



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

April 20, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130454*

*Claimant: Darle Runnels*

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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 ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130454  
(BALLOT MEASURE 37) OF )  
Darle Runnels, CLAIMANT )

Claimant: Darle Runnels (the Claimant)

Property: Township 39S, Range 7E, Section 30, Tax lot 200, Klamath County  
(the Property)

Claim: The demand for compensation and any supporting information received  
from the Claimant by the State of Oregon (the Claim).

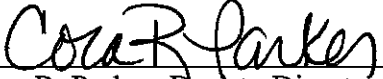
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

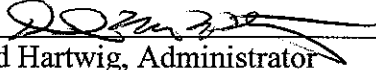
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 20<sup>th</sup> day of April, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 20<sup>th</sup> day of April, 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**

April 20, 2007

**STATE CLAIM NUMBER:** M130454

**NAME OF CLAIMANT:** Darle Runnels

**MAILING ADDRESS:** 136 Octavia Avenue  
Klamath Falls, Oregon 97601

**PROPERTY IDENTIFICATION:** Township 39S, Range 7E, Section 30  
Tax lot 200  
Klamath County

**OTHER CONTACT INFORMATION:** Michael L. Spencer, Attorney  
409 Pine Street, Suite 204  
Klamath Falls, Oregon 97601

**DATE RECEIVED BY DAS:** October 27, 2006

**180-DAY DEADLINE:** April 25, 2007

**I. SUMMARY OF CLAIM**

The claimant, Darle Runnels, seeks compensation in the amount of \$50,000 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 build a dwelling on the one-acre subject property. The landlocked subject property is located west of the John C. Boyle Reservoir on the Klamath River, near Klamath Falls, in Klamath 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 the claimant has not established that she has legal access to the subject property. (See the complete recommendation in Section VI. of this report.)

**III. COMMENTS ON THE CLAIM**

**Comments Received**

On March 12, 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 October 27, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization), provisions of OAR 660, division 6, and provisions of ORS 215 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, Darle Runnels, acquired the subject property on December 9, 1974, as reflected by a warranty deed included with the claim. The Klamath County Assessor's Office confirms the claimant's current ownership of the subject property.

## **Conclusions**

The claimant, Darle Runnels, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 9, 1974.

### **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 build a dwelling on the one-acre subject property, and that current land use regulations prohibit the desired use.<sup>1</sup>

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant's property is zoned by Klamath County as Forest (F) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, establish standards for development of dwellings on existing or proposed parcels on forest-zoned lands.

The claimant acquired the subject property on December 9, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals effective on January 25, 1975. At that time, the subject property was zoned by Klamath County as Forest, which required one acre for the creation of a new parcel.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and

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<sup>1</sup> The claimant summarily lists numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimant's desired use of the property, the department cannot evaluate how or whether they apply. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of her desired use.

counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition).

The "interim" land use goals were set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).<sup>2</sup>

No information has been provided establishing whether or to what extent the claimant's desired development of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant first acquired the property on December 9, 1974.

Although these state land use regulations would otherwise restrict the claimant's desired use, in this case, according to title records and information included in the claim, the claimant does not have legal access to the subject property.<sup>3</sup> Without legal access, the claimant did not have a right to use the property for the desired use when she acquired the property and does not have that right now. Therefore, the state land use regulations enacted or adopted after the claimant acquired the property do not restrict a use that the claimant has a right to carry out relative to uses allowed when they acquired the property, with the effect of reducing the property's fair market value.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and OAR 660-006-0027, were all enacted or adopted after the claimant acquired the subject property in 1974 and do not allow the desired development of the property.

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<sup>2</sup> Goal 4 replaced the interim goals with regard to forest resource land, and went into effect on January 25, 1975, "to conserve forest lands for forest uses" and required, "Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as follows: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.

<sup>3</sup> The department requested evidence of legal access to the subject property from the claimant's agent on March 15, 2007. As of the date of this report, no additional information has been received.

However, the claimant has not established that she had legal access to the subject property when she acquired the property and therefore, has not established that she could have developed the property for the desired use at the time she acquired the property. Therefore, no laws enforced by the Commission or the department restrict the claimant's use of private real property with the effect of reducing the fair market value of the property relative to when she acquired the property.

### **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, Darle Runnels, has not established that she had legal access to the property when she acquired it, and therefore, no state land use regulations restrict her use of the subject property with 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.

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Klamath County has implemented through its current F zone. All of these land use regulations were enacted or adopted after the claimant acquired the subject property. However, as explained in Section V.(2), the claimant has not established that she had legal access to the subject property when she acquired it. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant 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 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 findings and conclusions set forth in this report, the department finds that the claim is not valid because the claimant has not established that she has legal access to the subject property. Therefore, laws enforced by the Commission or the department do not restrict the

claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1974 and do not reduce the fair market value of the property.

### **Conclusions**

Based on the record and the foregoing findings and conclusions, the claimant has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because she has not established that she has legal access to the subject property. 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 March 28, 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.