

House Bill 2739

Sponsored by Representative BOONE (Pre-session filed.)

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 **as introduced**.

Clarifies standard under Ballot Measure 49 (2007) for approval of original Ballot Measure 37 (2004) claims for compensation. Clarifies provision requiring that use at issue was "permitted" on date of property acquisition to require that use at issue could have been permitted outright or conditionally allowable on date of property acquisition.

Requires Department of Land Conservation and Development to review denials of claims for compensation and reconsider denied claims affected by clarified standard.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Ballot Measure 49 (2007) claims for compensation; creating new provisions; amending
3 ORS 195.300 and sections 6, 7, 9 and 11, chapter 424, Oregon Laws 2007, and sections 2 and 4,
4 chapter 8, Oregon Laws 2010; and declaring an emergency.

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

6 **SECTION 1.** Section 6, chapter 424, Oregon Laws 2007, as amended by section 11, chapter 855,
7 Oregon Laws 2009, is amended to read:

8 **Sec. 6.** (1)(a) A claimant that filed a claim under ORS 195.305 on or before June 28, 2007, is
9 eligible for three home site approvals on the property if the requirements of this section and:

10 (A) Sections 8 and 11, chapter 424, Oregon Laws 2007, are met;

11 (B) Section 2, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,
12 Oregon Laws 2007, are met;

13 (C) Section 3, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,
14 Oregon Laws 2007, are met;

15 (D) Section 4, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,
16 Oregon Laws 2007, are met;

17 (E) Section 5, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,
18 Oregon Laws 2007, are met; or

19 (F) Section 5a, **chapter 855, Oregon Laws 2009**, [*of this 2009 Act*] and section 11, chapter 424,
20 Oregon Laws 2007, are met.

21 (b) The procedure for obtaining home site approvals under this section is set forth in section
22 8, chapter 424, Oregon Laws 2007, or, for sections 2 to 5a, **chapter 855, Oregon Laws 2009** [*of this*
23 *2009 Act*], is established pursuant to section 6, **chapter 855, Oregon Laws 2009** [*of this 2009 Act*].

24 (2) The number of lots, parcels or dwellings that may be approved for property under this sec-
25 tion may not exceed the lesser of:

26 (a) The number of lots, parcels or dwellings described in a waiver issued by the state before
27 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described
28 in the claim filed with the state; or

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

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

5 (3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief
 6 under this section may establish at least one additional lot, parcel or dwelling on the property. In
 7 addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before
 8 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described
 9 in the claim filed with the state is more than three, the claimant may amend the claim to reduce
 10 the number to no more than three by filing notice of the amendment with the form required by
 11 section 8, chapter 424, Oregon Laws 2007, or, for sections 2 to 5a, **chapter 855, Oregon Laws 2009**
 12 *[of this 2009 Act]*, in the manner established pursuant to section 6, **chapter 855, Oregon Laws 2009**
 13 *[of this 2009 Act]*.

14 (4) If a claim was for a use other than a subdivision or partition of property, or other than ap-
 15 proval for establishing a dwelling on the property, the claimant may amend the claim to seek one
 16 or more home site approvals under this section. A person amending a claim under this subsection
 17 may not make a claim under section 7, chapter 424, Oregon Laws 2007.

18 (5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings
 19 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels
 20 or dwellings in the most recent waiver issued by the state before December 6, 2007, or, if a waiver
 21 was not issued, the most recent claim filed with the state, but not more than three in any case.

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

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

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

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

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

31 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation
 32 described in ORS 195.305 (3); and

33 (f) On the claimant's acquisition date, the claimant lawfully *[was permitted to establish]* **could**
 34 **have established** at least the number of lots, parcels or dwellings on the property that are au-
 35 thorized under this section, **either as an outright permitted use or as a use subject to condi-**
 36 **tional approval for which evidence in the record suggests that the county more often than**
 37 **not historically approved applications seeking approval of lots, parcels or dwellings on simi-**
 38 **larly situated property.**

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

43 (8) Except as provided in section 11, chapter 424, Oregon Laws 2007, if the Department of Land
 44 Conservation and Development has issued a final order with a specific number of home site ap-
 45 provals for a property under this section, the claimant may seek other governmental authorizations

1 required by law for the partition or subdivision of the property or for the development of any
 2 dwelling authorized, and a land use regulation enacted by the state or county that has the effect
 3 of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those
 4 authorizations.

