

D-Engrossed
Senate Bill 1037

Ordered by the House July 29
Including Senate Amendments dated May 26 and July 5 and House
Amendments dated July 25 and July 29

Sponsored by Senator RINGO, Representative GARRARD

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.

Establishes claim process and judicial review process for Ballot Measure 37 (2004) claims.
Modifies provisions under which owner of property may claim right to compensation for land use regulation that restricts use of property and reduces value of property. Allows transfer of right to use property pursuant to waiver of land use regulations granted in lieu of compensation.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to land use; creating new provisions; amending chapter 1, Oregon Laws 2005; and declaring
3 an emergency.

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

5
6 **BALLOT MEASURE 37 (2004)**

7
8 **SECTION 1.** Chapter 1, Oregon Laws 2005, is amended to read:

9 **SECTION 1.** *[The following provisions are]* **Section 2, chapter 1, Oregon Laws 2005, is added**
10 to and made a part of ORS chapter 197[:].

11 **SECTION 2.** (1) If a public entity enacts or enforces a new land use regulation or enforces a
12 land use regulation enacted prior to *[the effective date of this amendment]* **December 2, 2004**, that
13 restricts the use of private real property or **of** any interest therein and has the effect of reducing
14 the fair market value of the property[,] or **of** any interest therein, then the owner of the property
15 shall be paid just compensation.

16 (2) Just compensation *[shall be]* **is** equal to the reduction in the fair market value of the affected
17 property interest resulting from enactment or enforcement of the land use regulation as of the date
18 the owner makes written demand for compensation under this *[act]* **section**.

19 (3) Subsection (1) of this *[act shall]* **section does** not apply to land use regulations:

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

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

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

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

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

7 **(f) Enacted by a county service district before the effective date of this 2005 Act.**

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

12 (5) For claims arising from land use regulations enacted prior to [the effective date of this act,]
13 **December 2, 2004, the owner of the property shall make a** written demand for compensation
14 under subsection (4) [shall be made] **of this section** within two years of [the effective date of this
15 act] **December 2, 2004**, or the date the public entity applies the land use regulation as an approval
16 [criteria] **criterion** to an application submitted by the owner of the property, whichever is later. For
17 claims arising from land use regulations enacted [after the effective date of this act,] **on or after**
18 **December 2, 2004, the owner of the property shall make a** written demand for compensation
19 under subsection (4) [shall be made] **of this section** within two years of the enactment of the land
20 use regulation, or the date the owner of the property submits a land use application in which the
21 land use regulation is an approval [criteria] **criterion**, whichever is later.

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

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

35 (8) Notwithstanding any other state statute or the availability of funds under subsection (10) of
36 this [act] **section**, in lieu of payment of just compensation under this [act] **section**, the [governing
37 body] **public entity** responsible for enacting the land use regulation may [modify, remove, or not to
38 apply] **waive** the land use regulation or land use regulations to allow the owner to use the property
39 for a use permitted [at the time] **when** the owner acquired the property **as follows**:

40 **(a) If a valid claim for compensation is based on a state statute, the state agency that**
41 **administers the statute may decide not to apply the statute.**

42 **(b) If a valid claim for compensation is based on a state statute that is not administered**
43 **by a state agency, the Oregon Department of Administrative Services may decide not to ap-**
44 **ply the statute.**

45 (9) A decision by a [governing body] **public entity** under this [act shall] **section is** not [be con-

1 *sidered*] a land use decision as defined in ORS 197.015 [(10)].

2 (10) Claims made under this section [*shall*] **must** be paid from funds, if any, specifically allocated
3 by the [*legislature*] **Legislative Assembly**, city, county, **county service district with a master**
4 **plan described in ORS 451.010 (1)** or metropolitan service district for payment of claims under this
5 [*act*] **section**. Notwithstanding the availability of funds under this subsection, a metropolitan service
6 district, city, county, **county service district with a master plan described in ORS 451.010 (1)**
7 or state agency shall have discretion to use available funds to pay claims or to modify, remove[,]
8 or not apply a land use regulation or land use regulations pursuant to subsection [(6)] **(8)** of this
9 [*act*] **section**. If a claim has not been paid within two years from the date on which [*it*] **the claim**
10 accrues, the owner [*shall be*] **is** allowed to use the property as permitted at the time the owner ac-
11 quired the property.

