

Measure 49

Frequently Asked Questions

On November 6, 2007, Oregon voters approved the legislatively referred Ballot Measure 49. Ballot Measure 49 modifies Ballot Measure 37 (2004) and became effective December 6, 2007.

Question 1—When will DLCD begin issuing Measure 49 final decisions?

Answer 1: DLCD began issuing Measure 49 Preliminary Evaluations at the end of July, 2008. Final authorizations will be based on the supplemental reviews of Measure 37 claims as allowed under Measure 49, and will follow Preliminary Evaluations by one to two months.

Question 2—What are important timelines and dates associated with M49?

Answer 2: (1) For M37 claims submitted before June 28, 2007:

- DLCD began mailing M49 election notices to claimants in January, 2008. Claimants had 90 days from the date the notice was mailed to return their election form. This process was completed by the end of June. Approximately 4,600 M49 Elections were returned. Those who did not return their elections within the 90-day time period received notice that their claims have been closed.
- Claimants who choose the conditional path (4-10 home sites) have 180 days from the date they submit their election form to submit an appraisal proving a loss in fair market value associated with their claim.
- DLCD will act on returned claims in the order they are received. Claims will be reviewed “as quickly as possible. Consistent with careful review of the claim” (language from M49).
- June 28, 2007 is the date by which a M37 claim must have been received by the state to be eligible to receive a M49 benefit.

(2) For claims submitted after June 28, 2007:

- DLCD will indicate within 60 days of the receipt of the claim (claims submitted after June 28, but before December 6, 2007, will be deemed as filed on December 6, 2007), whether or not the claim is complete.
- DLCD must issue a final determination within 180 days of the claim having been deemed complete.

Question 3—If I have filed a Measure 37 claim already, what options will be available to me under Measure 49?

Answer 3: As mentioned above, the M49 election return process is now complete. However, for informational purposes, the three options available under that process were:

1. Claimant believes they are vested and continues to develop their property under M37
2. Claimant desires up to three home sites (the Express Path)
3. Claimant desires 4-10 home sites (Conditional Path--A detailed appraisal will be due within 180 days of making this election)

Claimants were also able to indicate that they wanted to withdraw their claim, or that their claim is inside a city or urban growth boundary (in which case their claim will be analyzed by the city or county).

More information on these options is available on the Department of Land Conservation and Development website www.oregon.gov/LCD, and in the election notice and package.

Question 4—What is the “Supplemental Review?” Will I have a Supplemental Review under both options?

Answer 4: The “supplemental review” is the M49 review process which results in a decision which can authorize residential lots or dwellings. The supplemental review verifies facts of ownership, and it applies to both the express and conditional elections.

Question 5—May I still file a Measure 37 claim?

Answer 5: No. Measure 37 (ORS 197.352) has been modified by Measure 49. Only claims filed on or before June 28, 2007, are considered M37 claims and are eligible for compensation based on regulations applied to property acquired *prior to* January 1, 2007. After June 28, 2007, claims filed will be treated as M49 claims, which are eligible for compensation for regulations applied to property only after January 1, 2007.

Question 6—I filed a Measure 37 claim with my county, but not with the state. Am I eligible for a M49 benefit?

Answer 6: No. To be eligible for a M49 benefit based on regulations applied to your property before January 1, 2007, you must have filed a Measure 37 claim with both the county and the state on or before June 28, 2007.

Question 7—May claimants opt for an Express/Conditional review and also pursue a local vesting determination?

Answer 7: Yes. It is our position that selecting the Express or Conditional Measure 49 election path is not mutually exclusive with an application to a county or circuit court for a vesting decision. That is, we would proceed to analyze a claim and issue an order under the Express or Conditional path, even if the claimant is applying for vesting status from a county or circuit court.

Question 8—I have a waiver under M37, or I have submitted a M37 claim prior to June 28, 2007, but have received no decision from the state. Is my M37 claim still valid?

Answer 8(1) If you received a M37 waiver, the order approving your claim will be replaced by a new order under M49, if you returned your M49 election packet within the 90-day period (see above). If you choose to proceed under M49, and you meet the standards in the law, the state will authorize a specific number of homes to be built on your property.

Answer 8(2) If you have a pending claim, submitted prior to June 28, 2007, and you haven't received an order yet from the state, you do not need to submit a new claim. As above, the state mailed notice of your options under M49 and an election form for you to return, indicating your choice.

Answer 8 (3) If you received an order denying your claim under Measure 37, you may be eligible for home site approval under Measure 49 even though your claim was denied. As above, DLCD sent you notice indicating what your options are under Measure 49.

Answer 8(4) If you have started or completed the use that was authorized by a state Measure 37 order, you may have the right to continue that use if you are vested under common law, as required by M49.

If the property is inside of a city, you should discuss the status of your use with the city planning department. If your property is not inside of a city, you should talk to your county planning department.

Question 9—How do I file a M49 claim? What options are available for M49 claims?

