

2007 BALLOT MEASURE 49
SECTION-BY-SECTION SUMMARY
12/6/2007

SECTIONS 1 and 1a: CODIFICATION IN ORS CHAPTER 195

The codification of this legislation in chapter 195 instead of 197 is not intended to have any substantive effect. ORS 197.352 is being moved to chapter 195 simply because of the limited remaining room for new sections in chapter 197. LCDC rulemaking authority extends to ORS Chapter 195.

SECTION 2: DEFINITIONS

- (1) Acquisition date is as shown in county deed records. If there are multiple owners, it is the earliest date.
- (2) Claim.
- (3) Enacted.
- (4) Fair market value.
- (5) Farming practice.
- (6) Federal law.
- (7) File.
- (8) Forest practice.
- (9) Ground water restricted area.
- (10) High-value farmland.
- (11) High-value forestland.
- (12) Home site approval.
- (13) Just compensation.
- (14) Land use regulation.
- (15) Measure 37 permit.
- (16) Owner.
- (17) Property.
- (18) Protection of public health and safety.
- (19) Public entity.
- (20) Urban growth boundary.
- (21) Waive/waiver.
- (22) Zoned for residential use.

SECTION 3: STATEMENT OF PURPOSE

Provide just compensation for unfair burdens, while retaining protections for farm and forest uses and water resources.

SECTION 4: AMENDMENTS TO ORS 197.352 (MEASURE 37)

The amendments to ORS 197.352 (Measure 37) define how Measure 49 will operate for claims based on new land use regulations, along with sections 12 through 14.

The amendments repeal the authorization to file a claim for existing land use regulations, along with cause of action for compensation if regulations continue to apply.

The amendments also clarify that a decision by a public entity under Measure 37 or under Measure 49 is not a land use decision.

SECTION 5: JUST COMPENSATION FOR CLAIMS MADE BEFORE JUNE 28, 2007

This section sets up three pathways for claims made on or before June 28, 2007, regardless of whether a waiver has been approved.

The three paths are:

- To receive just compensation under the “express” path in section 6;
- To receive just compensation under the “conditional” path in section 7; or
- To continue with any rights under Measure 37 that have vested under common law as of the effective date of the Act, and that comply with the terms of applicable waivers.

SECTION 6: EXPRESS COMPENSATION FOR APPROVED AND PENDING CLAIMS OUTSIDE OF URBAN GROWTH BOUNDARIES (ONE TO THREE HOME SITES)

Section 6 authorizes persons with Measure 37 waivers and pending Measure 37 claims to establish one to three home sites on their property. Claimants may reduce the number of requested home sites to qualify (or amend their claim if they initially sought some other use). To qualify:

- The claimant must own the property and all owners must consent to the claim;
- The property must be outside of an urban growth boundary and a city;
- A land use regulation must prohibit the lot, parcel or dwelling sought;

- The claimant must have filed a Measure 37 claim on or before June 28, 2007 with both the county and the state;
- On the claimant's acquisition date, he/she must have been lawfully permitted to establish at least the number of homesites sought;
- Exempt land use regulations (public health and safety; regulations required by federal law) don't prohibit the home sites; and
- The claim must have complied with applicable state rules for Measure 37 claims (if the claim was filed after December 4, 2006, it must include the denial of a land use application).

There is no fee for these claims, and the expectation is that in most cases little or no additional information will be needed from the claimant.

SECTION 7: CONDITIONAL COMPENSATION FOR APPROVED AND PENDING CLAIMS OUTSIDE OF URBAN GROWTH BOUNDARIES (FOUR TO TEN HOME SITES)

Section 7 authorizes persons with waivers and pending claims to establish four to ten home sites on their property. Claimants may reduce the number of requested home sites to qualify, but may not increase the size of their claim.

To qualify:

- The claimant must meet the requirements under section 6 (above);
- The property must not be located on high-value farmland, high-value forestland, or in a groundwater restricted area; and
- An appraisal demonstrates that the fair market value of the property was reduced by the enactment of one or more land use regulations, and that the amount of the reduction is equal to or greater than the fair market value of the home sites that the claimant wishes to establish on the property.

