

An Unbiased Comparison¹ of Measure 37² and Measure 49³

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APPLICABLE MEASURE		MEASURE 37		MEASURE 49			
CLASS OF CLAIMANT:		Existing Measure 37 Claimants	Landowners who <u>have not</u> filed a Measure 37 Claim	Existing Measure 37 Claimants <u>with Vested Rights</u> ⁵ (and/or <i>potentially</i> those with Final Orders ⁶)	Existing Measure 37 Claimants entirely <u>Outside</u> the UGB ⁷ and any city, without vested rights ⁸	Existing Measure 37 Claimants <u>Inside</u> UGB, either in whole or part, without vested rights ⁹	<u>All</u> Landowners who <u>have not</u> filed a Measure 37 Claim ¹⁰
ELIGIBILITY BY INTENDED USE	Residential Use	Eligible: Applies to <u>all</u> land use regulations that <u>restrict</u> the use of private real property or <u>any</u> interest therein. ¹¹	Eligible: Applies to <u>all</u> land use regulations that <u>restrict</u> the use of private real property or <u>any</u> interest therein. ¹²	Eligible	Eligible- Only single-family dwellings are allowed. ¹³	Eligible, as a farming or forest use.	
	Commercial Use			Not Eligible	Not Eligible	Not Eligible	
	Industrial Use			Not Eligible	Not Eligible	Not Eligible	
	Mixed Use ¹⁴			Not Eligible	Not Eligible	Not Eligible	
ELIGIBILITY BY CLASS OF LAND	High Value Farmland ¹⁵	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible for 1- 3 home sites. ¹⁶ Over 6 acre parcels located in an EFU, forest or mixed farm/ forest zone may not qualify for new home sites under § 11(3)(a). ¹⁷	Not applicable.	Unclear ¹⁸	
	High Value Forestland ¹⁹	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible for 1- 3 home sites. ²⁰ Over 6 acre parcels located in an EFU, forest or mixed farm/ forest zone may not qualify for new home sites under § 11(3)(a). ²¹	Not applicable.	Unclear ²²	
	Groundwater Restricted ²³	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible for 1- 3 home sites. ²⁴ Over 6 acre parcels located in an EFU, forest or mixed farm/ forest zone may not qualify for new home sites under § 11(3)(a). ²⁵	Not applicable.	Unclear ²⁶	
	All Other Types of Property	Eligible; no distinction is made as to the class of land for a claim.	Eligible; no distinction is made as to the class of land that is eligible for a claim.	Eligible, provided that the <u>entire</u> property is located outside the UGB and any city. ²⁷	Eligible, but <u>only</u> on the portion of the property that is located within the UGB, and provided the property is zoned residential. ²⁸	Residential use, farm or forest practice is eligible. ²⁹	
DATE CLAIM WAS FILED	Claims filed before December 4, 2006	Filed by December 4, 2006, <u>or</u> within 2 years after the regulation is applied to a land use application, whichever is later. ³⁰	Filed by December 4, 2006, <u>or</u> within 2 years after the regulation is applied to a land use application, whichever is later. ³¹	No additional verification by DLCD required to show that claim was properly filed.		Not applicable	
	Claims filed between Dec. 4, 2006 and June 28, 2007	Written demand for compensation must be made within 2 years of the enactment of a land use regulation, <u>or</u> within 2 years after the owner submits a land use application where the regulation is an approval criteria, whichever is later. ³²	Written demand for compensation must be made within 2 years of the enactment of a land use regulation, <u>or</u> within 2 years after the owner submits a land use application where the regulation is an approval criteria, whichever is later. ³³	DLCD must verify claim was filed in accordance with its rules and the DAS' rules in order to issue a home site approval under Section 6 of Measure 49. ³⁴	Original claim must have included a copy of a final land use decision by the city or county showing the denial of the land use application. ³⁵	Not applicable	
	Claims filed after June 28,	Written demand for compensation must be made within 2 years of the enactment of a land use regulation, <u>or</u> within 2	Written demand for compensation must be made within 2 years of the enactment of a land use regulation, <u>or</u>	Non-applicable	Non-applicable	A <i>person</i> may file for just compensation if:	