Answer 9: M49 claims (not the same as M49 elections based on M37 claims) can be filed with the DLCD. Application forms and information are available on DLCD's website. Measure 49 claims can only be made against land use regulations applied to your property after January 1, 2007, that limit residential development, or a farming or forest practice, and only to the extent that that the claim demonstrates that the new regulation(s) has reduced the value of the property.

Question 10—When do I have to contact my city or county?

Answer 10: For M37 claims, the state has contacted you regarding claims inside counties, but entirely outside of urban growth boundaries and outside cities. Cities will contact claimants who filed claims for properties inside city boundaries, and counties will contact claimants with properties only within urban growth boundaries.

For new M49 claims, claimants will file claims with the jurisdiction that has adopted the regulation limiting residential development.

Question 11—When am I required to get an appraisal for my property?

Answer 11: An appraisal is not required if electing the Express option for the supplemental review of a Measure 37 claim. An appraisal is required if electing the Conditional option, or if your property is inside of an urban growth boundary. Finally, an appraisal also is required for new Measure 49 claims (those citing regulations adopted after January 1, 2007). DLCD's M49 website <http://www.oregon.gov/LCD/MEASURE49/index.shtml> has a link to a list of willing Measure 37/49 appraisers under "Current Topics."

Question 12—What standards will be applied to my property to determine whether it is high value forestland, and thus not eligible for a conditional M49 election?

Answer 12: Section 7 of Measure 49 allows M37 claimants to choose to elect a conditional path for 4-10 homesites under certain conditions, one being that the property is not high value forest land. High value forest land is defined in section 2 (Definitions) of Measure 49. High value forestland is further referenced in Measure 49 rules at 660-041-0130(3). Subsection 3 details how DLCD will determine whether property is high value forestland and that other information will be considered by the Department, in addition to NRCS data. Additional clarification follows:

In order for a property to be determined to be high value forest and not eligible for the conditional path, it must be predominantly in a forest zone or mixed farm and forest zone. The following test is then applied.

Part 1: look at the entire property that is to determine whether, according to the NRCS soil survey, more than 50% of the soils on the property are capable of producing greater than 120 cu ft/acre/year in western Oregon, or 85 cu ft/acre/year in eastern Oregon. Typically, the NRCS soil survey will provide this information for one or more types of commercial tree species. If 50% or more than 50% of the soils on the property ARE NOT capable of meeting this standard, the property is not high-value forestland and you don't have to go any further with your analysis.

Part 2: If more than 50% of the soils on the property are capable of producing greater than 120 cu ft/acre/year in western Oregon or 85 cu ft/acre/year in eastern Oregon, then the property is "predominantly" composed of soils capable of meeting the cu ft/acre/year standard and you take your analysis to the next step. This requires computing the amount of wood fiber that each soil type on the property is capable of producing in cubic feet per year and adding the results for all of the soil types to determine whether the property as a whole is also "capable of producing more than 5,000 cubic feet per year."

For example, if a 40-acre parcel in western Oregon contains 15 acres of soil type A capable of producing 135 cu ft/acre/year, 12 acres of soil type B capable of producing 125 cu ft/acre/year, 8 acres of soil type C capable of producing 110 cu ft/acre/year and 5 acres of soil type D capable of producing 90 cu ft/acre/year the results would be: $(15 \times 135 = 2,025) + (12 \times 125 = 1,500) + (8 \times 110 = 880) + (5 \times 90 = 450)$ which equals a total of 4,855 cu ft/year of wood fiber that the property is capable of producing in commercial tree species.

Therefore, although the property is "composed predominantly of soils capable of producing more than 120 cubic feet per acre per year" (i.e., 27 of the 40 acres or 67.5%), the entire 40-acre property would NOT be considered high-value forestland because the property as a whole is not also capable of producing more than 5,000 cubic feet per year.

The department, as a courtesy to claimants, has issued preliminary information to conditional claimants that indicate whether we believe their property has characteristics that could disallow a conditional claim. The department will not issue a final determination in that regard until it reviews the claim and issues a final order.

Claimants wishing to proactively establish that their property is not high value forestland may use the procedures and methodology explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998," (http://egov.oregon.gov/ODF/STATE_FORESTS/FRP/docs/LUPNote3.pdf) a methodology also accepted in the recently (2008) revised Goal 4 rule 660-006-0005, Definitions, subsections 2 & 3.

Question 13—How is contiguous property treated under Measure 49?

Answer 13: Contiguous real property is any real property that shares a common boundary with the real property that is the subject of the claim. When considering whether the property is contiguous, the DLCDC will consult local regulation and analyze the situation on a case by case basis.

Question 14—I had originally submitted two Measure 37 claims and the state combined my claims into one claim. Can I separate those claims again?

Answer 14: Per section 660-041-0140 of the existing M37 claim rules, DLCDC may divide a single claim into two or more claims if the M37 Claim Property contains multiple contiguous lots or parcels that are not in the same ownership. Conversely, DLCDC may combine multiple claims into one claim if the Property contains multiple contiguous lots or parcels that are in the same ownership.

Question 15—Where do I call if I have a question?

Answer 15: The DLCDC M37/M49 hotline: 503-373-0050 x324