

TITLE 2

COUNTY GOVERNMENT; ADMINISTRATION

CHAPTER 237

M49 VESTING RIGHTS CODE

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I. GENERAL PROVISIONS

237.010 Title

This Chapter, LCC 237.005 to 237.999, shall be known and may be cited as the “Linn County Measure 49 Vesting Rights Determination Procedure Code” or simply as the “M49 Vesting Rights Code.”

[Adopted 08-018 §1 eff 2/20/08]

237.050 Definitions

(A) For purposes of this Chapter, the following definitions apply:

(1) “**Aggrieved party**” means any person who made an appearance on the record with the Planning Director and, if the decision is appealed, the Board, any person entitled to receive notice under LCC 237.300(D) who did not receive notice under LCC 237.130(C).

(2) “**Appearance**” means the filing of any written evidence, arguments, or comments authorized by and in compliance with this Chapter. The writing may be in electronic format.

(3) “**Applicant**” means a person who has obtained non-compensatory relief under Measure 37 from the Board and from the State of Oregon and who has applied to the Planning and Building Department for a vesting rights decision. If an applicant files an appeal to the Board, the applicant is the appellant.

(4) “**Application**” means an application form created by the Planning Director,

completed by the applicant, and filed with the cant, and filed with the Planning and Building Department.

(5) “**Completed application**” means an application deemed complete by the Planning Director.

(6) “**Counsel**” means the Linn County Legal Counsel, or with the County Counsel’s consent, an Assistant County Counsel.

(7) “**Decision-maker**” means the Planning Director or the Board as appropriate.

(8) “**M49 vesting decision**” means a written decision by the Planning Director on an application that the applicant does or does not have a vested right to continue and complete a use allowed under a State M37 waiver and a Board resolution granting the applicant Measure 37 relief. The term also includes, if appealed to the Board, the Board’s final decision on the matter.

(9) “**Measure 37**” or “**M37**” means Ballot Measure 37 approved by the voters on November 2, 2004 and codified ORS 197.352 (2005).

(10) “**Measure 49**” or “**M49**” means Ballot Measure amending Measure 37 approved by the voters on November 6, 2007 and codified between ORS 195.305 and 195.308 (2007).

(11) “**Person**” means an individual or lawful business entity.

(12) “**Planning Department**” means the Linn County Planning and Building Department.

(13) “**Planning Director**” means the Linn County Planning and Building Director.

(14) “**Terms and conditions**” means those development requirements stated in the M37 waiver resolution that shall be considered in determining common law vesting.

(B) As used in this Chapter, words and phrases shall have the same meaning as provided in Ballot Measure 49.

[Adopted 08-018 §1 eff 2/20/08]

237.070 Purpose

The purpose of this Chapter is to establish a procedure for determining whether a property

owner who was granted a State and a Linn County waiver from land use regulations pursuant to ORS 197.352 before it was amended by the adoption of Measure 49 has a common law vested right to complete and continue the use described in the waiver. Measure 49, a legislative referendum adopted by the People of the State of Oregon, significantly and intentionally effected the law and procedure for recognizing a M37 waiver issued by the state and local governments. All M37 waivers must, pursuant to M49, be reprocessed pursuant to the law adopted in M49 before they may be recognized as legitimate claims. In the words of M49, “The purpose of sections 5 to 22 of this 2007 Act and the amendments to Ballot Measure 37 (2004) is to modify Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections to farm and forest uses and the state’s water resources.” This Chapter implements those laws and procedure.

[Adopted 08-018 §1 eff 2/20/08]

II. VESTING DECISION PROCEDURE

237.100 Delegation of authority to make a M49 vesting decision

(A) *Delegation of authority.* The Board hereby delegates authority to the Planning Director to make a M49 vesting decision on vested rights under Oregon Laws, 2007, Chapter 424, Section 5(3) pursuant to the test established by common law.

(B) *Decision-making process.* The Planning Director shall make a M49 vesting decision under this Chapter in accordance with the process described in LCC 237.100 to 237.200.

