34 in the same manner as provided by ORS 215.130. The claimant may carry out a use author-  
35 ized by a city, county or state agency under this section except that a public entity may  
36 waive only land use regulations that were enacted by the public entity. When a use author-  
37 ized by this section is lawfully established, the use may be continued lawfully in the same  
38 manner as provided by ORS 215.130.

39  
40 (Procedures for Actions on New Claims)

41  
42 **SECTION 13.** (1) A person filing a claim under section 12 of this 2007 Act shall file the  
43 claim in the manner provided by this section. If the property for which the claim is filed has  
44 more than one owner, the claim must be signed by all the owners or the claim must include  
45 a signed statement of consent from each owner. Only one claim for each property may be

1 filed for each land use regulation.

2 (2) A claim filed under section 12 of this 2007 Act must be filed with the public entity that  
3 enacted the land use regulation that is the basis for the claim.

4 (3) Cities and counties and the Department of Land Conservation and Development may  
5 impose a fee for the review of a claim filed under section 12 of this 2007 Act in an amount  
6 not to exceed \$1,000.

7 (4) A person must file a claim under section 12 of this 2007 Act within five years after  
8 the date the land use regulation was enacted.

9 (5) A public entity that receives a claim filed under section 12 of this 2007 Act must issue  
10 a final determination on the claim within 180 days after the date the claim is complete, as  
11 described in subsection (9) of this section.

12 (6) If a claim under section 12 of this 2007 Act is filed with state government, as defined  
13 in ORS 174.111, the claim must be filed with the department. If the claim is filed with a city  
14 or county, the claim must be filed with the chief administrative office of the city or county,  
15 or with an individual designated by ordinance, resolution or order of the city or county.

16 (7) A claim filed under section 12 of this 2007 Act must be in writing and must include:

17 (a) The name and address of each owner;

18 (b) The address, if any, and tax lot number, township, range and section of the property;

19 (c) Evidence of the acquisition date of the claimant, including the instrument conveying  
20 the property to the claimant and a report from a title company identifying the person in  
21 which title is vested and the claimant's acquisition date and describing exceptions and  
22 encumbrances to title that are of record;

23 (d) A citation to the land use regulation that the claimant believes is restricting the  
24 claimant's desired use of the property that is adequate to allow the public entity to identify  
25 the specific land use regulation that is the basis for the claim;

26 (e) A description of the specific use of the property that the claimant desires to carry  
27 out but cannot because of the land use regulation; and

28 (f) An appraisal of the property that complies with section 12 (3) of this 2007 Act.

29 (8) A claim filed under section 12 of this 2007 Act must include the fee, if any, imposed  
30 by the public entity with which the claim is filed pursuant to subsection (3) of this section.

31 (9) The public entity shall review a claim filed under section 12 of this 2007 Act to de-  
32 termine whether the claim complies with the requirements of sections 12 to 14 of this 2007  
33 Act. If the claim is incomplete, the public entity shall notify the claimant in writing of the  
34 information or fee that is missing within 60 days after receiving the claim and allow the  
35 claimant to submit the missing information or fee. The claim is complete when the public  
36 entity receives any fee required by subsection (8) of this section and:

37 (a) The missing information;

38 (b) Part of the missing information and written notice from the claimant that the re-  
39 mainder of the missing information will not be provided; or

40 (c) Written notice from the claimant that none of the missing information will be pro-  
41 vided.

42 (10) If a public entity does not notify a claimant within 60 days after a claim is filed under  
43 section 12 of this 2007 Act that information or the fee is missing from the claim, the claim  
44 is deemed complete when filed.

45 (11) A claim filed under section 12 of this 2007 Act is deemed withdrawn if the public

1 entity gives notice to the claimant under subsection (9) of this section and the claimant does  
2 not comply with the requirements of subsection (9) of this section.

3 **SECTION 14.** (1) A public entity that receives a complete claim as described in section  
4 13 of this 2007 Act shall provide notice of the claim at least 30 days before a public hearing  
5 on the claim or, if there will not be a public hearing, at least 30 days before the deadline for  
6 submission of written comments, to:

7 (a) All owners identified in the claim;

8 (b) All persons described in ORS 197.763 (2);

9 (c) The Department of Land Conservation and Development, unless the claim was filed  
10 with the department;

11 (d) The county in which the property is located, unless the claim was filed with the  
12 county; and

13 (e) The city, if the property is located within the urban growth boundary or adopted ur-  
14 ban planning area of the city.