12 (11)(a) **If a public entity waives a land use regulation, the waiver is transferable and re-**
13 **mains effective until:**

14 (A) **Ten years after the date of the final decision in which the waiver is approved if the**
15 **claim is filed on or before December 2, 2006; or**

16 (B) **Two years after the date of the final decision in which the waiver is approved if the**
17 **claim is filed after December 2, 2006.**

18 (b) **When a use allowed pursuant to a waiver is substantially implemented, the use has**
19 **the legal status that would have applied to the use if the use was lawfully established on the**
20 **date the owner who obtained the waiver acquired the property.**

21 (c) **A conveyance of the property that is subject to a valid waiver does not affect the**
22 **validity of the waiver.**

23 (d) **The time periods described in paragraph (a) of this subsection are tolled during the**
24 **time a final decision implementing a waiver is on review or remand.**

25 (e) **As used in this subsection, “substantially implemented” means:**

26 (A) **For a land division, a final partition or final subdivision plat has been recorded; or**

27 (B) **For all other uses, the use specified in the waiver has vested.**

28 [(11)] (12) [*Definitions - for purposes of*] **As used in** this section:

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

34 [(B)] (b) “Land use regulation” shall include:

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

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

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

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

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

42 [(C)] (c) “Owner” is the present owner of the property[,] or **of** any interest therein.

43 [(D)] (d) “Public entity” shall include the state, a metropolitan service district, **a county ser-**
44 **vice district with a master plan described in ORS 451.010 (1)**, a city[, *or*] **and** a county.

45 (e) **“Waive” means to modify, remove or not apply a land use regulation that is a basis**

1 **for a claim for compensation under this section.**

2 [(12)] (13) The remedy created by this [act] **section** is in addition to any other remedy under the
3 Oregon or United States [Constitutions] **Constitution**, and is not intended to modify or replace any
4 other remedy.

5 [(13)] (14) If any portion or portions of this [act] **section** are declared invalid by a court of
6 competent jurisdiction, the remaining portions of this [act] **section** shall remain in full force and
7 effect.

8
9 **CLAIMS PROCESS**

10
11 **SECTION 2.** (1) An owner who files a claim for compensation under section 2, chapter
12 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), shall file the claim in the manner provided
13 by this section. If the property has more than one owner, the claim must be signed by all
14 holders of fee title or the claim must include a signed statement of consent from each holder
15 of fee title who does not sign the claim.

16 (2) An owner who files a claim shall file the claim with each public entity that enacted
17 a land use regulation that is a basis for the claim. For each lot or parcel of land owned, an
18 owner may file only one claim with each public entity for all land use regulations enacted
19 by the public entity and in effect when the claim is filed.

20 (3) A public entity may impose a fee for the filing of a claim in an amount not to exceed
21 \$1,000.

22 (4) An owner may withdraw a claim for compensation at any time before the issuance
23 of a final decision on the claim or the expiration of the 180-day period described in subsection
24 (5) of this section, whichever is earlier.

25 (5) Except as provided in subsection (12) of this section, a public entity shall issue a final
26 decision on a claim filed under this section within 180 days after receiving a complete claim
27 as described in this section. If the decision is not issued within the time allowed by this
28 subsection, the claim is deemed denied.

29 (6) If the claim is made against the state, the claim must be filed with the Oregon De-
30 partment of Administrative Services. If the claim is made against a local public entity, the
31 claim must be filed with the chief administrative officer of the local public entity, or with
32 an individual designated by ordinance, resolution or order of the local public entity.