SECTION 8: PROCEDURES FOR APPROVED AND PENDING CLAIMS OUTSIDE OF URBAN GROWTH BOUNDARIES

DLCD will send notice to virtually all claimants describing what their options are and what (if any) additional information is needed.

Claimants elect what form of relief they want within 90 days of the DLCD notice.

If claimants choose “conditional” relief, they have until mid 2008 to submit an appraisal. They may opt into the “express” path if they do so before submitting their appraisal.

DLCD processes claims in the order received.

Review will include a notice and comment process for public involvement, and will allow claimants to respond to comments received.

If only county regulations are involved, the claim is transferred to the county (Note for pre-1973 claims).

When DLCD or the county approves a claim, they approve a specific number of home sites. The number of homes that may be developed on the property is set, based on the waiver. Landowners still will go through the normal land division and building permit processes to ensure that the homes comply with standards relating to where the homes are built on the property and how they are built.

SECTION 9: JUST COMPENSATION FOR APPROVED AND PENDING CLAIMS INSIDE OF URBAN GROWTH BOUNDARIES

Section 9 authorizes persons with waivers and pending claims for property within an urban growth boundary to establish one or more dwellings, up to a limit of 10.

To qualify:

- The claimant must own the property and all owners must have consented to the claim;
- The property must be inside of an urban growth boundary;
- The property must be residentially-zoned;
- The claimant must have had the right to establish the dwelling(s) on his or her acquisition date;
- One or more land use regulation(s) must prohibit the development of the dwelling(s);
- Exempt land use regulations (public health and safety; regulations required by federal law) don't prohibit the dwellings; and

- An appraisal demonstrates that the fair market value of the property was reduced by the enactment of one or more land use regulations, and that the amount of the reduction is equal to or greater than the fair market value of the home sites that the claimant wishes to establish on the property.

SECTION 10: PROCEDURES FOR APPROVED AND PENDING CLAIMS INSIDE OF URBAN GROWTH BOUNDARIES

The city or county that received the claim under Measure 37 reviews the claim to ensure that it complies with the requirements of the Act.

SECTION 11: DEVELOPMENT STANDARDS, TRANSFERABILITY (FOR APPROVED AND PENDING CLAIMS UNDER SECTIONS 6, 7 OR 9)

New lots/parcels in a resource zone are limited to 2 acres if high-value, 5 acres if not. Twenty home site cap, statewide, per owner.

All claims must comply with current development standards unless a standard would prohibit the use. A standard prohibits a dwelling or a land division if it makes it unlawful or economically unfeasible.

Home site approvals under the Act are transferable and run with the land (when the property is sold, the home site approval will transfer with the sale), with no time limit on when the claimant must carry out the use.

When the claimant conveys the property, however, the new owner(s) have ten years to build the dwelling and/or divide the property as authorized by the home site approval.

If a claimant passes away during the processing of a claim, the claimant's heirs are entitled to the relief that the claimant would have received.

Transfer of authorizations between properties to cluster allowed.

Cooperative agreements between cities, counties and Metro for transfer of development rights acquired through Measure 49 waivers are authorized.

SECTION 12: NEW CLAIMS FOR NEW LAND USE REGULATIONS

New claims are allowed for new land use regulations that are enacted after January 1, 2007.

New land use regulations that trigger claims are restrictions on residential uses, LCDC rules and goals, and restrictions on farm or forest practices.

SECTION 13: NEW CLAIMS, FILING AND REQUIRED CONTENTS

Claims must demonstrate loss of fair market value.

Just compensation is payment of money or waiver of regulations.

Just compensation is not transferable.

SECTION 14: PROCEDURES FOR REVIEW OF NEW CLAIMS

New claims must be filed within five years of the enactment of the land use regulation;

Claims are filed with the public entity that enacted them.

SECTION 15: INTERGOVERNMENTAL COORDINATION

Notice requirements.

SECTION 16: JUDICIAL REVIEW

Judicial review of decisions that a claimant is entitled to relief under Measure 49 are reviewed by the circuit courts. That review is on the record created before the public entity, and issues are limited to those raised before the public entity (raise it or waive it applies).