[Adopted 08-018 §1 eff 2/20/08]

237.110 Application

(A) Any person making an election pursuant to Oregon Laws, 2007, Chapter 424, Section 5(3) to complete or continue any use of property allowed pursuant to a waiver shall file an application for a vested rights determination as required by Measure 49.

(B) An application for a vested rights determination must be submitted to the Planning Department on the form prescribed by the Planning Director and signed by the owner. The form shall substantially comply with Appendix 1.

(C) *Application materials.* An applicant shall submit the following materials to the Planning Department:

- (1) An application with an application fee set by Board Order.
- (2) All the information and documents required in the application.
- (3) The name, mailing address, and phone number of the applicant.
- (4) A legal description and tax lot number of the subject property as well as a street address for the property, if any.
- (5) A copy of the State of Oregon order granting the applicant relief under Measure 37 for the subject property.
- (6) A copy of all land use applications and approvals for, but not limited to, development and access permits issued by the County and other authorities to allow development of the property based on the M37 waiver; this requirement also includes all recorded plats and all deeds showing lawful land divisions, if any.
- (7) Identification of expenditures made to develop the property and the dates of those expenditures.
- (8) A written statement describing:
 - (a) How the applicant's use of the property is consistent with the waiver; and
 - (b) How the applicant has a common law vested right to complete or continue the use described in the waiver.
- (9) Additional information deemed appropriate by the applicant to enable the Planning Director to make a M49 vesting decision.

[Adopted 08-018 §1 eff 2/20/08]

237.120 Deeming an application complete

(A) The Planning Director is authorized to determine when the application becomes a completed application and may require additional information beyond that originally submitted if the

Planning Director considers it necessary to address the criteria to establish a common law vested right. The applicant is responsible for the completeness and accuracy of all information submitted with the application and all of the supporting documentation.

(B) The Planning Director may not deem an application complete and may not approve an application if the applicant does not submit:

- (1) the application fee;
- (2) a Measure 37 waiver issued by the State approving the same property by the same applicant; and
- (3) all the applicable documentation required by LCC 237.110 or requested by the Planning Director by LCC 237.120(A).

(C) Failure to timely pay the application fee is jurisdictional grounds to not accept the application.

(D) The Planning Director shall exercise best efforts to make a timely decision on when an application is a completed application.

(E) If no comments from persons other than the applicant are received by 5 pm on the 21st calendar day following issuance of notice under LCC 237.130, the record is closed and the approving authority will make a M49 vesting decision on the record as it exists at that time.

[Adopted 08-018 §1 eff 2/20/08]

237.130 Notice of the application

(A) Not later than five (5) working days after the Planning Director's determination that an applicant has submitted a completed application, the Planning Director shall provide, or cause to be provided, notice of the completed application by first class U. S. mail, postage prepaid, to the persons named in subsection (C) of this section. The date of mailing shall be included in the notice.

(B) The notice shall include the name of the applicant and the location of the subject property, the proposed project, that the proposal is based on a M37 waiver, and shall state that a copy of the record of the case on the matter, as available, may

be inspected or obtained from the Planning Department.

(C) Notice shall be issued to the following:

- (1) The applicant.
- (2) The public, by the following

means:

(a) Posting notice of the completed application at a public place within the Planning Department.

(b) Posting notice of the completed application on the Linn County website.

(3) The Department of Land Conservation and Development.

(4) Owners of real property located within 1000 feet of the property that is subject to the M49 vesting decision as those owners are identified by existing records in the Linn County Assessor's Office.

(5) Any person who makes written request to receive notice of M49 vesting decision actions.

[Adopted 08-018 §1 eff 2/20/08]

237.140 Comments by persons other than the applicant

(A) A person may submit written evidence, arguments, or comments to the Planning Department for consideration by the Planning Director until 5 pm on the 21st calendar day following issuance of notice under LCC 237.130.