15 (2) The notice required under subsection (1) of this section must describe the claim and  
16 state:

17 (a) Whether a public hearing will be held on the claim, the date, time and location of the  
18 hearing, if any, and the final date for submission of written evidence and arguments relating  
19 to the claim;

20 (b) That judicial review of the final determination of a public entity on the claim is lim-  
21 ited to the written evidence and arguments submitted to the public entity; and

22 (c) That judicial review is available only for issues that are raised with sufficient  
23 specificity to afford the public entity an opportunity to respond.

24 (3) Except as provided in subsection (4) of this section, written evidence and arguments  
25 in proceedings on the claim must be submitted to the public entity not later than:

26 (a) The close of the final public hearing on the claim; or

27 (b) If a public hearing is not held, the date that is specified by the public entity in the  
28 notice required under subsection (1) of this section.

29 (4) The claimant may request additional time to submit written evidence and arguments  
30 in response to testimony or submittals. The request must be made before the close of testi-  
31 mony or the deadline for submission of written evidence and arguments.

32 (5) A public entity shall make the record on review of a claim, including any staff reports,  
33 available to the public before the close of the record as described in subsections (3) and (4)  
34 of this section.

35 (6) A public entity shall mail a copy of the final determination to the claimant and to any  
36 person who submitted written evidence or arguments before the close of the record. The  
37 public entity shall forward to the county, and the county shall record, a memorandum of the  
38 final determination in the deed records of the county in which the property is located.

39 **SECTION 15.** In addition to any other notice required by law, a county must give notice  
40 of a Measure 37 permit for property located entirely outside an urban growth boundary to:

41 (1) The county assessor for the county in which the property is located;

42 (2) A district or municipality that supplies water for domestic, municipal or irrigation  
43 uses and has a place of use or well located within one-half mile of the property; and

44 (3) The Department of Land Conservation and Development, the State Department of  
45 Agriculture, the Water Resources Department and the State Forestry Department.

JUDICIAL REVIEW

**SECTION 16.** (1) A person that is adversely affected by a final determination of a public entity under sections 5 to 11 or 12 to 14 of this 2007 Act may obtain judicial review of that determination under ORS 34.010 to 34.100, if the determination is one of a city or a county, or under ORS 183.484, if the determination is one of a state agency.

(2) A person is adversely affected under subsection (1) of this section if the person:

(a) Is an owner of the property that is the subject of the final determination; or

(b) Is a person who timely submitted written evidence, arguments or comments to a public entity concerning the determination.

(3) Notwithstanding subsection (1) of this section, judicial review of a final determination under sections 5 to 11 or 12 to 14 of this 2007 Act or ORS 197.352 is:

(a) Limited to the evidence in the record of the public entity at the time of its final determination.

(b) Available only for issues that are raised before the public entity with sufficient specificity to afford the public entity an opportunity to respond.

OMBUDSMAN

**SECTION 17.** (1) The Governor shall appoint an individual to serve, at the pleasure of the Governor, as the Compensation and Conservation Ombudsman.

(2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:

(a) Analyze problems of land use planning, real property law and real property valuation; and

(b) Facilitate resolution of complex disputes.

**SECTION 18.** (1) For the purpose of helping to ensure that a claim is complete, as described in section 13 of this 2007 Act, the Compensation and Conservation Ombudsman may review a proposed claim if the review is requested by a claimant that intends to file a claim under sections 12 to 14 of this 2007 Act and ORS 197.352.

(2) At the request of the claimant or the public entity reviewing a claim, the ombudsman may facilitate resolution of issues involving a claim under sections 5 to 22 of this 2007 Act.

MISCELLANEOUS

**SECTION 19.** (1) If an owner submits an application for a comprehensive plan or zoning amendment and the city or county approves the amendment, the owner is not entitled to relief under sections 5 to 22 of this 2007 Act with respect to a land use regulation enacted before the date the application was filed.

(2) If an owner files a petition to initiate annexation to a city and the city or boundary commission approves the petition, the owner is not entitled to relief under sections 5 to 22 of this 2007 Act with respect to a land use regulation enacted before the date the petition was filed.

**SECTION 20.** A person certified or licensed under ORS chapter 674 or registered under ORS chapter 308 may carry out the appraisals required by sections 5 to 22 of this 2007 Act.

1 The Department of Land Conservation and Development is authorized to retain persons to  
2 review the appraisals.

3 **SECTION 21.** (1) Except as provided in this section, a claimant's acquisition date is the  
4 date the claimant became the owner of the property as shown in the deed records of the  
5 county in which the property is located. If there is more than one claimant for the same  
6 property under the same claim and the claimants have different acquisition dates, the ac-  
7 quisition date is the earliest of those dates.