SECTIONS 17 & 18: OMBUDSMAN, QUALIFICATIONS

State ombudsman to facilitate issues arising with both Measure 37 claims and Measure 49 claims

**SECTION 19: COMPREHENSIVE PLAN OR ZONING AMENDMENTS;
ANNEXATION**

Persons who seek and obtain comprehensive plan or zoning amendments, or who petition for annexation, are not then eligible to file claims for land use regulations enacted before the application was filed.

SECTION 20: APPRAISALS

Specifies qualifications for appraisers under Measure 49.

SECTION 21: ACQUISITION DATE; MULTIPLE CLAIMANTS

Gives a surviving spouse an acquisition date that is the date of the marriage or the date the deceased spouse acquired the property, whichever is later.

If there are multiple claimants that acquired the property at different times, the acquisition date that is used is the earliest date.

SECTION 21b: FAIR MARKET VALUE

Defines term using definition from case law.

SECTION 22: COMPENSATION AND CONSERVATION FUND

SECTION 23: CONFORMING AMENDMENTS

SECTION 24: CAPTIONS

SECTION 25: REFERRAL

Text of Measure 49

AN ACT

Relating to compensation for loss of value of private real property resulting from land use regulation; creating new provisions; amending ORS 93.040 and 197.352; appropriating money; and providing that this Act shall be referred to the people for their approval or rejection.

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

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

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

DEFINITIONS

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

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

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

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

(b) Sections 12 to 14 of this 2007 Act and ORS 197.352, as in effect on and after the effective date of this 2007 Act.

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

(4) "Fair market value" means the value of property as determined under section 21b of this 2007 Act.

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

(6) "Federal law" means:

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

(b) A requirement contained in a plan or rule enacted by a compact entity; or

(c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.

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

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

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

(10) "High-value farmland" means:

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

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

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

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

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

(c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly is:

(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

- (B) Within the boundaries of a district, as defined in ORS 540.505; or**
- (C) Within the boundaries of a diking district formed under ORS chapter 551.**
- (d) Land that contains not less than five acres planted in wine grapes.**
- (e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:**
 - (A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;**
 - (B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or**
 - (C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.**
 - (f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:**
 - (A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;**
 - (B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;**
 - (C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;**
 - (D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or**
 - (E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.**
- (11) "High-value forestland" means land:**
 - (a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or**

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

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

(13) "Just compensation" means:

(a) Relief under sections 5 to 11 of this 2007 Act for land use regulations enacted on or before January 1, 2007; and

(b) Relief under sections 12 to 14 of this 2007 Act for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

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

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

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

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

(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

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

(16) "Owner" means:

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

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

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

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

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

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

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

(21) "Waive" or "waiver" means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under sections 5 to 22 of this 2007 Act or ORS 197.352, as in effect immediately before the

effective date of this 2007 Act, to allow the owner to use property for a use permitted when the owner acquired the property.

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

LEGISLATIVE POLICY ON FAIRNESS TO PROPERTY OWNERS

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

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

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

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

BALLOT MEASURE 37

SECTION 4. ORS 197.352 is amended to read:

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

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

(2) Just compensation **under sections 12 to 14 of this 2007 Act** shall be *[equal to]* **based on** the reduction in the fair market value of the *[affected]* property *[interest]*

resulting from [enactment or enforcement of] the land use regulation [as of the date the owner makes written demand for compensation under this section].

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

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

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

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

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

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

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

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

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

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

(b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection of human health and safety.

(c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the public entity enacting the regulation has no discretion under federal law to decline to enact the regulation.

[(7)] **(5)** *A [metropolitan service district, city, or county, or state agency] public entity may adopt or apply procedures for the processing of claims under [this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this section]* **sections 12 to 24 of this 2007 Act.**

[(8)] **(6)** *[Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this section, the governing body responsible for enacting] The public entity that enacted the land use regulation [may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property] that gives rise to a claim under subsection (1) of this section shall provide just compensation as required under sections 12 to 24 of this 2007 Act.*

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

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

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

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

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

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

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

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

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

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

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

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

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

[(13)] **(9)** If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect.