33 (7) A claim must be in writing and must include:

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

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

36 (c) For each owner, evidence of ownership of the property;

37 (d) Evidence of the date each owner acquired the property;

38 (e) If the claim is based on family relationship, evidence that the property has been
39 owned continuously by a family member as required by section 3 (6) of this 2005 Act;

40 (f)(A) A list or description of the land use regulations that the owner claims restrict the
41 use of the property that is adequate to allow the public entity to identify the specific regu-
42 lations that are the basis for the claim; or

43 (B) A description of the specific use of the property that the owner intends to carry out
44 but cannot because of a land use regulation enacted by the public entity to which the claim
45 is submitted;

1 (g) For each land use regulation identified in paragraph (f) of this subsection, a de-
2 scription of the manner in which the land use regulation restricts the use of the property
3 and a description of the uses allowed when each owner or the relevant family member of
4 each owner acquired the property if:

5 (A) The public entity maintains a copy or archive of the land use regulations that were
6 in effect when the property was acquired or otherwise maintains a record of the date of
7 enactment and amendment of land use regulations; and

8 (B) The public entity makes the copy, archive or other record of the date of enactment
9 and amendment of land use regulations available to the claimant;

10 (h) Evidence that the land use regulations identified in paragraph (f) of this subsection
11 have reduced the fair market value of the property, which may include a statement of re-
12 duction in fair market value prepared in a manner consistent with the rules of the Oregon
13 Department of Administrative Services and the Appraiser Certification and Licensure Board;
14 and

15 (i) A description of the specific use of the property that the owner intends to carry out
16 if the public entity elects to waive a land use regulation in lieu of paying compensation. The
17 description required by this paragraph need not include engineering, survey or final design
18 information.

19 (8) In addition to complying with the requirements of subsection (7) of this section, a
20 claim must include the fee, if any, imposed by the public entity pursuant to subsection (3)
21 of this section.

22 (9) The public entity shall review a claim filed under this section to determine whether
23 the claim complies with subsections (7) and (8) of this section. If the claim is incomplete, the
24 public entity shall notify the owner in writing of the information or fee that is missing within
25 30 days after receiving the claim and allow the owner to submit the missing information or
26 fee. The claim is complete when the public entity receives the fee required by subsection (8)
27 of this section and:

28 (a) The missing information;

29 (b) Part of the missing information and written notice from the owner that the remain-
30 der of the missing information will not be provided; or

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

32 (10) If a public entity does not notify an owner within 30 days after receiving a claim that
33 information or the fee is missing from the claim, the claim is complete when the claim is
34 received.

35 (11) A claim filed under this section is deemed withdrawn if the public entity gives notice
36 to the owner under subsection (9) of this section and the owner does not submit to the public
37 entity, within 180 days after the claim was filed, the fee required by subsection (8) of this
38 section and:

39 (a) The missing information;

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

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

43 (12) A public entity may extend the 180-day period described in subsection (5) of this
44 section for specified periods of time at the written request of the owner.

45 (13) If the owner dies after a claim is filed and before a final decision is made, a successor

1 in interest of the owner may continue the claim.

2 **SECTION 3. (1) A public entity that receives a complete claim for compensation as de-**
3 **scribed in section 2 of this 2005 Act shall provide notice of the claim at least 10 days before**
4 **a public hearing on the claim or, if there will not be a public hearing, at least 15 days before**
5 **the deadline for submission of written comments to:**

6 (a) All owners of the property;

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

8 (c) The Oregon Department of Administrative Services, unless the claim was filed with
9 the state government, as defined in ORS 174.111; and

10 (d) Other public entities that have enacted land use regulations that apply to the prop-
11 erty.

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

14 (a) Whether a public hearing will be held on the claim and the date, time and location
15 of the hearing or, if a public hearing will not be held, the location and final date for sub-
16 mission of written evidence and arguments relating to the claim;

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

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

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

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

24 (b) If a public hearing is not held, a date that is specified by the public entity in the no-
25 tice given under subsection (1) of this section.