5 **SECTION 2.** Section 7, chapter 424, Oregon Laws 2007, as amended by section 12, chapter 855,
 6 Oregon Laws 2009, is amended to read:

7 **Sec. 7.** (1) A claimant that filed a claim under ORS 195.305 on or before June 28, 2007, for
 8 property that is not high-value farmland or high-value forestland and that is not in a ground water
 9 restricted area is eligible for four to 10 home site approvals for the property if the requirements of
 10 this section and sections 8 and 11, chapter 424, Oregon Laws 2007, are met. The procedure for ob-
 11 taining home site approvals under this section is set forth in section 8, chapter 424, Oregon Laws
 12 2007.

13 (2) The number of lots, parcels or dwellings that may be established on the property under this
 14 section may not exceed the lesser of:

15 (a) The number of lots, parcels or dwellings described in a waiver issued by the state before
 16 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described
 17 in the claim filed with the state;

18 (b) Ten, except that if there are existing dwellings on the property or the property contains
 19 more than one lot or parcel, the number of lots, parcels or dwellings that may be established is re-
 20 duced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or
 21 dwellings located on or contained within the property, does not exceed 10; or

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

25 (3) If the number of lots, parcels or dwellings described in a waiver issued by the state before
 26 December 6, 2007, or, if a waiver was not issued, the number of lots, parcels or dwellings described
 27 in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the
 28 number to no more than 10 by filing notice of the amendment with the form required by section 8,
 29 chapter 424, Oregon Laws 2007.

30 (4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings
 31 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels
 32 or dwellings in the most recent waiver issued by the state before December 6, 2007, or, if a waiver
 33 was not issued, the most recent claim filed with the state, but not more than 10 in any case.

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

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

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

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

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

43 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation
 44 described in ORS 195.305 (3);

45 (f) On the claimant's acquisition date, the claimant lawfully [*was permitted to establish*] **could**

1 **have established** at least the number of lots, parcels and dwellings on the property that are au-
 2 **thorized under this section, either as an outright permitted use or as a use subject to condi-**
 3 **tional approval for which evidence in the record suggests that the county more often than**
 4 **not historically approved applications seeking approval of lots, parcels and dwellings on**
 5 **similarly situated property; and**

6 (g) The enactment of one or more land use regulations, other than land use regulations de-
 7 scribed in ORS 195.305 (3), that are the basis for the claim caused a reduction in the fair market
 8 value of the property that is equal to or greater than the fair market value of the home site ap-
 9 provals that may be established on the property under subsection (2) of this section, with the re-
 10 duction in fair market value measured as set forth in subsection (6) of this section.

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

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

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

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

41 (c) Expressly determine the highest and best use of the property at the time the land use regu-
 42 lation was enacted.

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

45 (9) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-

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

4 (10) Except as provided in section 11, chapter 424, Oregon Laws 2007, if the Department of Land
 5 Conservation and Development has issued a final order with a specific number of home site ap-
 6 provals for the property under this section, the claimant may seek other governmental authori-
 7 zations required by law for the subdivision or partition of the property or for the development of
 8 any dwelling authorized, and a land use regulation enacted by the state or county that has the effect
 9 of prohibiting the subdivision or partition, or the dwelling, does not apply to the review of those
 10 authorizations.

11 **SECTION 3.** Section 9, chapter 424, Oregon Laws 2007, is amended to read:

12 **Sec. 9.** (1) A claimant that filed a claim under ORS [197.352] **195.305** on or before [*the date of*
 13 *adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June 28,**
 14 **2007**, for property located, in whole or in part, within an urban growth boundary may establish one
 15 to 10 single-family dwellings on the portion of the property located within the urban growth
 16 boundary.