**BALLOT MEASURE 37 CLAIMS MADE
ON OR BEFORE THE DATE OF ADJOURNMENT
SINE DIE OF THE 2007 REGULAR SESSION
OF THE SEVENTY-FOURTH LEGISLATIVE ASSEMBLY
(Generally)**

SECTION 5. A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly is entitled to just compensation as provided in:

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

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

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

**(Claims Relating to Property
Outside Urban Growth Boundaries)**

SECTION 6. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly 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 form 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

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

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

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

SECTION 7. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly for property that is not high-value farmland or

high-value forestland and that is not in a ground water restricted area is eligible for four to 10 home site approvals for 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 established on the 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;

(b) 10, 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 10; or

(c) The number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) 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 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) 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 10 in any case.

(5) 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);

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

(g) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128,

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

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

- (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;
 - (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
 - (c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.
- (8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.
- (9) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development

must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

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

SECTION 8. (1) No later than 120 days after the effective date of this 2007 Act, the Department of Land Conservation and Development shall send notice to all the following claimants that filed a claim for property outside an urban growth boundary:

(a) A claimant whose claim was denied by the state before the effective date of this 2007 Act, but who may become eligible for just compensation because of section 21 (2) of this 2007 Act or any other provision of sections 5 to 22 of this 2007 Act;

(b) A claimant whose claim was approved by the state before the effective date of this 2007 Act; and

(c) A claimant whose claim has not been approved or denied by the state before the effective date of this 2007 Act.

(2) The notice required by subsection (1) of this section must:

(a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a dwelling on the property under sections 5 to 22 of this 2007 Act;

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

(c) Provide a form for the claimant's use.

(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by filing the form provided by the department within 90 days after the date the department mails the notice and form required under subsection (1) of

this section. In addition, the claimant must file any information required in the notice. If the claimant fails to file the form within 90 days after the date the department mails the notice, the claimant is not entitled to relief under section 6 or 7 of this 2007 Act.

(4) The department shall review the claims in the order in which the department receives the forms required under subsection (3) of this section. In addition to reviewing the claim, the department shall review the department's record on the claim, the form required under subsection (3) of this section, any new material from the claimant and any other information required by sections 5 to 22 of this 2007 Act to ensure that the requirements of this section and section 6 or 7 of this 2007 Act are met. The department shall provide a copy of the material submitted by the claimant to the county where the property is located and consider written comments from the county that are timely filed with the department. If the department determines that the only land use regulations that restrict the claimant's use of the property are regulations that were enacted by the county, the department shall transfer the claim to the county where the property is located and the claim shall be processed by the county in the same manner as prescribed by this section for the processing of claims by the department. The county must consider any written comments from the department that are timely filed with the county.

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

(6) The department or the county shall review claims as quickly as possible, consistent with careful review of the claim. The department shall report to the

Joint Legislative Audit Committee on or before March 31, 2008, concerning the department's progress and the counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.

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

(Claims Relating to Property Within Urban Growth Boundaries)

SECTION 9. (1) A claimant that filed a claim under ORS 197.352 on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

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

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

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

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a

city or a county is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the information required by section 10 of this 2007 Act.

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

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief 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, in whole or in part, within an urban growth boundary;

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

(e) The property is zoned for residential use;

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

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

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

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

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

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

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal

also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

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

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

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

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

(9) When Metro, a city or a county has issued a final decision authorizing one or more single-family dwellings under this section on the portion of the property located within the urban growth boundary, the claimant may seek other governmental authorizations required by law for that use, and a land use regulation enacted by a public entity that has the effect of prohibiting the use does not apply to the review of those authorizations, except as provided in section 11 of this 2007 Act. If Metro is reviewing a claim for a property, and a city or a county is reviewing a claim for the same property, Metro and the city or county shall coordinate the review and decisions and may:

(a) Provide that one of the public entities be principally responsible for the review; and

(b) Provide that the decision of each of the public entities is contingent on the decision of the other public entity.

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

SECTION 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public entity shall complete a tentative review no later than 240 days after the effective date of this 2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

(2) If Metro, a city or a county has not made a final decision before the effective date of this 2007 Act on a claim filed for property located, in whole or in part, within an urban growth boundary, the public entity with which the claim was filed shall send notice to the claimant within 90 days after the effective date of this 2007 Act. The notice must:

(a) Explain that the claimant is entitled to seek relief under section 9 of this 2007 Act;

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

(c) Provide a form for the claimant's use.