26 (4) The owner who filed the claim may request additional time to submit written evidence
27 or arguments. The request must be made before the close of the final public hearing on the
28 claim or before the final date established for submission of evidence and arguments. If a
29 public entity allows the owner additional time to submit evidence and arguments, the public
30 entity shall allow members of the public the same period of time to submit additional written
31 evidence and arguments. If a member of the public submits additional evidence or arguments
32 during this time, the public entity shall give the owner a final period of 14 additional calendar
33 days in which to submit additional evidence or arguments. Additional time provided under
34 this subsection tolls the 180-day period described in section 2 (5) of this 2005 Act.

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

38 (6) A public entity may approve a claim under section 2, chapter 1, Oregon Laws 2005
39 (Ballot Measure 37 (2004)), only if:

40 (a) The claim complies with section 2 (7) and (8) of this 2005 Act;

41 (b) A land use regulation enacted or enforced by the public entity and specified in the
42 claim imposes a restriction on the owner's use of the property that did not exist:

43 (A) When the owner acquired the property; or

44 (B) If the relief granted is compensation and the owner or a family member has owned
45 the property continuously, when the owner or a family member first acquired the property;

1 (c) The restriction on the owner's use of the property caused by the land use regulation
2 reduces the fair market value of the property; and

3 (d) The land use regulation is not exempt under section 2, chapter 1, Oregon Laws 2005
4 (Ballot Measure 37 (2004)).

5 (7) For the purpose of determining that the use referenced in section 2 (7)(i) of this 2005
6 Act was permitted, the public entity shall apply the relevant land use regulations and other
7 laws that governed the property when the owner acquired the property.

8 (8) The decision to waive a land use regulation must specify the use of the property for
9 which the regulation is waived, subject to compliance with land use regulations that have
10 not been waived.

11 (9) A public entity shall mail a copy of the final decision to the owner who filed the claim
12 and to the persons who submitted evidence or arguments before the close of the record. The
13 public entity shall record the memorandum of a final decision or a copy of the memorandum
14 that approves a claim for compensation in the deed records of the county in which the
15 property is located. A waiver becomes effective when the memorandum of a final decision
16 or a copy of the memorandum is recorded. The county clerk shall record promptly in the
17 deed and mortgage records of the county a memorandum of a final decision or a copy of a
18 memorandum of a final decision presented for recording by the public entity making the final
19 decision or an owner of the property that is the subject of the final decision.

20 (10) The division or use of property pursuant to a final decision of a public entity to waive
21 a land use regulation under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)),
22 must comply with the final decision and land use regulations that have not been waived in-
23 cluding, but not limited to, land use regulations:

24 (a) Enacted by the state that have not been waived if the claim is filed with a city, county
25 or metropolitan service district; or

26 (b) Adopted by a city, county or metropolitan service district that have not been waived
27 if the claim is filed with the state.

28 (11) If a land use application based in whole or in part on a waiver of land use regulations
29 under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), is denied because
30 the application does not comply with land use regulations that could have been considered
31 during the processing of the claim but were not considered, the applicant for the land use
32 application may file one additional claim with the public entity. The additional claim is lim-
33 ited to consideration of land use regulations that could have been considered as part of the
34 original claim and that are a basis for the denial of the land use application.

35
36 **JUDICIAL REVIEW**

37
38 **SECTION 4.** (1) The circuit court has exclusive jurisdiction to review a final decision by
39 a public entity on a claim for compensation filed under section 2, chapter 1, Oregon Laws
40 2005 (Ballot Measure 37 (2004)).

41 (2) A person who is adversely affected by a final decision of a public entity under section
42 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), and who participated in the claim
43 proceedings conducted by the public entity may seek judicial review of the final decision by
44 filing a petition in the circuit court for the county in which the property is located and
45 serving a copy of the petition on the public entity in the manner provided by ORCP 7. If the

1 petitioner is not the claimant, the petitioner shall name and serve both the public entity and
2 the claimant. The petition must be filed and served within 60 days after a written final de-
3 cision is mailed by the public entity.