(B) No evidence, arguments or comments from persons other than the applicant will be received by the Planning Department for consideration by the Planning Director after 5 pm on the 21st calendar day following issuance of notice under LCC 237.130.

(C) If comments from persons other than the applicant are received by 5 pm on the 21st calendar day following issuance of notice under LCC 237.130, the record before the approving authority is closed except for rebuttal comments by the applicant. Rebuttal comments from the applicant will thereafter be received by the Planning Director until the record is closed on the earlier of (a) the date the applicant notifies the Planning Director in writing that it desires the record closed; or

(b) the 35th calendar day following issuance of notice under LCC 237.130.

[Adopted 08-018 §1 eff 2/20/08]

237.145 Withdrawal of application

The applicant may at any time by written request received by the Planning Director withdraw an M49 vesting rights application filed with the Planning Director. The election to seek a M49 vesting rights determination is personal to the applicant. The County is not responsible for the consequences of an applicant withdrawing a M49 vesting rights application.

[Adopted 08-018 §1 eff 2/20/08]

237.150 Determination of vested rights

(A) In accordance with the process described in LCC 237.100 to 237.200, the Planning Director shall determine vested rights under Oregon Laws, 2007, Chapter 424, Section 5(3) pursuant to the test established by common law as reflected in LCC 237.160.

(B) *Basis of determination.* The Planning Director must determine and base its M49 vesting decision on:

(1) whether the applicant's use of the property complies with orders from the State and Board granting Measure 37 relief; and

(2) whether the applicant has a common law vested right as of December 6, 2007, to complete and continue the use described in the waiver.

(C) The decision of the Planning Director shall contain at least the following elements:

(1) findings of fact on the question whether the applicant's use complies with orders from the State and Board granting Measure 37 relief; and

(2) findings of fact on the question whether the applicant has a common law vested right; and

(3) an analysis of each of the criteria listed in LCC 237.160.

[Adopted 08-018 §1 eff 2/20/08]

237.160 Criteria considered to determine common law vested right

(A) The terms and conditions imposed in a M37 waiver approval resolution shall be considered to determine vesting to the extent that such conditions are not inconsistent with the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.

(1) The Planning Director, and the Board on appeal, is authorized to make the determination whether the applicant has substantially complied with the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.

(2) If the holder of the M37 waiver is unable to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder shall not be entitled to a common law vesting right.

(3) If the holder of the M37 waiver is able to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section on or before December 6, 2007, the holder shall be entitled to a common law vesting right determination.

(B) The determination of common law vesting rights made by the Planning Director or the Board on appellate review shall be based on the criteria set forth in subsection (C) of this section.

(C) In determining whether the applicant has a vested right to continue and complete a use allowed under a Board resolution granting Measure 37 relief, the decision-maker must consider the following factors based on the evidence submitted in the application:

(1) The amount of money spent on developing the use in relation to the total cost of the project approved in the State and County M37 waivers and whether it was a substantial expenditure.

(2) The good faith of the property owner.

(3) Whether the property owner had notice of the proposed change in law before beginning development.¹

(4) The type of expenditures, *i.e.*, whether the expenditures have any relation to the completed project or could apply to other various uses of the land;

(5) The kind of project.

(6) The location and ultimate cost of the project.

(7) Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.

(8) Other relevant factors decided by an Oregon appellate court or the State legislature.

(D) This vesting right determination is an issue of fact to be decided on a case-by-case basis.

[Adopted 08-018 §1 eff 2/20/08]

237.170 Notice of final decision on application

(A) *Notice of the M49 vesting decision.* Not later than five (5) working days after the Planning Director has made and signed a M49 vesting determination, the Planning Director shall provide, or cause to be provided, notice of the decision by first class U. S. mail, postage prepaid, to the persons named in this subsection. The date of mailing shall be included in the notice.

(B) The notice shall include the name of the applicant and the location of the subject property, the proposed project, that the proposal is based on a M37 waiver, the name of the appellant, and shall state that a copy of the record of the case on the matter, as available, may be inspected or obtained from the Board.