8 (2) If the claimant is the surviving spouse of a person who was the sole owner of the  
9 property in fee title at all times during the marriage, the claimant's acquisition date is the  
10 date the claimant was married to the deceased spouse or the date the spouse acquired the  
11 property, whichever is later. A claimant or a surviving spouse may disclaim the relief pro-  
12 vided under sections 5 to 22 of this 2007 Act by using the procedure provided in ORS 105.623  
13 to 105.649.

14 (3) If a claimant conveyed the property to another person and reacquired the property,  
15 whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant  
16 reacquired ownership of the property.

17 (4) A default judgment entered after December 2, 2004, does not alter a claimant's ac-  
18 quisition date unless the claimant's acquisition date is after December 2, 2004.

19 **SECTION 21a.** For the purposes of sections 5 to 22 of this 2007 Act, a document is filed  
20 on the date the document is received by the public entity.

21 **SECTION 22.** (1) The Compensation and Conservation Fund is established in the State  
22 Treasury, separate and distinct from the General Fund. Interest earned on moneys in the  
23 Compensation and Conservation Fund shall be credited to the fund. The fund consists of  
24 moneys received by the Department of Land Conservation and Development under sections  
25 8 and 13 of this 2007 Act and other moneys available to the department for the purpose de-  
26 scribed in subsection (2) of this section.

27 (2) Moneys in the fund are continuously appropriated to the department for the purpose  
28 of paying expenses incurred to review claims under sections 5 to 22 of this 2007 Act and for  
29 the purpose of paying the expenses of the Compensation and Conservation Ombudsman ap-  
30 pointed under section 17 of this 2007 Act.

31 **SECTION 23.** Notwithstanding any other law limiting expenditures, the limitation on  
32 expenditures established by section \_\_\_\_\_, chapter \_\_\_\_\_, Oregon Laws 2007  
33 (Enrolled \_\_\_\_\_ Bill \_\_\_\_\_), for the biennium beginning July 1, 2007, as the maximum  
34 limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous  
35 Receipts, but excluding lottery funds and federal funds, collected or received by the Depart-  
36 ment of Land Conservation and Development, is increased by \$\_\_\_\_\_ for the purpose of  
37 carrying out the provisions of section 22 (2) of this 2007 Act.

38  
39 **CONFORMING AMENDMENTS**

40  
41 **SECTION 24.** ORS 93.040 is amended to read:

42 93.040. (1) The following statement shall be included in the body of an instrument transferring  
43 or contracting to transfer fee title to real property except for owner's sale agreements or earnest  
44 money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR AC-  
45 CEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE

1 ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22**  
2 **OF THIS 2007 ACT.** THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DE-  
3 SCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND  
4 REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON AC-  
5 QUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY  
6 OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY  
7 LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS  
8 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF  
9 ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT."**

10 (2) In all owner's sale agreements and earnest money receipts, there shall be included in the  
11 body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRU-  
12 MENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES.  
13 THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR  
14 FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND  
15 THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS  
16 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON  
17 TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY,  
18 UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.** BEFORE SIGNING OR  
19 ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY  
20 SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO  
21 VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND  
22 THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352]  
23 **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT."**

24 (3) In all owners' sale agreements and earnest money receipts subject to ORS 358.505, there  
25 shall be included in the body of the instrument or by addendum the following statement: "THE  
26 PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UN-  
27 DER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESER-  
28 VATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY."

29 (4) An action may not be maintained against the county recording officer for recording an in-  
30 strument that does not contain the statement required in subsection (1) or (2) of this section.

31 (5) An action may not be maintained against any person for failure to include in the instrument  
32 the statement required in subsection (1) or (2) of this section, or for recording an instrument that  
33 does not contain the statement required in subsection (1) or (2) of this section, unless the person  
34 acquiring or agreeing to acquire fee title to the real property would not have executed or accepted  
35 the instrument but for the absence in the instrument of the statement required by subsection (1) or  
36 (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire  
37 fee title to the real property against any person other than the person transferring or contracting  
38 to transfer fee title to the real property.

39 **SECTION 25. The unit captions used in this 2007 Act are provided only for the conven-**  
40 **ience of the reader and do not become part of the statutory law of this state or express a**  
41 **legislative intent in the enactment of this 2007 Act.**

42 **SECTION 26. This 2007 Act shall be submitted to the people for their approval or re-**  
43 **jection at a special election held throughout this state as provided in chapter \_\_\_\_\_,**  
44 **Oregon Laws 2007 (Enrolled \_\_\_\_\_ Bill \_\_\_\_\_).**