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

19 (a) The number of single-family dwellings described in a waiver issued by Metro, a city or a
 20 county before [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued,
 21 the number described in the claim filed with Metro, a city or a county;

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

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

28 (3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a
 29 county before [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued,
 30 the number described in the claim filed with Metro, a city or a county is more than 10, the claimant
 31 may amend the claim to reduce the number to no more than 10 by filing notice of the amendment
 32 with the information required by section 10, **chapter 424, Oregon Laws 2007** [*of this 2007 Act*].

33 (4) If multiple claims were filed for the same property, the number of single-family dwellings that
 34 may be established for purposes of subsection (2)(a) of this section is the number in the most recent
 35 waiver issued by Metro, a city or a county before [*the effective date of this 2007 Act*] **December 6,**
 36 **2007**, or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but
 37 not more than 10 in any case.

38 (5) To qualify for the relief provided by this section, the claimant must have filed a claim for
 39 the property with the city or county in which the property is located. In addition, regardless of
 40 whether a waiver was issued by Metro, a city or a county before [*the effective date of this 2007*
 41 *Act*] **December 6, 2007**, to qualify for relief under this section, the claimant must establish that:

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

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

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

45 (d) On the claimant's acquisition date, the claimant lawfully [*was permitted to establish*] **could**

1 **have established** at least the number of dwellings on the property that are authorized under this
2 section, **either as an outright permitted use or as a use subject to conditional approval for**
3 **which evidence in the record suggests that the city or county more often than not histor-**
4 **ically approved applications seeking approval of dwellings on similarly situated property;**

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

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

7 (g) The establishment of the single-family dwellings is not prohibited by a land use regulation
8 described in ORS [197.352 (3)] **195.305 (3)**;

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

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

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

16 (k) The enactment of one or more land use regulations, other than land use regulations de-
17 scribed in ORS [197.352 (3)] **195.305 (3)**, that are the basis of the claim caused a reduction in the fair
18 market value of the property, as determined under subsection (6) of this section, that is equal to or
19 greater than the fair market value of the single-family dwellings that may be established on the
20 property under subsection (2) of this section.

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

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

1 duction in fair market value under section 7 (6), **chapter 424, Oregon Laws 2007** [*of this 2007*
 2 *Act*]. The appraisal must:

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

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

7 (c) Expressly determine the highest and best use of the property at the time the land use regu-
 8 lation was enacted.

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

11 (9) When Metro, a city or a county has issued a final decision authorizing one or more single-
 12 family dwellings under this section on the portion of the property located within the urban growth
 13 boundary, the claimant may seek other governmental authorizations required by law for that use,
 14 and a land use regulation enacted by a public entity that has the effect of prohibiting the use does
 15 not apply to the review of those authorizations, except as provided in section 11, **chapter 424,**
 16 **Oregon Laws 2007** [*of this 2007 Act*]. If Metro is reviewing a claim for a property, and a city or a
 17 county is reviewing a claim for the same property, Metro and the city or county shall coordinate
 18 the review and decisions and may:

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

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

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

25 **SECTION 4.** Section 11, chapter 424, Oregon Laws 2007, as amended by section 14, chapter 855,
 26 Oregon Laws 2009, is amended to read:

27 **Sec. 11.** (1) A subdivision or partition of property, or the establishment of a dwelling on prop-
 28 erty, authorized under sections 5 to 11, chapter 424, Oregon Laws 2007, **and sections 2 to 9 and**
 29 **17, chapter 855, Oregon Laws 2009**, must comply with all applicable standards governing the siting
 30 or development of the dwelling, lot or parcel including, but not limited to, the location, design,
 31 construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a
 32 manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized
 33 under sections 5 to 11, chapter 424, Oregon Laws 2007, **and sections 2 to 9 and 17, chapter 855,**
 34 **Oregon Laws 2009**, unless the standards are reasonably necessary to avoid or abate a nuisance, to
 35 protect public health or safety or to carry out federal law.

36 (2) If the property described in a claim is bisected by an urban growth boundary, any new
 37 dwelling, lot or parcel established on the property pursuant to an order under section 6, chapter 424,
 38 Oregon Laws 2007, must be located on the portion of the property outside the urban growth
 39 boundary.