(C) Notice shall be issued to the following:

(1) The applicant.

¹See Opinion of County Counsel (No. 2008-01, dated February 7, 2008) addressing the applicable date to be used to determine M49 vesting rights.

(2) The public, by the following means:

(a) Posting notice of the M49 vesting decision at a public place within the Planning Department.

(b) Posting notice of the M49 vesting decision on the Linn County website.

(3) The Department of Land Conservation and Development.

(4) A person who submitted written evidence, arguments or comments on the application to the Planning Department before the Planning Director made and signed a M49 vesting decision on the application.

(5) Any person who has made written request to the County to receive notice of M49 vesting decision actions.

(6) Any other person known to be an person interested in the matter.

[Adopted 08-018 §1 eff 2/20/08]

237.180 Record of the case

(A) The Planning Director shall create and maintain a record of each application for a vesting rights determination filed with the County.

(B) The record of the case shall at least contain the following:

(1) the application for a M49 vesting determination;

(2) all the documentation required to be submitted along with the M49 vesting rights determination application;

(3) the M37 application on the underlying case;

(4) the staff report of the underlying M37 application;

(5) the resolution by the Board approving the applicant's M37 waiver;

(6) all written correspondence from the applicant and other persons pertaining to the matter;

(7) the written determination that an application is deemed complete;

(8) the certificate of notice given by the director pursuant to LCC 237.130;

(9) the Planning Director's analysis of the application of the applicant's facts to the criteria set forth in LCC 237.160.

(10) the determination of the Planning Director whether the applicant has a vested right to continue and to complete a use and the basis for that determination.

(C) On appeal, the record of the case shall contain at a minimum:

(1) the record of the case before the Planning Director;

(2) the notice of intent to appeal;

(3) the certificate of notice given by the Board to interested persons;

(4) all written correspondence from the appellant and other persons pertaining to the matter;

(5) the written decision and the Board's analysis supporting its decision, in the form of a resolution, that the determination of the Planning Director is upheld in whole or in part, or denied in whole or in part.

[Adopted 08-018 §1 eff 2/20/08]

237.200 M49 vesting decision status

(A) If the M49 vesting determination is not appealed to the Board in accordance with LCC 237.300, the M49 vesting determination is deemed a final decision and may be subject to judicial review pursuant to LCC 237.400.

(B) A person having made an appearance on the record may not seek a judicial review under LCC 237.400 prior to seeking and obtaining a decision on appeal from the Board of a determination of the Planning Director.

[Adopted 08-018 §1 eff 2/20/08]

III. APPELLATE REVIEW BY THE BOARD

237.300 Appellate review of vesting decision

(A) The M49 vesting decision is subject to appeal to the Board as provided in this section.

(B) *Petition to appeal.* An aggrieved party may appeal a M49 vesting decision made by the Planning Director in the following manner:

(1) the aggrieved party shall file a petition together with an appeal fee set by the Board to appeal the decision with the Board;

(2) the aggrieved party shall provide with the petition a copy of the M49 vesting decision by the Planning Director;

(3) the aggrieved party shall state in the petition what the applicant believes to be the errors in the decision made by the Planning Director and;

(4) if the aggrieved party is a person who was entitled to receive notice under LCC 237.300(D) who did not receive notice under LCC 237.130(C), that person may submit written evidence on the matter to the Board for consideration;

(5) the aggrieved party must file the petition with the Board within fourteen (14) days of the date stated on the M49 vesting decision or date of the postmarked envelope that contained the M49 vesting decision which ever is later.

(6) Failure to timely pay the appeal fee is jurisdictional grounds to not accept the petition fee.

(C) A person is not an aggrieved person and does not have standing to seek appeal or review of a decision by a decision-maker, if the sole grounds of the appeal or review is failure of the challenger to have received notice and such person was entitled to notice and notice was given to the address of such person that is of record.