	2007	years after the owner submits a land use application where the regulation is an approval criteria, whichever is later. ³⁶		within 2 years after the owner submits a land use application where the regulation is an approval criteria, whichever is later. ³⁷				<ul style="list-style-type: none"> • They own the land, and all owners have consented in writing; • Use is for residential, farming or forest practice; AND • That use is restricted by regulation(s) enacted <u>after</u> January 1, 2007 that reduce the FMV³⁸ of the property.³⁹ <p>New claims must be filed within 5 years after the date the land use application was enacted.⁴⁰</p>	
APPLICABLE RULES UNDER EACH MEASURE	Claimant	"Owner" – the current owner of the property or any interest therein.		"Owner" – the current owner of the property or any interest therein.		<p>"Owner"</p> <ul style="list-style-type: none"> • Owner of fee title to the property; or • Purchaser under land sale contract, if the contract is recorded; or settlor of a revocable trust of the property is owned by the trustee of a revocable trust; at least until the trust becomes irrevocable.⁴¹ 			
	Property	No definition.	No definition.	No definition.		"Property" – the private real property and contiguous private real property owned by same owner. ⁴²			
	Acquisition Date	No definition.	No definition.	No definition.		<ul style="list-style-type: none"> • Date claimant became owner or earliest acquisition date if multiple owners.⁴³ • If a surviving spouse acquires property, the later of the date of marriage or the date the spouse acquired the property.⁴⁴ • If the claimant conveyed then reacquired the property, the date the claimant reacquired the property.⁴⁵ • A default judgment before December 4, 2004 doesn't affect the claimants acquisition date unless the acquisition date is after December 4, 2004.⁴⁶ 			
	Public Entity with Whom Claimant Must File	Both the State and the local government in where the property is located. ⁴⁷	Both the State and the local government where the property is located. ⁴⁸	Both the State and the local government where the property is located. ⁴⁹		The State, when responding to the notice it sends out informing the claimant of their options under Measure 49. ⁵⁰	Metro, the city or the county- who ever sends the notice informing the claimant of their options under Measure 49. ⁵¹	The public entity that enacted the regulation that is the basis for the claim. ⁵²	
	Just Compensation	Reduction in FMV of the property interest. ⁵³		Reduction in FMV of the property interest. ⁵⁴		Reduction in the FMV of the property. ⁵⁵ Note the difference in FMV calculation below.			
	Waiver	At government's option, waive regulation back to date of owner's acquisition. ⁵⁶		At government's option, waive regulation back to date of owner's acquisition. ⁵⁷		If selecting the 1 – 3 home site option, waiver is back to date of owner's acquisition. If 4 – 10, waiver is only to the extent of reduction in FMV. ⁵⁸	At government's option, waive but only to the extent necessary to offset reduction in the FMV of the property. ⁵⁹		
	Loss of Fair Market Value Calculation	Between family acquisition date and claim date. ⁶⁰		Between family acquisition date and claim date. ⁶¹		1 year <u>before</u> vs. 1 year <u>after</u> the enactment of the land use regulation, subject to decrease or increase as per a statutory formula. ⁶² Note the interest calculated on one-year T-Bill rates are no longer available. ⁶³			
	Proof of Reduction in Fair Market Value	Not specified. ⁶⁴	Not specified. ⁶⁵	Not specified. ⁶⁶		Required, for 4 to 10 home sites. ⁶⁷ Not required for 3 or fewer home sites.	Required, regardless of the number of single-family dwellings claimant is requesting (from 1-10). ⁶⁸	Required ⁶⁹	
	Appraisal	Not Required	Not Required	Not Required.		Required, for the 4 to 10 home sites. ⁷⁰ Not required for 3 or fewer home sites.	Required, regardless of the number of single-family dwellings claimant is requesting (from 1-10). ⁷¹	Required ⁷²	
	Exemptions	Does <u>not</u> apply to regulations relating to: <ul style="list-style-type: none"> • Public nuisances (construed narrowly); • Protection of the public health and safety; • Land use regulations required by Federal law; • Sale of pornography or nude dancing; or • Regulations enacted before current owner acquired the land.⁷³ 		Does <u>not</u> apply to regulations relating to: <ul style="list-style-type: none"> • Public nuisances (construed narrowly); • Protection of the public health and safety; • Land use regulations required by Federal law; • Sale of pornography or nude dancing; or • Regulations enacted before current owner acquired the land.⁷⁴ 		Does <u>not</u> apply to regulations relating to: <ul style="list-style-type: none"> • Public nuisances; • Protection of the public health and safety; • Land use regulations required by Federal law; • Sale of pornography or nude dancing; or • Regulations enacted before current owner acquired the land.⁷⁵ 			
