



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

December 2, 2010

STATE ELECTION NUMBER: D135039

CLAIMANTS: Tae Hoon and Sue E. Chung
3164 NW 114th Terrace
Portland, OR 97229

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2N, Range 3W, Section 25
Tax lot 2004
Washington County

I. ELECTION

The claimants, Tae Hoon and Sue E. Chung, filed a claim with Washington County under ORS 197.352 (2005) (Measure 37) on November 21, 2006, for property located at 31677 NW Pumpkin Ridge Road, near North Plains, in Washington County. The claimants did not file a state Measure 37 claim. ORS 195.300 to ORS 195.336 (Measure 49), as amended by Senate Bill 1049 (SB 1049) entitles claimants who filed Measure 37 claims only with the county in which the claim property is located to elect supplemental state review of their claims; and allows the Department of Land Conservation and Development (the department) to authorize one dwelling approval to qualified claimants and, if the property does not include a vacant parcel for the dwelling, a parcel on which to site the dwelling.

The claimants have elected supplemental review of their Washington County Measure 37 claim under SB 1049, and have submitted the \$2500 fee required by Section 7(2) of SB 1049 for that review.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimants are not eligible for any relief under Measure 49, as amended by SB 1049 because the claimants would not have been lawfully permitted to establish any additional dwellings on the property when they acquired the property.

Additionally, without the consent of Tae-Young Chung, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

III. PRELIMINARY ANALYSIS OF QUALIFICATION FOR DWELLING APPROVAL

1. Preliminary Analysis

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must have provided a certified copy of the claim to the department no later than June 30, 2010.

The claimants, Tae Hoon and Sue E. Chung, filed a Measure 37 claim, 37CL0610, with Washington County on November 21, 2006. Washington County provided a certified copy of that claim to the department on June 7, 2010. It appears the claimants filed a timely Measure 37 claim with Washington County in order to be eligible for supplemental review under SB 1049.

In addition to timely filing a county claim, to qualify for a dwelling approval under SB 1049, the claimants must also establish each of the following:

(a) The Claimant is an Owner of the Property

Measure 49 defines “Owner” as: “(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.”

According to the deed submitted to the county by the claimants, Tae Hoon and Sue E. Chung are the owners of fee title to the property as shown in the Washington County deed records and, therefore, are owners of the property under Measure 49.

(b) All Owners of the Property Have Consented in Writing to the Claim

The deed by which the claimants acquired the property indicates that there is one non-claimant owner who has not consented to the claim: Tae-Young Chung. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

(c) The Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City; or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary

The Measure 37 claim property is located in Washington County, outside any urban growth boundary and outside the city boundary of the nearest city, North Plains.

(d) One or More Land Use Regulations Prohibit Establishing the Dwelling

The property is currently zoned Exclusive Farm Use or Farm (EFU) by Washington County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of a dwelling in an EFU zone. In general, and subject to some exceptions, those standards require that the property be a minimum of 80 acres in size in an EFU zone and generate a minimum annual income from the sale of farm products.

The claimants’ property consists of 5.27 acres in one parcel and is undeveloped. Therefore, the standards for the establishment of a dwelling in an EFU zone prohibit the claimants from establishing a dwelling on the Measure 37 claim property.

(e) The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

Based on the documentation submitted by the claimants, it does not appear that the establishment of the dwelling would be prohibited by land use regulations described in ORS 195.305(3).

(f) On the Claimant’s Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least One Additional Dwelling on the Property

A claimant’s acquisition date is “the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.”

Washington County deed records indicate that the claimants acquired the property on May 14, 1990.

On May 14, 1990, the Measure 37 claim property was subject to Washington County's acknowledged Exclusive Farm Use (EFU) zone. Washington County's EFU zone generally required 76 acres for the creation of a new lot or parcel, and was subject to the County Development Code Section 430-37.2 standard that required \$10,000 in farm income for the establishment of a dwelling on a vacant lot or parcel. The claimants' property consists of 5.27 acres and is undeveloped, and there is no evidence in the record that in 1990 the property generated \$10,000 in farm income. Therefore, the claimants lawfully could not have established a dwelling on their date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Tae Hoon and Sue E. Chung, do not qualify for relief under Section 6 of Measure 49, as amended by SB 1049, because the claimants were not lawfully permitted to establish a dwelling on the claimants' date of acquisition.

Additionally, without the consent of Tae-Young Chung, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

IV. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimants and the claimants' agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimants and the claimants' agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimants and the claimants' authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.