(D) *Notice of petition to appeal*

(1) Not later than fourteen (14) working days after the Board has received a petition to appeal a M49 vesting decision, the Board shall provide, or cause to be provided, notice of the petition to appeal to County Counsel and by first class U. S. mail, postage prepaid, to the persons named in this subsection. The date of mailing shall be included in the notice.

(2) Notice of the petition to appeal shall be issued to the following:

(a) The applicant.

(b) The public, by the following

means:

(i) Posting notice of the M49 vesting decision at a public place within the Planning Department.

(ii) Publishing notice of the completed application in a newspaper of general circulation in Linn County.

(iii) Posting notice of the M49 vesting decision on the Linn County website.

(c) The Department of Land Conservation and Development.

(d) Owners of real property located within 1000 feet of the property that is subject to the M49 vesting decision as those owners are identified by existing records in the Linn County Assessor's Office.

(e) A person who submitted written evidence, arguments or comments on the application to the Planning Department before the Planning Director made and signed a M49 vesting decision on the application.

(f) Any person who has made written request to the County to receive notice of M49 vesting decision actions.

(g) Any other person known to be an person interested in the matter.

(h) The notice of petition to appeal shall be accompanied by a copy of the M49 vesting decision of the Planning Director and a copy of the petition to appeal.

(E) The Board shall cause any new evidence submitted by an aggrieved party under paragraph (4) of subsection (B) of this section to be provided to the appellant and allow the appellant seven (7) days to respond to the newly submitted evidence.

(F) *Final decision.* Except as otherwise required by this section, the Board shall make its decision on appeal using the process and criteria set forth LCC 237.100 to 237.200.

(1) Appellate review of a M49 vesting decision of the Planning Director is:

(a) limited to the evidence in the record before the Planning Director at the time the Director made and signed a M49 vesting decision, and, according to subsection (D) of this section, any supplemental written evidence submitted to the Board, and

(b) available only for issues that are raised before the Planning Director with sufficient specificity to afford the Planning Director and applicant an opportunity to respond.

(2) On the basis of the record before the Planning Director and the record submitted to the Board, the Board shall make one of the following decisions:

(a) affirm, in whole or in part, the decision of the Planning Director; or

(b) deny, in whole or in part, the decision of the Planning Director.

(3) The Board may modify the findings as needed to support its decision.

(4) A decision by the Board shall be set forth in a written resolution and contain its decision, finding of facts, analysis of the applicable criteria, and other relevant law and factors.

(G) The final decision of the Board shall be mailed to the persons listed in LCC 237.300(D)(2) in the manner provided in LCC 237.300(D)(1).

[Adopted 08-018 §1 eff 2/20/08]

IV. JUDICIAL REVIEW BY THE COURT

237.400 Judicial review of final decision

(A) For purposes of LCC 237.400, “**decision-maker**” means:

(1) the Planning Director if the decision of the Planning Director is not timely appealed to the Board; or

(2) the Board, if the Planning Director’s decision, is timely appealed to the Board.

(B) A M49 vesting decision made by the decision-maker may be subject to judicial review as provided in this section at the time the Board has made and signed a written M49 vesting decision.

(C) A M49 vesting decision of the Board made by a decision-maker under this Chapter is not a land use decision subject to review by the Land Use Board of Appeals.

(D) A M49 vesting decision of a decision-maker made under this Chapter may be subject to review by the Linn County circuit court in a Writ

of Review proceeding filed under Oregon Revised Statutes Chapter 34 by an applicant or a person who has standing under that Chapter.

(E) Judicial review of a M49 vesting decision of a decision-maker is:

(1) limited to the evidence in the record before the decision-maker made and signed a M49 vesting decision; and

(2) available only for issues that are raised before the decision-maker with sufficient specificity to afford the decision-maker and applicant an opportunity to respond.

(F) For purposes of ORS 34.030, the “date of the decision or determination sought to be reviewed” is the date the final written vesting decision was made and signed by the decision-maker.