40 (3) Before beginning construction of any dwelling authorized under section 6 or 7, chapter 424,
 41 Oregon Laws 2007, the owner must comply with the requirements of ORS 215.293 if the property is
 42 in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

43 (4)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling au-
 44 thorized under sections 5 to 11, chapter 424, Oregon Laws 2007, **and sections 2 to 9 and 17,**
 45 **chapter 855, Oregon Laws 2009.** However, a new lot or parcel located in an exclusive farm use

1 zone, a forest zone or a mixed farm and forest zone may not exceed:

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

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

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

9 (5) If an owner is authorized to subdivide or partition more than one property, or to establish
10 dwellings on more than one property, under sections 5 to 11, chapter 424, Oregon Laws 2007, **and**
11 **sections 2 to 9 and 17, chapter 855, Oregon Laws 2009**, and the properties are in an exclusive
12 farm use zone, a forest zone or a mixed farm and forest zone, the owner may cluster some or all of
13 the dwellings, lots or parcels on one of the properties if that property is less suitable than the other
14 properties for farm or forest use. If one of the properties is zoned for residential use, the owner may
15 cluster some or all of the dwellings, lots or parcels that would have been located in an exclusive
16 farm use zone, a forest zone or a mixed farm and forest zone on the property zoned for residential
17 use.

18 (6) An owner is not eligible for more than 20 home site approvals under sections 5 to 11, chapter
19 424, Oregon Laws 2007, **and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009**, regardless
20 of how many properties that person owns or how many claims that person has filed.

21 (7) An authorization to partition or subdivide the property, or to establish dwellings on the
22 property, granted under section 6, 7 or 9, chapter 424, Oregon Laws 2007, runs with the property
23 and may be either transferred with the property or encumbered by another person without affecting
24 the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9,
25 chapter 424, Oregon Laws 2007, must be carried out, except that once the owner who obtained the
26 authorization conveys the property to a person other than the owner's spouse or the trustee of a
27 revocable trust in which the owner is the settlor, the subsequent owner of the property must create
28 the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9,
29 chapter 424, Oregon Laws 2007, within 10 years of the conveyance. In addition:

30 (a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9, chapter
31 424, Oregon Laws 2007, remains a discrete lot or parcel, unless the lot or parcel lines are vacated
32 or the lot or parcel is further divided, as provided by law; and

33 (b) A dwelling or other residential use of the property based on an authorization under section
34 6, 7 or 9, chapter 424, Oregon Laws 2007, is [a] **an outright** permitted use and may be established
35 or continued by the claimant or a subsequent owner, except that once the claimant conveys the
36 property to a person other than the claimant's spouse or the trustee of a revocable trust in which
37 the claimant is the settlor, the subsequent owner must establish the dwellings or other residential
38 use authorized under section 6, 7 or 9, chapter 424, Oregon Laws 2007, within 10 years of the
39 conveyance.

40 (8) When relief has been claimed under sections 5 to 11, chapter 424, Oregon Laws 2007, **and**
41 **sections 2 to 9 and 17, chapter 855, Oregon Laws 2009**:

42 (a) Additional relief is not due; and

43 (b) An additional claim may not be filed, compensation is not due and a waiver may not be is-
44 sued with regard to the property under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424,
45 Oregon Laws 2007, **and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009**, or ORS 195.305

1 as in effect immediately before December 6, 2007, except with respect to a land use regulation en-
2 acted after January 1, 2007.

3 (9) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to
4 carry out a use of land authorized under sections 5 to 11, chapter 424, Oregon Laws 2007, **and**
5 **sections 2 to 9 and 17, chapter 855, Oregon Laws 2009**, from a willing seller in the manner pro-
6 vided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements
7 under ORS chapter 195 to establish a system for the purchase and sale of severable development
8 interests as described in ORS 94.531. A system established under this subsection may provide for the
9 transfer of severable development interests between the jurisdictions of the public entities that are
10 parties to the agreement for the purpose of allowing development to occur in a location that is dif-
11 ferent from the location in which the development interest arises.