4 (3) On the same day the petitioner serves the petition under subsection (2) of this sec-
5 tion, the petitioner shall mail notice of the petition to the persons entitled to receive notice
6 under section 3 (9) of this 2005 Act. A person who is adversely affected by the final decision
7 of a public entity and who participated in the claim proceeding conducted by the public entity
8 may intervene by filing a motion pursuant to ORCP 33 B with the court within 21 days after
9 the date the notice is mailed to the person.

10 (4) A public entity shall file a certified copy of the record with the court within 21 days
11 after the date the public entity is served with a copy of the petition. The record must contain
12 the decision, the application and all other evidence and arguments submitted to the public
13 entity before the close of the hearing or the final date for submission of written evidence and
14 arguments. The court may extend the period for filing the record upon motion by the public
15 entity. Discovery is not allowed.

16 (5) When a public entity files the record with the court under subsection (4) of this sec-
17 tion, the public entity shall provide a certified copy of the record to the petitioner and, if the
18 petitioner is not the claimant, to the claimant. The petitioner and, if the petitioner is not the
19 claimant, the claimant may object to the record by motion filed with the court within 14 days
20 after receipt of the copy of the record from the public entity. The public entity may file a
21 response to the objection within 14 days after the date the objection is filed with the court.
22 The court may extend the deadlines under this subsection or request additional briefing on
23 the objection. The court shall resolve objections to the record and notify the parties of the
24 date the record is final.

25 (6) The petitioner's opening brief and the opening brief of a person who intervenes in
26 support of the petitioner must be filed with the court within 28 days after the date the record
27 is final. The respondent's brief and the response brief of a person who intervenes in support
28 of the respondent must be filed with the court within 28 days after the date the petitioner's
29 opening brief is filed. The court may allow additional briefing.

30 (7) Briefs filed under subsection (6) of this section must contain a statement indicating
31 whether the party requests oral argument. If a party requests oral argument, the court shall
32 set the case for argument as soon after the filing of the final brief as practicable. The court
33 must decide the case based on the record before the public entity, the briefing and the oral
34 argument made to the court, without further testimony or evidence.

35 (8) Except as provided in section 6 (3) to (5) of this 2005 Act, judicial review of a public
36 entity's final decision on a claim under section 2, chapter 1, Oregon Laws 2005 (Ballot
37 Measure 37 (2004)), is limited to the evidence in the record of the public entity. Judicial re-
38 view is available only for issues that are raised before the public entity with sufficient
39 specificity to afford the public entity an opportunity to respond.

40 (9) If two or more petitions are filed under this section for judicial review of final deci-
41 sions issued by public entities that relate to property within a single tract, the court shall
42 consolidate the petitions into a single action when practicable.

43 **SECTION 5.** The circuit court shall affirm the final decision of a public entity on a claim
44 filed under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), unless the
45 public entity:

1 (1) Exceeded the jurisdiction of the public entity;

2 (2) Failed to follow applicable procedures in a manner that prejudiced the substantial
3 rights of a party to the proceeding;

4 (3) Applied the criteria in section 3 (6) of this 2005 Act to the evidence in the record er-
5 roneously;

6 (4) Improperly construed applicable law; or

7 (5) Issued a decision that is unconstitutional.

8 **SECTION 6. (1) The circuit court shall issue:**

9 (a) A judgment affirming the final decision of the public entity;

10 (b) A judgment reversing the final decision of the public entity because the court deter-
11 mines that relief is not due under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure
12 37 (2004)); or

13 (c) A judgment under subsection (3), (4) or (5) of this section after issuing an order re-
14 versing the final decision of the public entity, in whole or in part, that:

15 (A) Concludes that the public entity erred in determining the amount of compensation,
16 if any, provided for in the final decision of the public entity;

17 (B) Specifies the land use regulations that the court determines were improperly waived;
18 or

19 (C) Specifies the land use regulations that the court determines must be waived if the
20 public entity elects to waive in lieu of paying compensation.