(3) Within 120 days after the date the public entity mails notice under subsection (2) of this section, a claimant must notify the public entity if the claimant intends to continue the claim and must file the information required in the notice. If the claimant fails to file the notice and required information with the public entity within 120 days after the date the public entity mails the notice, the claimant is not entitled to relief under section 9 of this 2007 Act.

(4) A public entity that receives a notice from a claimant under subsection (3) of this section shall review the claim, the record on the claim, the notice received from the claimant and the information required under subsection (3) of this section to determine whether the claim demonstrates that the requirements of section 9 of this 2007 Act are satisfied. The public entity shall complete a tentative review no later than 120 days after receipt of the notice from the claimant and shall provide written notice to the claimant, the department and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 180 days after receipt of the notice from the claimant.

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

(Development Standards; Transferability)

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

sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.

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

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

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

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

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

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

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

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of this 2007 Act runs

with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

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

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

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

(a) Additional relief is not due; and

(b) An additional claim may not be filed, compensation is not due and a waiver may not be issued with regard to the property under sections 5 to 22 of this 2007 Act or ORS 197.352 as in effect immediately before the effective date of this 2007 Act, except with respect to a land use regulation enacted after January 1, 2007.

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable

development interests between the jurisdictions of the public entities that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

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

(a) Is not affected by the death of the claimant if the death occurs on or after the effective date of this 2007 Act; and

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

**BALLOT MEASURE 37 CLAIMS MADE
AFTER THE DATE OF ADJOURNMENT SINE DIE
OF THE 2007 REGULAR SESSION OF THE
SEVENTY-FOURTH LEGISLATIVE ASSEMBLY
(Generally)**

SECTION 12. (1) A person may file a claim for just compensation under sections 12 to 14 of this 2007 Act and ORS 197.352 after the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly if:

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

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

(c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 197.352 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use

regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

- (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;
 - (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
 - (c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.
- (3) Relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.
- (4) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:
- (a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

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

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130.

(Procedures for Actions on New Claims)

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

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

(3) Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under section 12

of this 2007 Act in an amount not to exceed the actual and reasonable cost of reviewing the claim.

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

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

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

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

(a) The name and address of each owner;

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

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

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

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

(f) An appraisal of the property that complies with section 12 (2) of this 2007 Act.

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

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

(a) The missing information;

(b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

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

(11) A claim filed under section 12 of this 2007 Act is deemed withdrawn if the public entity gives notice to the claimant under subsection (9) of this section and the claimant does not comply with the requirements of subsection (9) of this section.

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

(a) All owners identified in the claim;

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

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

(d) Metro, if the property is located within the urban growth boundary of Metro;

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

(f) The city, if the property is located within the urban growth boundary or adopted urban planning area of the city.

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

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

(b) That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the public entity; and

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

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

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

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

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

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

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

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

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

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

(3) The Department of Land Conservation and Development, the State Department of 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 made by Metro, a city or a county, or under ORS 183.484, if the determination is one of a state agency. Proceedings for review of a state agency determination under sections 5 to 11 or 12 to 14 of this 2007 Act must be commenced in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue. A determination by a public entity under sections 5 to 11 or 12 to 14 of this 2007 Act is not a land use decision.

(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, or submits an application for an amendment to the Metro urban growth boundary, and Metro, a city or a 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. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by sections 5 to 22 of this 2007 Act. The Department of Land Conservation and Development is authorized to retain persons to review the appraisals.

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

(2) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under sections 5 to 22 of this 2007 Act by using the procedure provided in ORS 105.623 to 105.649.

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

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

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

SECTION 21b. For the purposes of sections 5 to 22 of this 2007 Act, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to

sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.

SECTION 21c. If any part of sections 5 to 22 of this 2007 Act is held to be unconstitutional or otherwise invalid, all remaining parts of sections 5 to 22 of this 2007 Act shall not be affected by the holding and shall remain in full force and effect.

SECTION 22. (1) The Compensation and Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on moneys in the Compensation and Conservation Fund shall be credited to the fund. The fund consists of moneys received by the Department of Land Conservation and Development under sections 5 to 22 of this 2007 Act and other moneys available to the department for the purpose described in subsection (2) of this section.