Number of	Requirement is not applicable under Measure 37.		Requirement is not applicable under Measure 37.		• Eligible for <u>1 - 3</u> home sites. ⁷⁷	• Eligible for 1-10 <u>single-</u>	• Only 1 claim for each property		

<p>Home sites Allowed⁷⁶</p>				<p>AND</p> <ul style="list-style-type: none"> Eligible for up to 4 to 10 home sites, subject to conditions under Section 7 of Measure 49, including limitations based on the type of land being developed.⁷⁸ If claimant is eligible for both 1-3 and 4 - 10 home sites, they must elect within 90 days of notice from the State and submit any required documentation, or they will forfeit their entitled relief under both Section 6 and 7 of Measure 49.⁷⁹ If an owner is developing more than 1 property, an owner is not eligible for more than 20 home sites, regardless of how many properties that person owns or how many claims that person filed.⁸⁰ 	<p><u>family dwellings</u>, but <u>only</u> on the portion of the property that is located within the UGB, and provided the property is zoned residential.⁸¹</p> <p>BUT</p> <ul style="list-style-type: none"> Relief may not be granted to the claimant if the highest and best use of the property was not residential use at the time the land use regulation was enacted.⁸² <u>Only</u> single-family dwellings are allowed to be developed by these types of claimants.⁸³ If an owner is developing more than 1 property, an owner is not eligible for more than 20 home sites, regardless of how many properties that person owns or how many claims that person filed.⁸⁴ 	<p>may be filed.⁸⁵</p> <ul style="list-style-type: none"> If an owner is developing more than 1 property, an owner is not eligible for more than 20 home sites, regardless of how many properties that person owns or how many claims that person filed.⁸⁶ Relief may not be granted to the claimant if the highest and best use of the property was not residential use at the time the land use regulation was enacted.⁸⁷
<p>Processing Fee</p>	<p>Not required⁸⁸</p>	<p>Not required⁸⁹</p>	<p>Not required⁹⁰</p>	<p>Permitted⁹¹</p>	<p>Permitted⁹²</p>	<p>Permitted⁹³</p>
<p>Time for Public Entity to Process Claim</p>	<ul style="list-style-type: none"> 180 days after written demand for compensation is made.⁹⁴ If a claim has not been paid within 2 years, the owner is allowed to use the property as permitted at the time the owner acquired the property.⁹⁵ 		<p>180 days after written demand for compensation is made.⁹⁶</p> <p>If a claim has not been paid within 2 years, the owner is allowed to use the property as permitted at the time the owner acquired the property.⁹⁷</p>	<ul style="list-style-type: none"> No deadline Completed by State in order of receipt of Measure 49 forms.⁹⁸ State will consider comments from the county if timely.⁹⁹ If the regulation(s) restricting the property were enacted by the county, the State will transfer the claim to the county, who must proceed under Measure 49 § 8.¹⁰⁰ Review of the resubmittal of these claims, either by the State or County, must proceed "as quickly as possible."¹⁰¹ 	<ul style="list-style-type: none"> The public entity review the claim, must make a tentative review no later than 120 days after receipt of the notice provided by the claimant that they wish to continue under Measure 49.¹⁰² Following the notice of the tentative review and a 15 day comment period, the public entity must make its final decision within 180 days of the receipt of the notice provided by the claimant that they wish to proceed under Measure 49.¹⁰³ 	<ul style="list-style-type: none"> Entity must notify the claimant within 60 days of receipt of claim if it is incomplete, or the claim will be deemed complete when filed.¹⁰⁴ The entity must process the claim within 180 days of receiving a completed claim.¹⁰⁵
<p>Recovery of Attorney's Fees, and costs</p>	<p>Allowed¹⁰⁶</p>	<p>Allowed¹⁰⁷</p>	<p>Allowed¹⁰⁸</p>	<p>Not allowed¹⁰⁹</p>	<p>Not allowed¹¹⁰</p>	<p>Not allowed¹¹¹</p>
