

C-Engrossed
House Bill 3540

Ordered by the Senate June 1
Including House Amendments dated April 26 and May 1 and Senate
Amendments dated June 1

Sponsored by Representative MACPHERSON, Senator PROZANSKI; Senator SCHRADER

SUMMARY

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

Revises law relating to compensation of property owners for land use regulations.
Continuously appropriates moneys in Compensation and Conservation Fund to Department of Land Conservation and Development to pay expenses incurred to review claims.
Refers Act to people for their approval or rejection at special election to be held on date specified in chapter _____, Oregon Laws 2007 (Enrolled House Bill 2083).

A BILL FOR AN ACT

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

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

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

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

9
10 **DEFINITIONS**

11
12 **SECTION 2. As used in this section and sections 3 and 5 to 22 of this 2007 Act:**

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

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

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

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

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

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

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

22 (6) "Federal law" means:

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

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

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

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

1 a federal statute or regulation.

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

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

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

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

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

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

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

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

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

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

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

24 (B) Within the boundaries of a district, as defined in ORS 540.505; or

25 (C) Within the boundaries of a diking district formed under ORS chapter 551.

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

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

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

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

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

33 (f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above
34 mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and
35 15 percent, and that is located within:

36 (A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178
37 that is within the State of Oregon;

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

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

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

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

45 (11) "High-value forestland" means land:

1 (a) That is in a forest zone or a mixed farm and forest zone, that is located in western
2 Oregon and composed predominantly of soils capable of producing more than 120 cubic feet
3 per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet
4 per year of commercial tree species; or

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

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

11 (13) "Just compensation" means:

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

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

16 (14) "Land use regulation" means:

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

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

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

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

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

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

29 (g) An administrative rule or goal of the Land Conservation and Development Commis-
30 sion; or

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

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

35 (16) "Owner" means:

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

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

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

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

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

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

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

9 (21) "Waive" or "waiver" means an action or decision of a public entity to modify, remove
10 or not apply one or more land use regulations under sections 5 to 22 of this 2007 Act or ORS
11 197.352, as in effect immediately before the effective date of this 2007 Act, to allow the owner
12 to use property for a use permitted when the owner acquired the property.

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

15
16 **LEGISLATIVE POLICY**
17 **ON FAIRNESS TO PROPERTY OWNERS**
18

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

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

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

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

27
28 **BALLOT MEASURE 37**
29

30 **SECTION 4.** ORS 197.352 is amended to read:

31 197.352. *[The following provisions are added to and made a part of ORS chapter 197:]*

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

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

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

45 *[(A)]* (a) Restricting or prohibiting activities commonly and historically recognized as public

1 nuisances under common law. *This subsection shall be construed narrowly in favor of a finding of*
2 *compensation under this section*];

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

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

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

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

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

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

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

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

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

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

40 [(7)] **(5) A [metropolitan service district, city, or county, or state agency] public entity may adopt**
41 **or apply procedures for the processing of claims under [this section, but in no event shall these pro-**
42 **cedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section,**
43 **nor shall the failure of an owner of property to file an application for a land use permit with the local**
44 **government serve as grounds for dismissal, abatement, or delay of a compensation claim under sub-**
45 **section (6) of this section] sections 12 to 24 of this 2007 Act.**

1 effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with
2 the state, but not more than three in any case.

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

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

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

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

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

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

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

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

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

29 **SECTION 7.** (1) A claimant that filed a claim under ORS 197.352 on or before the date
30 of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative As-
31 sembly for property that is not high-value farmland or high-value forestland and that is not
32 in a ground water restricted area is eligible for four to 10 home site approvals for the prop-
33 erty if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The
34 procedure for obtaining home site approvals under this section is set forth in section 8 of
35 this 2007 Act.

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

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

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

45 (c) The number of home site approvals with a total value that represents just compen-

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

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

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

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

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

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

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

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

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

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

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

35 (6) The reduction in the fair market value of the property caused by the enactment of
36 one or more land use regulations that were the basis for the claim is equal to the decrease,
37 if any, in the fair market value of the property from the date that is one year before the
38 enactment of the land use regulation to the date that is one year after the enactment, plus
39 interest. If the claim is based on the enactment of more than one land use regulation enacted
40 on different dates, the reduction in the fair market value of the property caused by each
41 regulation shall be determined separately and the values added together to calculate the total
42 reduction in fair market value. The reduction in fair market value shall be adjusted by any
43 ad valorem property taxes not paid as a result of any special assessment of the property
44 under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus
45 interest, offset by any severance taxes paid by the claimant and by any recapture of potential

1 additional tax liability that the claimant has paid or will pay for the property if the property
2 is disqualified from special assessment under ORS 308A.703. Interest shall be computed under
3 this subsection using the average interest rate for a one-year United States Government
4 Treasury Bill on December 31 of each year of the period between the date the land use reg-
5 ulation was enacted and the date the claim was filed, compounded annually on January 1 of
6 each year of the period.