[Adopted 08-018 §1 eff 2/20/08]

V. MISCELLANEOUS PROVISIONS

237.500 Authority to complete and continue a use

Following the time for filing any available review described in this Chapter, if the applicant is determined to have a common law vested right to complete and continue the use, the county will issue land use and development permits in accordance with state and county laws and regulations.

[Adopted 08-018 §1 eff 2/20/08]

237.550 Land use authority retained

(A) Nothing in this Chapter shall be construed to repeal or modify those laws and regulations of the State of Oregon or of Linn County relating to land use.

(B) An applicant who obtains a vesting rights determination to continue and complete a use is not exempt from applicable land use regulations.

[Adopted 08-018 §1 eff 2/20/08]

237.575 Legal effect of a vesting rights decision

(A) A vesting rights decision to continue and complete a use means that the person to

whom the M37 waiver was granted is entitled to continue and complete a use in accordance with the decision and applicable law.

(B) A vesting rights decision to continue and complete a use does not mean, in and of itself, that the property is transferable.

(C) According to Measure 49, a vesting rights determination is not a land use decision as that term is used in ORS 197.015.

[Adopted 08-018 §1 eff 2/20/08]

237.600 Rules for Computing Time

ORS 174.120 (2007), applies for purposes of computing time and deadlines under this Chapter.

[Adopted 08-018 §1 eff 2/20/08]

237.800 Tax status is not a part of this Chapter

A M49 vesting decision under this Chapter shall not determine the taxable status of an individual property, but the right to make such determination shall be reserved to the Linn County Tax Assessor in consultation with the State of Oregon Department of Revenue and shall be in accordance with the laws and regulations of the State of Oregon.

[Adopted 08-018 §1 eff 2/20/08]

237.850 Recordation of final decision

A copy of any M49 vesting rights decision made by the Planning Director, and, if the determination is appealed, the appellate decision of the Board shall be recorded in the Linn County property and deed records. The recorded copy need not contain supporting exhibits so long as such supporting exhibits are on file in the Planning Department with the original resolution filed in the commissioners' journal.

[Adopted 08-018 §1 eff 2/20/08]

VI. ENFORCEMENT PROVISIONS

237.900 Development in violation of a M49 vesting decision

Failure to develop or to maintain a use consistent with a M49 vesting decision and other

applicable laws, including land use regulations is grounds for seeking relief under, but not limited to, the provisions of LCC 240 (Code Enforcement Code).

[Adopted 08-018 §1 eff 2/20/08]

Statutory References and Other Authorities:

ORS 195 (2007); ORS 197.352 (2005); OAR 660-041-0000 to 660-041-0070; LCC 235

Clackamas Co. v Holmes, 265 Or 193 (1973) and its progeny; *DLCD v Jefferson County and Jerry Burk*, LUBA No. 2007-177, January 24, 2008

Opinion of County Counsel, #2008-01, dated February 7, 2008, addressing the applicable date to be used to determine M49 vesting rights; and “*Ballot Measure 49 and the Common Law of Vested Rights: Guidance from the Oregon Department of Land Conservation & Development and the Oregon Department of Justice, December 31, 2007.*”

Legislative History of Chapter 237:

The People of Oregon at a General Election on November 2, 2004 adopted by initiative process entitled Measure 37 with an effective date of December 2, 2004. The measure amended ORS 197; ORS 197; 203; draft Administrative rules of the State of Oregon, Department of Administrative Services (DAS) set forth at OAR 125-145-0010 to 125-145-0120.

The People of Oregon at a General Election on November 6, 2007 adopted by referendum process a measure entitled Ballot Measure 49 which amended Measure 37 and added new provisions codified at ORS 195.300 to 195.336 (2007).