<p>"Restrict" vs. "Prohibit"</p>	<p>Applies to <u>all</u> land use regulations that "<u>restrict</u>" the use of private real property or <u>any</u> interest therein.¹¹²</p>		<p>Applies to <u>all</u> land use regulations that "<u>restrict</u>" the use of private real property or <u>any</u> interest therein.¹¹³</p>	<p>Applies to land use regulations that "<u>prohibit</u>" establishing the lot, parcel or dwelling, therefore, permitted uses with conditions would <u>not</u> qualify as offending land use regulations.¹¹⁴</p>		<p>Applies to land use regulations that "<u>restrict</u>" the use of private real property.¹¹⁵</p>
<p>Effect of Prerequisites</p>	<p>A government entity may adopt or apply procedures for processing claims, but the procedures may not act as a prerequisite to the filing of a compensation claim.¹¹⁶</p>		<p>A government entity may adopt or apply procedures for processing claims, but the procedures may not act as a prerequisite to the filing of a compensation</p>	<p>Provision removed under Measure 49. Government may adopt process fees and conditions to file claims.</p>		

				claim. ¹¹⁷			
	Notice Required from the State Regarding the Effect of Measure 49 on a Pending Claim	Not Applicable.	Not Applicable.	Not Applicable.	Within 120 days after the enactment of Measure 49, DLCD must send notice to explain the claimant's options under Measure 49 and any additional requirements. ¹¹⁸	<ul style="list-style-type: none"> The Metro, city or county must review any claims for which they issued a waiver to determine if the information available complies with Measure 49, entitling the claimant to relief.¹¹⁹ If Metro, a city or county hadn't made a final decision before the effective date of Measure 49¹²⁰, they must send notice to the claimants within 90 days after the effective date of Measure 49 to explain the claimant's options and any additional requirements on them.¹²¹ If a claimant does not reply within 120 days of receipt of notice and information request, they will forfeit their claim under Section 9 of Measure 49.¹²² 	Not Applicable.
	Transferability	No provisions.	No provisions.	No provisions.	<ul style="list-style-type: none"> An "authorization", once received under Measure 49, runs with the land and may be transferred or encumbered.¹²³ However, there is no provision for transfer of a waiver. There is no time limit as to when the property must be developed, unless the property is conveyed. If so, the new owner must develop the land in accordance with the authorization within 10 years.¹²⁴ If a claimant is an individual, the entitlement to make a claim and to use the property as provided by an authorization, is not affected by the death of the claimant, and passes to the person that acquires the property by devise or operation of law.¹²⁵ 	A use authorized by Measure 49 §12, pertaining to new claims, "has the legal status of a lawful nonconforming use . . . as provided by ORS 215.130." ¹²⁶ Because nonconforming uses are not transferable, there is likely no transferability for new claims under Measure 49.	
	Size of New Lots or Parcels	No restrictions	No restrictions.	No restrictions	If the land is zoned EFU, forest mixed farm/ forest, and it is high-value farmland, high-value forestland or ground water restricted land, there is a maximum lot size of 2 acres, otherwise, the maximum size is 5 acres. ¹²⁷ Additionally, EFU, forest or mixed farm/ forest zone lots must be clustered. ¹²⁸		
	Development Standards	Development standards may be treated as land use regulations, subject to exceptions.		Development standards may be treated as land use regulations, subject to exceptions.	<ul style="list-style-type: none"> All development must comply with all applicable standards governing development of land.¹²⁹ Under both Section 6 and 7 of Measure 49, the owner must comply with all requirements under the Oregon Revised Statutes that govern the development of property in an EFU, a forest zone or a mixed farm and forest zone.¹³⁰ 	All development must comply with all applicable standards governing the development of land. ¹³¹	
JURISDICTION FOR APPEALS	Land Use Board of Appeals	No Jurisdiction ¹³²		No Jurisdiction ¹³³	No Jurisdiction ¹³⁴		
	Circuit Court	Jurisdiction exists ¹³⁵		Jurisdiction exists ¹³⁶	Jurisdiction exists ¹³⁷		
	Court of Appeals	Limited jurisdiction ¹³⁸		Limited jurisdiction ¹³⁹	Jurisdiction exists ¹⁴⁰		