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

CONFORMING AMENDMENTS

SECTION 23. ORS 93.040 is amended to read:

93.040. (1) The following statement shall be included in the body of an instrument transferring or contracting to transfer fee title to real property except for owner's sale agreements or earnest money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352] SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE

TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352] **SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.**"

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

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

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

(5) An action may not be maintained against any person for failure to include in the instrument the statement required in subsection (1) or (2) of this section, or for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section, unless the person acquiring or agreeing to

acquire fee title to the real property would not have executed or accepted the instrument but for the absence in the instrument of the statement required by subsection (1) or (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire fee title to the real property against any person other than the person transferring or contracting to transfer fee title to the real property.

SECTION 24. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express a legislative intent in the enactment of this 2007 Act.

SECTION 25. This 2007 Act shall be submitted to the people for their approval or rejection at a special election held throughout this state as provided in chapter _____, Oregon Laws 2007 (Enrolled House Bill 2083).

1 of 1 DOCUMENT

OREGON REVISED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2005 REGULAR SESSION OF THE 73RD LEGISLATIVE ASSEMBLY ***

*** ANNOTATIONS CURRENT THROUGH OCTOBER 31, 2007 ***

TITLE 10. PROPERTY RIGHTS AND TRANSACTIONS
CHAPTER 94. REAL PROPERTY DEVELOPMENT
TRANSFERABLE DEVELOPMENT CREDITS

GO TO OREGON REVISED STATUTES ARCHIVE DIRECTORY

ORS § 94.531 (2005)

94.531. Severable development interest in real property; transferable development credit.

(1) The governing body of a city or county is authorized to recognize a severable development interest in real property. The governing body of the city or county may establish a system for the purchase and sale of development interests. The interest transferred shall be known as a transferable development credit. A transferable development credit shall include the ability to establish in a location in the city or county a specified amount of residential or nonresidential development that is different from development types or exceeds development limitations provided in the applicable land use regulations for the location. All development authorized or approved using transferable development credits shall comply with the land use planning goals adopted under ORS 197.225 and the acknowledged comprehensive plan.

(2) The ability to develop land from which credits are transferred shall be reduced by the amount of the development credits transferred, and development on the land to which credits are transferred may be increased in accordance with a transfer system formally adopted by the governing body of the city or county.

(3) The holder of a recorded mortgage encumbering land from which credits are transferred shall be given prior written notice of the proposed conveyance by the record owner of the property and must consent to the conveyance before any development credits may be transferred from the property.

(4) A city or county with a transferable development credit system shall maintain a registry of all lots or parcels from which credits have been transferred, the lots or parcels to which credits have been transferred and the allowable development level for each lot or parcel following transfer.

(5) A city or county, or an elected official, appointed official, employee or agent of a city or county, shall not be found liable for damages resulting from any error made in:

(a) Allowing the use of a transferable development credit that complies with an adopted transferable development credit system and the acknowledged comprehensive plan; or

(b) Maintaining the registry required under subsection (4) of this section.

HISTORY: 1999 c.573 § 1

NOTES:

94.531 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Example of Oregon TDC Program from Deschutes County

Chapter 11.12. TRANSFERABLE DEVELOPMENT CREDIT PROGRAM

11.12.010. Definitions.

11.12.020. TDC Transactions.

11.12.030. TDC Sending Area Eligibility Criteria.

11.12.040. TDC Advisory Committee.

11.12.010. Definitions.

As used in DCC 11.12, the following words and phrases shall mean as set forth in DCC 11.12.010.

“Certificate of TDC Purchase” means a certificate from Deschutes County that documents the purchase or, in the case of a PRC, creation of TDC(s).

“Department” means, for purposes of this chapter, the Deschutes County Community Development Department.

“Existing Wastewater Treatment System” means a wastewater treatment system in use in the Sending Area on May 31, 2006 that is not a Nitrogen Reducing System approved by Deschutes County.

“High Priority Deer Migration Corridor Area” means the area mapped in 2000 by the Oregon Department of Fish and Wildlife which shows the area of priority protection for migrating mule deer within a larger migration corridor acknowledged under statewide planning Goal 5. A copy of this map is on file with the Department.

“Net Developable Acre” means the acreage in a tract of land in a Receiving Area calculated by subtracting the acreage reserved for collector road right-of-way and community parks and open space from the gross acreage of a subject tract.