21 (2) An order issued under subsection (1)(c) of this section is appealable only as part of a
22 judgment issued under subsection (3), (4) or (5) of this section.

23 (3) Within 45 days after entry of an order under subsection (1)(c) of this section, the
24 public entity shall file notice with the court stating whether the public entity intends to pay
25 compensation or waive the land use regulations specified in the order. If the public entity
26 does not file notice under this subsection within 45 days after entry of the order:

27 (a) The public entity is deemed to have waived the land use regulations specified in the
28 order; and

29 (b) The court shall enter a judgment accordingly.

30 (4) Within 90 days after the public entity files notice with the court under subsection (3)
31 of this section stating that the public entity intends to pay compensation, the public entity
32 shall obtain an appraisal of the reduction in the fair market value of the property and pro-
33 vide a copy of the appraisal to the owner. If the owner files notice with the court accepting
34 the appraisal, the court shall enter a judgment accordingly. If the owner files notice with the
35 court objecting to the appraisal:

36 (a) The owner shall obtain an appraisal and provide a copy to the public entity within 90
37 days after the date the owner received the public entity's appraisal; and

38 (b) If the public entity files notice with the court accepting the appraisal, the court shall
39 enter a judgment in the amount identified by the appraisal provided by the owner.

40 (5) If the parties are unable to agree on an amount of compensation after exchanging
41 appraisals as required under subsection (4) of this section, upon motion of either party, the
42 court shall schedule the matter for a hearing. The court shall determine the amount of
43 compensation due based on the appraisals and other evidence received by the court. If the
44 court determines that the amount of compensation due exceeds the amount identified in the
45 public entity's appraisal:

1 (a) The public entity shall file notice with the court electing to pay the amount of com-
2 pensation determined by the court or to waive the land use regulations specified in sub-
3 section (1)(c)(C) of this section; and

4 (b) The court shall enter a judgment accordingly.

5 **SECTION 7.** An appeal from a judgment entered pursuant to sections 4 to 7 of this 2005
6 Act must be filed in the manner provided in ORS chapter 19.

7
8 MISCELLANEOUS

9
10 **SECTION 7a.** As used in sections 2 to 7a of this 2005 Act:

11 (1) "Family member" has the meaning given that term in section 2, chapter 1, Oregon
12 Laws 2005 (Ballot Measure 37 (2004)).

13 (2) "Land use regulation" has the meaning given that term in section 2, chapter 1,
14 Oregon Laws 2005 (Ballot Measure 37 (2004)).

15 (3) "Owner" has the meaning given that term in section 2, chapter 1, Oregon Laws 2005
16 (Ballot Measure 37 (2004)).

17 (4) "Public entity" has the meaning given that term in section 2, chapter 1, Oregon Laws
18 2005 (Ballot Measure 37 (2004)).

19 (5) "Waive" has the meaning given that term in section 2, chapter 1, Oregon Laws 2005
20 (Ballot Measure 37 (2004)).

21 **SECTION 8.** The unit captions used in this 2005 Act are provided only for the convenience
22 of the reader and do not become part of the statutory law of this state or express any leg-
23 islative intent in the enactment of this 2005 Act.

24 **SECTION 9.** (1) Sections 4 to 7 of this 2005 Act and the amendments to chapter 1, Oregon
25 Laws 2005 (Ballot Measure 37 (2004)), by section 1 of this 2005 Act apply to claims for com-
26 pensation filed under chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), before, on or
27 after the effective date of this 2005 Act.

28 (2) Sections 2 and 3 of this 2005 Act apply to claims for compensation filed under chapter
29 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), on or after the effective date of this 2005 Act.

30 **SECTION 10.** This 2005 Act being necessary for the immediate preservation of the public
31 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
32 on its passage.
33