12 (10) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or
13 9, chapter 424, Oregon Laws 2007, and an authorization to use the property provided by a waiver
14 under section 6, 7 or 9, chapter 424, Oregon Laws 2007:

15 (a) Is not affected by the death of the claimant if the death occurs on or after December 6, 2007;
16 and

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

18 **SECTION 5.** Section 2, chapter 8, Oregon Laws 2010, is amended to read:

19 **Sec. 2.** For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if a claimant acquired
20 property on or after January 25, 1975, and before the date the comprehensive plan for the county
21 in which the property is located was first acknowledged by the Land Conservation and Development
22 Commission to comply with the statewide land use planning goals, the claimant is deemed to have
23 been lawfully permitted **outright** to establish one or more home sites, as follows:

24 (1) For property that was subsequently designated in the first acknowledged comprehensive plan
25 as land subject to a goal related to agricultural lands or a goal related to forestlands and that was
26 not zoned, was subject to a zone without a fixed minimum acreage standard or was subject to a zone
27 with a fixed minimum acreage standard that would have allowed at least the number of home sites
28 that would result under the application of this subsection:

29 (a) If the property contains less than 20 acres, the claimant is deemed to have been lawfully
30 permitted **outright** to establish one home site on the property.

31 (b) If the property contains at least 20 acres and less than 40 acres, the claimant is deemed to
32 have been lawfully permitted **outright** to establish up to two home sites on the property.

33 (c) If the property contains 40 acres or more, the claimant is deemed to have been lawfully
34 permitted **outright** to establish up to three home sites on the property.

35 (2) For property that was subsequently designated in the first acknowledged comprehensive plan
36 as land subject to a goal related to agricultural lands or a goal related to forestlands and that was
37 subject to a zone with a fixed minimum acreage standard that would not have allowed at least the
38 number of home sites that would result under the application of subsection (1) of this section, the
39 claimant is deemed to have been lawfully permitted **outright** to establish up to three home sites on
40 the property, consistent with the fixed minimum acreage standard in the zone on the date the
41 claimant acquired the property.

42 (3) For property that was subsequently designated in the first acknowledged comprehensive plan
43 as land for rural residential development:

44 (a) If the property was not zoned or was zoned to allow residential development at a density
45 equal to or greater than one dwelling per two acres, the claimant is deemed to have been lawfully

1 permitted **outright** to establish up to three home sites with a minimum acreage standard of two
 2 acres.

3 (b) If the property was zoned for residential development at a density of less than one dwelling
 4 per two acres, the claimant is deemed to have been lawfully permitted **outright** to establish up to
 5 three home sites, consistent with the density of residential development allowed in the zone on the
 6 date the claimant acquired the property.

7 (4) Notwithstanding subsections (1) and (2) of this section, if the record of the claim includes a
 8 county evaluation and determination of the compliance or noncompliance of the requested residen-
 9 tial use with the applicable statewide land use planning goals, the Department of Land Conservation
 10 and Development may defer to that analysis.

11 **SECTION 6.** Section 4, chapter 8, Oregon Laws 2010, is amended to read:

12 **Sec. 4.** For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if, on or after the date
 13 the comprehensive plan for the county in which the property is located was first acknowledged by
 14 the Land Conservation and Development Commission to comply with the statewide land use planning
 15 goals, the property was subject to a resource zone without a fixed minimum acreage standard, the
 16 fixed minimum acreage standard is deemed to have been 40 acres for purposes of determining the
 17 number of home sites that a claimant [*would have been lawfully permitted to establish*] **lawfully could**
 18 **have established** unless the record of the claim establishes that the claimant [*was lawfully permit-*
 19 *ted to establish*] **lawfully could have established** a home site on a lot or parcel of a different
 20 acreage.

21 **SECTION 7.** ORS 195.300 is amended to read:

22 195.300. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11,
 23 chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009:

24 (1) "Acquisition date" means the date described in ORS 195.328.

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

26 (a) ORS 195.305, as in effect immediately before December 6, 2007; or

27 (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.

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

29 (4) "Fair market value" means the value of property as determined under ORS 195.332.

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

31 (6) "Federal law" means:

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

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

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

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

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

39 (9) "Ground water restricted area" means an area designated as a critical ground water area
 40 or as a ground water limited area by the Water Resources Department or Water Resources Com-
 41 mission before December 6, 2007.

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

43 (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone
 44 or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are
 45 December 6, 2007.

