



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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March 15, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M1030088*

*Claimant: Thomas L. Sanders*

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR  
COMPENSATION UNDER ORS 197.352  
(BALLOT MEASURE 37) OF  
Thomas L. Sanders, CLAIMANT

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FINAL ORDER  
CLAIM NO. M130088

Claimant: Thomas L. Sanders (the Claimant)  
Property: Township 37S, Range 6W, Section 12, Tax lot 1500, Josephine County  
(the property)  
Claim: The demand for compensation and any supporting information received  
from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under  
OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred  
the Claim to the Department of Land Conservation and Development (DLCD) as the  
regulating entity. This order is based on the record herein, including the Findings and  
Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the  
DLCD Report) attached to and by this reference incorporated into this order.

ORDER

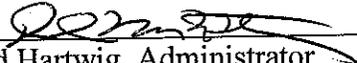
The Claim is denied as to laws administered by DLCD and the Land Conservation and  
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Director of the DLCD as a final order of DLCD and the  
Land Conservation and Development Commission under ORS 197.352, OAR 660-002-  
0010(8), and OAR chapter 125, division 145, and by the Administrator for the State  
Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter  
125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:  
Lane Shetterly, Director

  
Cora R. Parker, Deputy Director  
DLCD  
Dated this 14<sup>th</sup> day of March, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of March, 2007.

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

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

1. Judicial review under ORS 183.484: 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 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

March 16, 2007

**STATE CLAIM NUMBER:** M130088  
**NAME OF CLAIMANT:** Thomas L. Sanders  
**MAILING ADDRESS:** 5395 New Hope Road  
Grants Pass, Oregon 97527  
**PROPERTY IDENTIFICATION:** Township 37S, Range 6W, Section 12  
Tax lot 1500  
Josephine County  
**DATE RECEIVED BY DAS:** September 21, 2006  
**180-DAY DEADLINE:** March 20, 2007

**I. SUMMARY OF CLAIM**

The claimant, Thomas Sanders, seeks compensation in the amount of \$163,260 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 1.84-acre subject property into two approximately 1-acre parcels with an existing habitable dwelling located on each of the two resulting parcels. The subject property is located at 5393 and 5395 New Hope Road (Tax Lot 1500), near Grants Pass, in Josephine County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimant's use of the private real property. (See the complete recommendation in Section VI. of this report.)

**III. COMMENTS ON THE CLAIM**

**Comments Received**

On January 4, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

## IV. TIMELINESS OF CLAIM

### Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

### Findings of Fact

This claim was submitted to DAS on September 21, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goal 14 (Urbanization) and OAR 660-004-0040 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

### Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### 1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

### Findings of Fact

The claimant, Thomas Sanders, acquired the subject property on October 3, 1960, as reflected by a warranty deed included with the claim. The Josephine County Assessor's Office confirms the claimant's current ownership of the subject property.

### Conclusions

The claimant, Thomas Sanders, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of October 3, 1960.

## **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimant desires to divide the 1.84-acre subject property into two approximately 1-acre parcels with an existing dwelling on each resulting parcel, and that Goal 14 and OAR 660-004-0040 prevent the claimant's desired use.

The claim is based on the provisions of state law that regulate rural residential zoning. The claimant's property is zoned by Josephine County as Rural Residential (RR-5). The RR-5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Josephine County's RR-5 zone was adopted on June 30, 1973<sup>1</sup>, and generally requires a minimum of 5 acres for the creation of a new lot or parcel.<sup>2</sup>

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,<sup>3</sup> the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). However, relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h).

Specifically, OAR 660-004-0040(7)(h) authorizes local governments to allow the creation of a new parcel smaller than the otherwise required minimum lot size without an exception to Goal 14 if:

- (A) The parcel to be divided has two or more permanent habitable dwellings on it;
- (B) The permanent habitable dwellings on the parcel to be divided were established there before the effective date of this rule;
- (C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and
- (D) The partition would not create any vacant parcels on which a new dwelling could be established.

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<sup>1</sup> When adopted in 1973, the Josephine County rural residential zone was called FR-5.

<sup>2</sup> Josephine County's comprehensive plan acknowledgement date is December 9, 1985.

<sup>3</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

In this case, the subject property is presently developed with two permanent, habitable dwellings that, based on Josephine County records and the documentation in the claim, were existing before October 4, 2000. The desired partition would allow one dwelling on each new parcel and would not create any vacant parcel.<sup>4</sup>

Based on the information in the claim, the desired use is allowed under OAR 660-004-0040(7)(h)(A) through (D). The department has not identified any state laws that restrict the claimant's desired use of the subject property.

### **Conclusions**

The claim does not establish any state laws that currently restrict the use of the claimant's property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the use of the claimant's real property. The claimant's desired use is allowed under OAR 660-004-0040(7)(h)(A) through (D).

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

As explained in Section V.(2) of this report, the claimant, Thomas Sanders, has not established that any state land use regulations restrict the claimant's desired use of the subject property. Accordingly, the claimant has not established that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

As explained in Section V.(2) of this report, the claimant, Thomas Sanders, has not established that any state land use regulations restrict the claimant's desired use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by

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<sup>4</sup> Information from the Josephine County planning director indicates that the subject property qualifies for a land division under provisions of OAR 660-004-0040(7)(h), but the claimant has not applied to the county for this desired use.

rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the record for this claim, the claimant's desired use of the property is allowed under OAR660-004-0040(7)(h)(A) through (D). The claimant has not established that any state laws enforced by the Commission or the department restrict his desired use of the subject property, and have the effect of reducing the fair market value of the subject property.

### **Conclusions**

Based on the record before the department, the claimant, Thomas Sanders, has not established that he is entitled to relief under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on February 22, 2007. OAR 125-145 0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.