Adopted 08-018 §1 eff 2/20/08

Amendments to 08-018 §1:

#1 none

Appendix 1 — M49 Vesting Rights Application

LINN COUNTY PLANNING & BUILDING DEPARTMENT

**APPLICATION FOR
M49 VESTING RIGHTS DECISION**

PD File # _____
 Date _____
 Rec'd By _____
 Fee rec'd _____

300 4th Avenue SW, PO BOX 100, Albany OR 97321
 • Tel: 541.967.3816 • Fax: 541.926.2060

APPLICANT			OTHER OWNER		
Last Name	First	MI	Last Name	First	MI
Mailing Address (Street or PO Box)			Mailing Address (Street or PO Box)		
City	State	Zip	City	State	Zip
Telephone			Telephone		
List any other owners of subject property:					
PROPERTY INFORMATION					
Tax Lot(s) _____			Size of parcel: _____		
Street address, if any: _____					

Note: LCC 237 allows a Measure 37 claimant to obtain a determination by the county Planning Director as to whether the claimant has a vested right to continue and complete a use allowed under a State and a County order granting Measure 37 relief on the property subject to the determination (the “subject property”). The determination is referred to as the “M49 vesting decision.” This application is required by LCC 237 before the M49 vesting decision may be reviewed on appeal by the Board of County Commissioners for Linn County and before a final decision may be made the subject of a judicial review in a court.

Note: If the holder of the M37 waiver is unable to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder shall not be entitled to a common law vesting right. If the holder of the M37 waiver is able to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder may be entitled to a common law vesting right determination. The Planning Director, and the Board on appeal, is authorized to make the determination whether the applicant has substantially complied with such terms and conditions and the criteria set forth in LCC 237.160(C).

THE APPLICANT MUST SUBMIT ALONG WITH THIS APPLICATION:

1. The legal description of subject property.
2. A copy of the State of Oregon order granting Measure 37 relief for the subject property.

3. Any additional information you deem appropriate to enable the Planning Director to make a M49 vesting decision.

Note: LCC 237.160 states that “In determining whether the applicant has a vested right to continue and complete a use allowed by a Board resolution granting Measure 37 relief, the decision-maker must consider [several] factors based on the evidence submitted in the application.” They include, and you must provide evidence addressing these factors:

4. The amount of money spent on developing the use in relation to the total cost of project approved in the State and County M37 waivers.
5. The good faith of the property owner.
6. Whether the property owner had notice of the proposed change in law before beginning development.
7. Whether the improvements could be used for other uses that are allowed under the new law.
8. The kind of use, location, and cost of the development.
9. Whether the owner’s acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
10. Other relevant factors.

Please complete this application and attach the information required in this application and the additional information required by LCC 237.110(C) and any other documents desired to assist the Planning Director in making a decision. Once the Planning Director determines the application is complete, notice of the application will be provided to surrounding property owners and to others. Public comments on the application will then be received for 21 calendar days. If public comments are received, the applicant has 14 calendar days to provide rebuttal comments. The M49 vesting decision is subject to judicial review.

I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that the information submitted with this application is true and correct to the best of my knowledge.

I understand that issuance of a M49 vesting decision is subject to appeal to the Board of Commissioners for Linn County and that a decision made from an appeal is subject to review by the circuit court. I understand that judicial review by the circuit court is limited to information in the record before the Board at the time the final vesting decision is made. I understand it is unlikely the court will accept any additional factual information regarding vesting of the Measure 37 waiver other than information in the record before the Board at the time the final vesting decision is made.

I understand that due to uncertainties of Measure 49, I proceed with any development based on a Measure 37 waiver at my own risk. I understand that any M49 vesting decision will not excuse me from complying with any other applicable ordinances and laws regulating the use of the land and buildings. I hereby grant permission for and consent to Linn County, its officers, agents, and employees coming upon the subject property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

