



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW  
OF MEASURE 37 CLAIM  
Final Order of Denial**

**STATE ELECTION NUMBER:**

D135039

**CLAIMANTS:**

Tae Hoon and Sue E. Chung  
3164 NW 114<sup>th</sup> Terrace  
Portland, OR 97229

**MEASURE 37 PROPERTY  
IDENTIFICATION:**

Township 2N, Range 3W, Section 25  
Tax lot 2004  
Washington County

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.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

**I. ANALYSIS OF CLAIM**

**A. Maximum Relief for Which the Claimants May Qualify**

Under Measure 49, as amended by SB 1049, the department may authorize one dwelling approval and, if the property does not include a vacant parcel for that dwelling, a parcel on which to site the dwelling.

## **B. Qualification Requirements**

To qualify for a dwelling approval under Section 6 of Measure 49, as amended by SB 1049, the claimants must meet each of the following requirements:

### **1. Timeliness of Claim**

To qualify for approval of a dwelling under Measure 49, as amended by SB 1049, a claimant must have filed, and not withdrawn, a valid Measure 37 claim with the county in which the claim property is located before Measure 49 became effective on December 6, 2007; and the county must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.

### **Findings of Fact and Conclusions**

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.

The claimants filed a timely Measure 37 claim with Washington County in order to be eligible for supplemental review under SB 1049.

### **2. 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."

### **Findings of Fact and Conclusions:**

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.

Washington County has confirmed that the claimants are the current owners of the property.

### **3. All Owners of the Property Have Consented in Writing to the Claim**

All owners of the property must consent to the claim in writing.

#### **Findings of Fact and Conclusions:**

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.<sup>1</sup>

### **4. 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**

Either the majority of the Measure 37 claim property must be located outside any urban growth boundary and outside the boundaries of any city or the Measure 37 claim property must be located within the boundaries of a city and entirely outside any urban growth boundary.

#### **Findings of Fact and Conclusions:**

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.

### **5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling**

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

#### **Findings of Fact and Conclusions:**

The property is currently zoned Exclusive Farm Use (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.

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<sup>1</sup> As further explained below, the claimants submitted a comment indicating that they have been unable to obtain the consent of the non-claimant owner, which, as explained in the preliminary evaluation, was required prior to the issuance of the final order. The claimants assert that without the consent of the non-claimant owner their "application and election is not complete." As a result, they have requested withdrawal of their previously submitted and reviewed election and return of the non-refundable processing fee. As described in detail in the "Senate Bill 1049 Information Guide" that accompanied the claimants' election form, the inability to obtain non-claimant owner consent renders the claimants ineligible to receive relief under SB 1049. It is not a condition precedent to the completeness of the previously filed election and does not provide a basis for refund of the non-refundable processing fee.

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.

**6. 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.

**Findings of Fact and Conclusions**

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

**7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49**

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."

**Findings of Fact and Conclusions**

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.

## II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 2, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. A comment letter from claimant Tae Hoon Chung was received and has been taken into account by the department in the issuance of this Final Order of Denial. Specifically, in response to the preliminary evaluation, the claimants have requested to “withdraw” their election and request return of the non-refundable \$2,500 processing fee because they have not obtained the consent of the non-claimant owner. The claimants describe their inability to obtain the non-claimant owner consent as rendering their “application and election form” incomplete. As noted above, failure to obtain the consent of all non-claimant owners renders the claimants ineligible for relief under SB 1049. It does not negate their filing of the SB 1049 election form, or the processing of their claim.

As explained in detail in the “Senate Bill 1049 Information Guide” that accompanied the election form the claimants completed and submitted, the filing of an election under SB 1049 required the payment of a non-refundable \$2,500 processing fee. The first paragraph of that guide urged claimants to carefully consider their eligibility for relief prior to filing the processing fee precisely because it is non-refundable, regardless of the outcome of the review. Specifically that first paragraph states:

“This election for review requires that the claimant pay a non-refundable \$2,500 processing fee. Given this processing fee requirement, DLCD urges claimants to carefully consider the information included in this packet before submitting an election.”

The information included in the packet also explicitly stated:

“SB 1049 requires a claimant to pay a non-refundable processing fee of \$2,500 for review of a claim. This fee covers the approximate average cost to DLCD for the supplemental review of a claim under Measure 49 and is not refundable, regardless of the outcome of DLCD’s review of the claim.”

It also emphasized that the claimants were required to obtain the consent of all owners—not as a precedent to filing their election—but in order to be eligible for relief under SB 1049. As stated in the information packet:

“All current owners of the claim property must consent to the claim. If the claimant does not submit consent of all current owners, or establish that owners shown in the deed records are no longer owners, the claimant is not eligible for relief.”

The claimants submitted their SB 1049 election, with the required non-refundable \$2,500 processing fee. The claimants are not entitled to a refund of that non-refundable processing fee after the department’s review of the claim, regardless of their inability to satisfy each of the requirements for relief under SB 1049.

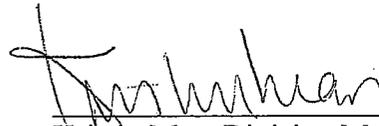
### III. CONCLUSION

Based on the analysis above, 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 was not provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090.

IT IS HEREBY ORDERED that this Final Order of Denial is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Kristin May, Division Manager  
Dept. of Land Conservation and Development  
Dated this 10<sup>th</sup> day of January, 2011.

#### **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.