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

- 4 (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;
- 5 (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and
- 6 (C) Subclassification IVw, specifically Huffling Silty Clay Loam.

7 (c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June
 8 28, 2007, is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon
 34 and composed predominantly of soils capable of producing more than 120 cubic feet per acre per
 35 year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of com-
 36 mercial tree species; or

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

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

43 (13) "Just compensation" means:

44 (a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17,
 45 chapter 855, Oregon Laws 2009, for land use regulations enacted on or before January 1, 2007; and

- 1 (b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.
- 2 (14) "Land use regulation" means:
- 3 (a) A statute that establishes a minimum lot or parcel size;
- 4 (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter
5 215 that restricts the residential use of private real property;
- 6 (c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that
7 restricts the residential use of private real property zoned for residential use;
- 8 (d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that
9 restricts the residential use of private real property;
- 10 (e) A provision, enacted or adopted on or after January 1, 2010, of:
- 11 (A) The Oregon Forest Practices Act;
- 12 (B) An administrative rule of the State Board of Forestry; or
- 13 (C) Any other law enacted, or rule adopted, solely for the purpose of regulating a forest prac-
14 tice;
- 15 (f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State
16 Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;
- 17 (g) An administrative rule or goal of the Land Conservation and Development Commission; or
- 18 (h) A provision of a Metro functional plan that restricts the residential use of private real
19 property.
- 20 (15) "Lawfully established unit of land" has the meaning given that term in ORS 92.010.
- 21 (16) "Lot" has the meaning given that term in ORS 92.010.
- 22 (17) "Measure 37 permit" means a final decision by Metro, a city or a county to authorize the
23 development, subdivision or partition or other use of property pursuant to a waiver.
- 24 (18) "Owner" means:
- 25 (a) The owner of fee title to the property as shown in the deed records of the county where the
26 property is located;
- 27 (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force
28 for the property; or
- 29 (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust,
30 except that when the trust becomes irrevocable only the trustee is the owner.
- 31 (19) "Parcel" has the meaning given that term in ORS 92.010.
- 32 (20) "Property" means the private real property described in a claim and contiguous private real
33 property that is owned by the same owner, whether or not the contiguous property is described in
34 another claim, and that is not property owned by the federal government, an Indian tribe or a public
35 body, as defined in ORS 192.410.
- 36 (21) "Protection of public health and safety" means a law, rule, ordinance, order, policy, permit
37 or other governmental authorization that restricts a use of property in order to reduce the risk or
38 consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural
39 or human disaster or threat to persons or property including, but not limited to, building and fire
40 codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control
41 regulations.
- 42 (22) "Public entity" means the state, Metro, a county or a city.
- 43 (23) "Urban growth boundary" has the meaning given that term in ORS 195.060.
- 44 (24) "Waive" or "waiver" means an action or decision of a public entity to modify, remove or
45 not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11,

1 chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, or ORS
2 195.305, as in effect immediately before December 6, 2007, to allow the owner to [*use property for a*
3 *use permitted*] **establish a use on property that the owner could have established** when the
4 owner acquired the property.

5 (25) "Zoned for residential use" means zoning that has as its primary purpose single-family res-
6 idential use.

7 **SECTION 8. Within one year after the effective date of this 2011 Act, the Department**
8 **of Land Conservation and Development shall review claims for compensation under sections**
9 **5 to 11, chapter 424, Oregon Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws**
10 **2009, that were denied and reconsider the denial for the claims affected by the amendments**
11 **to ORS 195.300 and sections 6, 7, 9 and 11, chapter 424, Oregon Laws 2007, and sections 2 and**
12 **4, chapter 8, Oregon Laws 2010, by sections 1 to 7 of this 2011 Act.**

13 **SECTION 9. The amendments to ORS 195.300 and sections 6, 7, 9 and 11, chapter 424,**
14 **Oregon Laws 2007, and section 2 and 4, chapter 8, Oregon Laws 2010, by sections 1 to 7 of**
15 **this 2011 Act apply to claims for compensation under sections 5 to 11, chapter 424, Oregon**
16 **Laws 2007, and sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, made before, on and**
17 **after the effective date of this 2011 Act.**

18 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
20 **on its passage.**

21 _____