“Nitrate Loading Management Model” means the groundwater model developed by the US Geological Survey to determine the nitrate loading capacity of the drinking water aquifer underlying south Deschutes County.

“Nitrogen Reducing System” means a wastewater treatment system that reduces nitrogen loading to the groundwater in accordance with the Nitrate Loading Management Model and that is approved by Deschutes County.

“Pollution Reduction Credit” (PRC) means the credit given for the Retrofitting of an Existing Wastewater Treatment System or payment into the County’s fund.

“Receiving Area” means the area designated by the County where Transferable Development Credits are required in order to purchase and develop a tract of land.

“Restrictive Covenant” means a legal instrument which places restrictions on future development on a lot or parcel of land in the Sending Area.

“Retrofit” means to upgrade or replace an Existing Wastewater Treatment System in the Sending Area with a Nitrogen Reducing System approved by the County.

“Sending Area” means the area designated by the County in which Transferable Development Credits may be sold.

“TDC Report” means a report from a title company verifying title to and encumbrances on the subject property.

Example of Oregon TDC Program from Deschutes County

“Transferable Development Credit” (TDC) means the credit given for a Restrictive Covenant granted to Deschutes County restricting the placement of a septic system- on the subject property or a PRC. (Ord. 2006-016 §1, 2006; Ord. 2004-007 §1, 2004; Ord. 2002-010 §1, 2002)

11.12.020. TDC Transactions.

- A. Sale of TDCs from the Sending Area. Either Section B or C shall be followed for ~~a~~the creation of TDCs,
- B. Restrictive Covenant
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a TDC.
 - 2. The Department shall send the property owner or interested person written verification confirming the number of TDCs the subject property is eligible for based on the criteria in DCC 11.12.030.
 - 3. Upon mutual agreement of a sale between the property owner and TDC purchaser, the following transactions shall occur:
 - a. The property owner shall provide a TDC Report to the Department.
 - b. If the TDC purchaser is other than the County then the property owner and TDC purchaser shall sign a TDC Contract form provided by the County.
 - c. Upon Department review and approval of the TDC Report and receipt of payment of the consideration in accordance with the County’s agreement with the property owner or the TDC Contract pursuant to DCC 11.12.010(A)(3)(b), the County shall prepare a Restrictive Covenant that restricts development on the subject property. This Restrictive Covenant shall be signed by the County and the property owner. The County shall record the Restrictive Covenant.
 - d. Contemporaneously with the recording of the Restrictive Covenant, County shall provide the TDC purchaser with documentation of the TDC purchase.
- C. PRC.
 - 1. The property owner or any other interested person shall request verification from the County that the subject property is eligible for a PRC.
 - 2. The Department shall provide the property owner or interested person written verification confirming the subject property is eligible for a PRC based on the criteria in DCC 11.12.030.
 - 3. The County shall grant a PRC to a developer in the Receiving Area if the developer provides one of the following:
 - a. A Retrofit, in cooperation with the property owner of a property eligible for a PRC, Existing Wastewater Treatment System and documentation submitted to the County that includes proof of ownership of the subject property, proof of consent of the property owner for the Retrofit, and final County inspection of the Retrofit; or
 - b. Payment into the County’s fund the proportional cost established by Board of County Commissioner Resolution for a Retrofit. The County’s fund shall be use d to aid property owners in Retrofitting their Existing Wastewater Treatment Systems.
- D. Assignment of TDCs to the Receiving Area. Prior to **final** plat approval in the Receiving Area, the Department must have record of the required number of TDCs established and available to apply to development of a tract or lot meeting the following criteria within the Receiving Area:
 - 1. The tract or lot shall be located within the La Pine Neighborhood Planning Area in the La Pine Urban Unincorporated Community and be zoned Residential General or Residential Center. The Receiving Area is identified on a map prepared and maintained by the Department.
 - 2. TDCs shall be assigned to a lot or tract based on the Net Developable Acres at a rate approved by Board of County Commissioner resolution.
 - 3. PRCs shall be assigned to a tract at a rate established by Board of County Commissioner resolution.
 - 4. The Board may, by resolution, adjust the number of TDCs required per acre or alter the factors for which TDCs are required in the Receiving Area.