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

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

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

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

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

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

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

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

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

43 (b) A claimant whose claim was approved by the state before the effective date of this
44 2007 Act; and

45 (c) A claimant whose claim has not been approved or denied by the state before the ef-

1 **fective date of this 2007 Act.**

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

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

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

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

7 **(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by**
8 **filing the form provided by the department within 90 days after the date the department**
9 **mails the notice and form required under subsection (1) of this section. In addition, the**
10 **claimant must file any information required in the notice. If the claimant fails to file the**
11 **form within 90 days after the date the department mails the notice, the claimant is not en-**
12 **titled to relief under section 6 or 7 of this 2007 Act.**

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

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

40 **(6) The department or the county shall review claims as quickly as possible, consistent**
41 **with careful review of the claim. The department shall report to the Joint Legislative Audit**
42 **Committee on or before March 31, 2008, concerning the department's progress and the**
43 **counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.**

44 **(7) The department's final order and a county's final decision on a claim under section 6**
45 **or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision**

1 approves the claim, the order or decision must state the number of home site approvals is-
2 sued for the property and may contain other terms that are necessary to ensure that the
3 use of the property is lawful.

4
5 (Claims Relating to Property Within
6 Urban Growth Boundaries)
7

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

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

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

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

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

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

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

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

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

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

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

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

45 (e) The property is zoned for residential use;

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

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

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

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

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

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

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

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

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

1 **ORS chapter 308;**

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

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

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

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

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

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

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

22 **SECTION 10. (1) If Metro, a city or a county issued a waiver before the effective date**
23 **of this 2007 Act for property located, in whole or in part, within an urban growth boundary,**
24 **the public entity that issued the waiver must review the claim, the record on the claim and**
25 **the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007**
26 **Act. If the public entity that issued the waiver lacks information needed to determine**
27 **whether the claimant is entitled to relief, the public entity shall issue a written request to**
28 **the claimant for the required information. The claimant must file the required information**
29 **within 90 days after receiving the request. If the claimant does not file the information, the**
30 **public entity shall review the claim based on the information that is available. The public**
31 **entity shall complete a tentative review no later than 240 days after the effective date of this**
32 **2007 Act. The public entity shall provide written notice to the claimant, the Department of**
33 **Land Conservation and Development and any other person entitled to notice of the tentative**
34 **determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act**
35 **and, if so, the specific number of single-family dwellings that the public entity proposes to**
36 **authorize. The notice must state that the recipient has 15 days to submit evidence or argu-**
37 **ments in response to the tentative determination, after which the public entity shall make**
38 **a final determination. A public entity shall make the final determination under this sub-**
39 **section within 300 days after the effective date of this 2007 Act.**

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

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

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

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

2 (3) Within 120 days after the date the public entity mails notice under subsection (2) of
3 this section, a claimant must notify the public entity if the claimant intends to continue the
4 claim and must file the information required in the notice. If the claimant fails to file the
5 notice and required information with the public entity within 120 days after the date the
6 public entity mails the notice, the claimant is not entitled to relief under section 9 of this
7 2007 Act.

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

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

27
28 (Development Standards; Transferability)
29

30 **SECTION 11.** (1) A subdivision or partition of property, or the establishment of a dwelling
31 on property, authorized under sections 5 to 11 of this 2007 Act must comply with all appli-
32 cable standards governing the siting or development of the dwelling, lot or parcel including,
33 but not limited to, the location, design, construction or size of the dwelling, lot or parcel.
34 However, the standards must not be applied in a manner that has the effect of prohibiting
35 the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007
36 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect
37 public health or safety or to carry out federal law.

38 (2) Before beginning construction of any dwelling authorized under section 6 or 7 of this
39 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in
40 an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

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

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

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

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

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

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

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

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

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

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

36 (a) Additional relief is not due; and

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

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

1 established under this subsection may provide for the transfer of severable development in-
2 terests between the jurisdictions of the public entities that are parties to the agreement for
3 the purpose of allowing development to occur in a location that is different from the location
4 in which the development interest arises.

