

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION 145 MEASURE 37 CLAIMS

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0020

Definitions

The following definitions apply to this division:

- (1) Agency has the meaning provided by ORS 183.310.
- (2) Claim means a written demand for compensation under ORS 197.352.
- (3) Claimant means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.
- (4) Department means the Department of Administrative Services.
- (5) DLCD Regulation has the meaning provided by OAR 660-041-0010.
- (6) Land Use Regulation has the meaning provided in ORS 197.352. An Existing State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date before December 2, 2004. A New State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date on or after December 2, 2004.
- (7) Lot means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.
- (8) Measure 37 means ORS 197.352.
- (9) Parcel means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.
- (10) Property means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.
- (11) Reduction in Fair Market Value means the decrease (if any) in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.
- (12) Registry means the database of information about Claims required by OAR 125-145-0060.
- (13) Regulating Entity means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 197.352, 293, 125 - 145

Stats. Implemented: ORS 197.352, 306

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at:

1225 Ferry Street SE, U160

Salem, OR 97310-4292

Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0040

Contents of a Claim

A Claim must contain the information described in subsections (1)-(8) of this rule, along with the information described in subsection (9), (10), (11) or (12), whichever is applicable. A Claim should contain the information described in subsections (13) and (14) of this rule. A Claim that does not contain the required information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The location of the Property by reference to:

(a) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(b) The street address of the Property if one has been assigned;

(c) The county the Property is located in; and

(d) If the Property is located within the boundary of a city, the city the Property is located in.

(3) Evidence that the Claimant owns an interest in the Property that includes the legal right to carry out the use of the Property that the Claimant alleges has been restricted, and a copy of the document or documents conveying that interest to the Claimant. In most cases, this will be the deed conveying fee title to the Property to the Claimant, but it may also include a land sale contract or other conveyances.

(4) Evidence of the date the Claimant acquired the ownership interest in the Property and, if the Claim is based on the prior ownership of a family member of the Claimant, the date that the family member acquired an ownership interest in

the Property along with evidence of the chain of title from the family member to the Claimant.

(5) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions (CC&Rs), and any other recorded or unrecorded rights applicable to the use of the Property that may affect the Claimant's legal right to carry out the use of the Property that the Claimant alleges has been restricted. This may include a preliminary title report or comparable information from a title company.

(6) The comprehensive land use plan and zoning designation of the Property:

(a) Currently; and

(b) On the date the Claimant acquired the Property.

(7) A description of the Claimant's desired use of the Property that the Claimant alleges is restricted by one or more state Land Use Regulations. If the Claimant has filed a claim with a city or county, the Claim must include a copy of that claim, and a statement as to whether the Claimant's desired use is the same in both claims.

(8)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge." It is a crime under ORS 162.085 to certify the truth of a statement when the person certifying knows the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both.

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(9) A Claim received by the Department on or before December 4, 2006, must identify the state Land Use Regulation(s) that the Claim is based on, and include evidence or information that demonstrates the following:

(a) The manner in which the state Land Use Regulation(s) restricts the Claimant's desired use of the Property, compared with how the Claimant (or family member, if applicable) was permitted to use the Property under Land Use Regulations in effect at the time the Claimant (or family member, if applicable) acquired the Property; and

(b) The amount by which the enforcement or enactment of the state Land Use Regulation(s) has caused a Reduction in the Fair Market Value of the Property.

(10) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more Existing State Land Use Regulations must be received by the Department within two years of the date a city, county, Metro, or an Agency applied the Existing State Land Use Regulation as an approval criterion to an application submitted by the owner of the property. These Claims must include evidence or information that demonstrates the amount by which the enactment or enforcement of the state Land Use Regulation has caused a Reduction in the Fair Market Value of the Property, and one or more of the following:

(a) If the Claim is based on a DLCD Regulation, the Claim must include the

material required by OAR 660-041-0020(1)(b);

(b) If the Claim is based on an Existing State Land Use Regulation other than a DLCD Regulation, the Claim must include a copy of the final written action by an Agency on a complete application to the Agency, in which Agency determined that the Existing State Land Use Regulation was an approval criterion for the application.

(11) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more New State Land Use Regulations must be received by the Department within two years of the effective date of the New State Land Use Regulation, or within two years of the date the Claimant submitted a complete land use application to a city, a county or Metro in which the New State Land Use Regulation was an approval criterion for the land use application, whichever is later.

(12) If a Claim received by the Department after December 4, 2006 contains a demand for compensation based on both Existing and New State Land Use Regulations, the requirements of both subsections (10) and (11) of this section must be met.

(13) Written permission from the Claimant and all other owners with a right to restrict access to the Property, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it or to verify information necessary to act on the Claim.

(14) Evidence that may be submitted to address the requirements of this section include, but are not limited to, the following: current tax assessor's maps of the Property and the surrounding area; a title report for the Property; an appraisal report for the Property by a certified appraiser; the deed or other instrument conveying the Property to the Claimant; Covenants, Conditions & Restrictions (CC&Rs) relating to the Property; land use applications, staff reports and decisions concerning the Claimant's desired use of the Property; applications for permits, staff reports and decisions concerning the Claimant's desired use of the Property.

Stat. Auth.: ORS 197.352, 293, 125 - 145

Stats. Implemented: ORS 197.352, 306

125-145-0045

Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions

related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0060

Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

- (1) The name of the Claimant, and the name of the person submitting the Claim, if different;
- (2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;
- (3) The amount of Reduction in Fair Market Value alleged in the Claim;
- (4) The date the Claim was filed;
- (5) The date the Claim was entered into the Registry
- (6) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;
- (7) Additional information deemed appropriate by the Department.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0080

Third Party Participation

- (1) The Department shall mail written notice of a Claim to any person or organization that has requested notice, to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is

located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, any neighborhood, or community organization(s) whose boundaries include the site when the city or county in which the site is located provides to the Department or Regulating Entity, contact information for the organization(s).

(2) Any person or organization receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.

(3) Comments, evidence and information from third parties must be submitted within **fifteen (15) [ten 10]** days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the **fifteenth (15th) [tenth (10)]** day or actually delivered to the Department by the close of business on the **fifteenth (15th) [tenth (10)]** day.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0100

Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2). The staff report shall be mailed to the Claimant, person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

(a) Whether the Claim was timely filed under section 5 of Measure 37;

(b) Whether the Claimant is an owner under section 11(c) of Measure 37;

(c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under section 11(A) of Measure 37;

(d) Whether any of the Land Use Regulations relied on in the Claim are exempt under section 3 of Measure 37;

(e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;

(f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;

(g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and (h) The Regulating Entity's conclusions and

recommendation for just compensation or to modify, remove or not apply any of

the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than **fifteen (15) [ten (10)]** days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the **fifteenth (15th) [tenth (10)]** day, or actually delivered to the Department by the close of business on the **fifteenth (15th) [tenth (10)]** day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

(1) The Claim;

(2) The contents of the Registry as to the Claim;

(3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;

(4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;

(5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties, and;

(6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & OL 2005 (Measure 37, 2004)