Applicant's signature	Date
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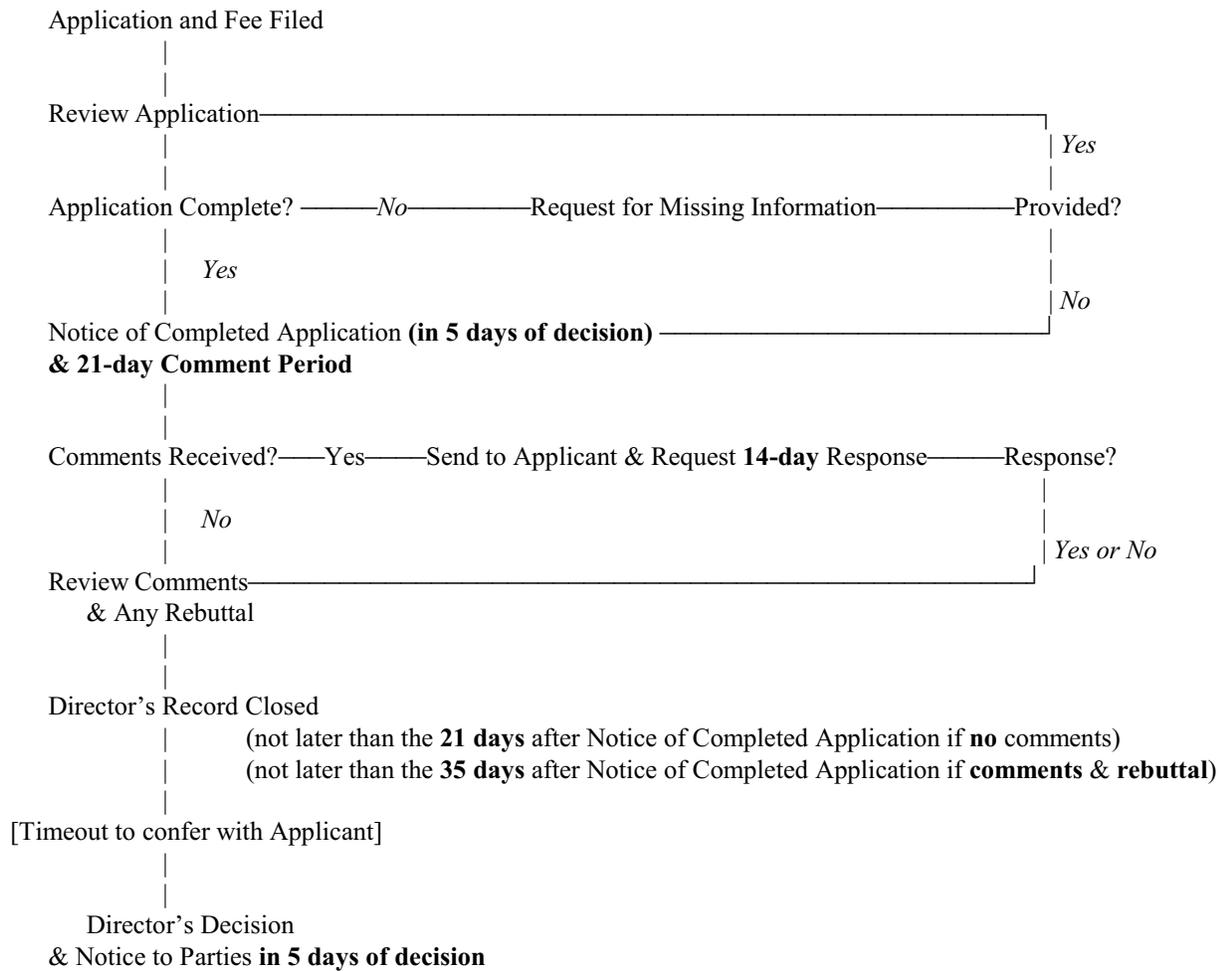
Additional property owner's signature	Date
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Additional property owner's signature	Date
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Additional property owner's signature	Date
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Additional property owner's signature	Date
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Appendix 2 — M49 Vesting Rights Procedure Time Line



Petition to Appeal to Board and Fee Filed **in 14 days of Decision**

Notice of Petition **in 14 days of filing petition**
& open-ended Comment Period