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

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

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

11
12 **BALLOT MEASURE 37 CLAIMS MADE**
13 **AFTER THE DATE OF ADJOURNMENT SINE DIE**
14 **OF THE 2007 REGULAR SESSION OF THE**
15 **SEVENTY-FOURTH LEGISLATIVE ASSEMBLY**
16 **(Generally)**
17

18 **SECTION 12.** (1) A person may file a claim for just compensation under sections 12 to
19 14 of this 2007 Act and ORS 197.352 after the date of adjournment sine die of the 2007 regular
20 session of the Seventy-fourth Legislative Assembly if:

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

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

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

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

30 (2) For purposes of subsection (1) of this section, the reduction in the fair market value
31 of the property caused by the enactment of one or more land use regulations that are the
32 basis for the claim is equal to the decrease, if any, in the fair market value of the property
33 from the date that is one year before the enactment of the land use regulation to the date
34 that is one year after the enactment, plus interest. If the claim is based on the enactment
35 of more than one land use regulation enacted on different dates, the reduction in the fair
36 market value of the property caused by each regulation shall be determined separately and
37 the values added together to calculate the total reduction in fair market value. Interest shall
38 be computed under this subsection using the average interest rate for a one-year United
39 States Government Treasury Bill on December 31 of each year of the period between the date
40 the land use regulation was enacted and the date the claim was filed, compounded annually
41 on January 1 of each year of the period. A claimant must provide an appraisal showing the
42 fair market value of the property one year before the enactment of the land use regulation
43 and the fair market value of the property one year after the enactment. The actual and
44 reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed
45 \$5,000, may be added to the calculation of the reduction in fair market value under this

1 subsection. The appraisal must:

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

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

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

8 (3) Relief may not be granted under this section if the highest and best use of the prop-
9 erty at the time the land use regulation was enacted was not the use that was restricted by
10 the land use regulation.

11 (4) If the claimant establishes that the requirements of subsection (1) of this section are
12 satisfied and the land use regulation was enacted by Metro, a city or a county, the public
13 entity must either:

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

16 (b) Authorize the claimant to use the property without application of the land use regu-
17 lation to the extent necessary to offset the reduction in the fair market value of the prop-
18 erty.

19 (5) If the claimant establishes that the requirements of subsection (1) of this section are
20 satisfied and the land use regulation was enacted by state government, as defined in ORS
21 174.111, the state agency that is responsible for administering the statute, statewide land use
22 planning goal or rule, or the Oregon Department of Administrative Services if there is no
23 state agency responsible for administering the statute, goal or rule, must:

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

26 (b) Authorize the claimant to use the property without application of the land use regu-
27 lation to the extent necessary to offset the reduction in the fair market value of the prop-
28 erty.

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

35
36 (Procedures for Actions on New Claims)

37
38 **SECTION 13.** (1) A person filing a claim under section 12 of this 2007 Act shall file the
39 claim in the manner provided by this section. If the property for which the claim is filed has
40 more than one owner, the claim must be signed by all the owners or the claim must include
41 a signed statement of consent from each owner. Only one claim for each property may be
42 filed for each land use regulation.

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

45 (3) Metro, cities, counties and the Department of Land Conservation and Development

1 may impose a fee for the review of a claim filed under section 12 of this 2007 Act in an
2 amount not to exceed the actual and reasonable cost of reviewing the claim.

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

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

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

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

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

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

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

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

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

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

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

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

33 (a) The missing information;

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

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

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

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

44 **SECTION 14.** (1) A public entity that receives a complete claim as described in section
45 13 of this 2007 Act shall provide notice of the claim at least 30 days before a public hearing

1 on the claim or, if there will not be a public hearing, at least 30 days before the deadline for
2 submission of written comments, to:

3 (a) All owners identified in the claim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43
44 **JUDICIAL REVIEW**
45

1 commission approves the petition, the owner is not entitled to relief under sections 5 to 22
2 of this 2007 Act with respect to a land use regulation enacted before the date the petition
3 was filed.

4 **SECTION 20.** An appraiser certified under ORS 674.310 or a person registered under ORS
5 chapter 308 may carry out the appraisals required by sections 5 to 22 of this 2007 Act. The
6 Department of Land Conservation and Development is authorized to retain persons to review
7 the appraisals.

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

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

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

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

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

25 **SECTION 21b.** For the purposes of sections 5 to 22 of this 2007 Act, the fair market value
26 of property is the amount of money, in cash, that the property would bring if the property
27 was offered for sale by a person who desires to sell the property but is not obligated to sell
28 the property, and if the property was bought by a person who was willing to buy the property
29 but not obligated to buy the property. The fair market value is the actual value of property,
30 with all of the property's adaptations to general and special purposes. The fair market value
31 of property does not include any prospective value, speculative value or possible value based
32 upon future expenditures and improvements.

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

36 **SECTION 22.** (1) The Compensation and Conservation Fund is established in the State
37 Treasury, separate and distinct from the General Fund. Interest earned on moneys in the
38 Compensation and Conservation Fund shall be credited to the fund. The fund consists of
39 moneys received by the Department of Land Conservation and Development under sections
40 5 to 22 of this 2007 Act and other moneys available to the department for the purpose de-
41 scribed in subsection (2) of this section.

42 (2) Moneys in the fund are continuously appropriated to the department for the purpose
43 of paying expenses incurred to review claims under sections 5 to 22 of this 2007 Act and for
44 the purpose of paying the expenses of the Compensation and Conservation Ombudsman ap-
45 pointed 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.

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

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

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