Example of Oregon TDC Program from Deschutes County

- E. Non-Residential Districts. Where permitted under DCC 18.61.050, uses in non-residential districts in the Receiving Area do not require TDCs.
- F. Right to Develop. If an owner of a lot or parcel of land eligible for a TDC chooses not to participate in the TDC program, the owner shall not be restricted from developing said lot or parcel in accordance with the applicable zoning standards in DCC Title 18, and any other applicable regulations, rules or standards.

(Ord. 2006-016 §1, 2006; Ord. 2004-007 §1, 2004; Ord. 2002-010 §1, 2002)

11.12.030. TDC Sending Area Eligibility Criteria.

- A. A lot or parcel that meets the following criteria is eligible to receive a TDC. The lot or parcel shall:
 - 1. Be located within the “Sending Area” identified on a map prepared and maintained by the Department;
 - 2. Be no greater than two acres in area;
 - 3. Be capable of being served by an on-site sewage disposal system that meets current Oregon Department of Environmental Quality standards, as demonstrated by a satisfactory feasibility evaluation for an on-site sewage disposal system or when the lot or parcel is shown as being eligible for such system on the TDC Sending Area map; and
 - 4. Not be developed with an existing sewage disposal system, or if developed with an existing sewage disposal system, the landowner shall disable said system, or
 - 5. Have received prior approval for a site evaluation or an installed septic system that has expired or is no longer valid, or
 - 6. Have an Existing Wastewater Treatment System eligible for a Retrofit.
- B. TDCs shall be assigned to an eligible lot or parcel that meets the criteria in DCC 11.12.030(A), as follows:
 - 1. An eligible lot or parcel upon which a Restrictive Covenant is recorded shall be assigned one TDC.
 - 2. An eligible lot or parcel located in the High Priority Deer Migration Corridor Area upon which a Restrictive Covenant is recorded shall be assigned an additional one-half TDC.
 - 3. An eligible lot or parcel upon which an Existing Wastewater Treatment System has been Retrofitted shall be assigned one TDC.
 - 4. The Board of County Commissioners may by Resolution revise the number of TDCs assigned or the factors for which TDCs are assigned to eligible lots or parcels in the Sending Area.

(Ord. 2006-016 §1, 2006; Ord. 2004-007 §1, 2004; Ord. 2002-010 §1, 2002)

11.12.040. TDC Advisory Committee.

- A. Purpose. The TDC Advisory Committee is an advisory committee whose purpose is to assist staff in implementing the TDC program and to recommend to staff the means to accomplish the goals of Regional Problem Solving insofar as the transfer of development credits from the Sending Area to the Receiving Area are concerned.
- B. Duties. The committee will advise staff in evaluating the TDC program for record keeping accuracy, determine if program goals are being met, consider whether any changes to the TDC allocation criteria in the Sending Area or TDC requirements in the Receiving Area are advisable, or if any other revisions to the program are warranted. The committee may assist the County in determining which TDC options to exercise.
- C. Committee member terms. Committee members will be selected by staff based on the knowledge and expertise that each member may contribute to the development of the TDC Program. One-half the initial members shall serve for one year and one-half shall serve for two years. Thereafter, members shall serve two-year terms. Members may be requested to serve additional terms. Staff shall report the membership of the TDC Advisory Committee to the Board of County Commissioners on an annual basis.

Example of Oregon TDC Program from Deschutes County

- D. Committee members. The TDC Advisory Committee may include a representative from each of the following organizations, agencies or professions:
1. The International Society of Appraisers or an Oregon State Certified Appraiser;
 2. A firm established for the purpose of real estate development or the representation of development interests;
 3. An individual with recognized expertise in hydrology or ground water;
 4. An individual with recognized expertise in big game wildlife management;
 5. The Community Solutions Team for Central Oregon;
 6. An individual who resides in the designated Sending Area;
 7. A member of the La Pine Community Action Team;
 8. The Deschutes County Community Development Department Director or designee as an ex officio member.
 9. Staff may select additional members as it deems appropriate.
- (Ord. 2006-016 §1, 2006; Ord. 2003-033 §1, 2003; Ord. 2002-010 §1, 2002)