



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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October 29, 2007

To: Interested Persons  
From: Cora R. Parker, Acting Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M131097*

*Claimant: Santos Ranches, Inc.*

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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. M131097  
(BALLOT MEASURE 37) OF )  
Santos Ranches, Inc., CLAIMANT )

Claimant: Santos Ranches, Inc. (the Claimant)

Property: Township 26S, Range 4W, Section 12: tax lot 101  
Township 26S, Range 4W, Section 13: tax lot 400  
Township 26S, Range 4W, Section 14A: tax lot 100  
Douglas 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 Amended Final Staff Report and Recommendation of DLCD  
(the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

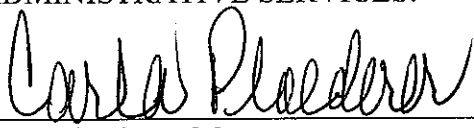
The Claim is denied as to laws administered by DLCD and the Land Conservation and  
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Acting 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 Manager for the Measure  
37 Services Unit 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:

  
Cora R. Parker, Acting Director  
DLCD  
Dated this 29<sup>th</sup> day of October, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Carla Ploederer, Manager  
DAS, Measure 37 Services Unit  
Dated this 29<sup>th</sup> day of October, 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**

October 29, 2007

**STATE CLAIM NUMBER:** M131097

**NAME OF CLAIMANT:** Santos Ranches, Inc.

**MAILING ADDRESS:** c/o Paul Santos  
16988 N Bank Road  
Roseburg, Oregon 97470

**PROPERTY IDENTIFICATION:** Township 26S, Range 4W  
Section 12: tax lot 101  
Section 13: tax lot 400  
Section 14A: tax lot 100  
Douglas County

**DATE RECEIVED BY DAS:** November 22, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 15, 2008

**I. SUMMARY OF CLAIM**

The claimant, Santos Ranches, Inc., seeks compensation in the amount of \$400,000 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 divide two approximately 10-acre parcels from the 382.84-acre subject property and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at on N Bank Road, near Roseburg, in Douglas 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's desired use of the subject property was prohibited by the zoning in effect when the claimant acquired it. 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

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

relative to the uses permitted when the claimant acquired the subject property. Therefore, no laws enforced by the Commission or the department have the effect of reducing the property's fair market value. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On June 22, 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, one written comment was received in response to the 15-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

### **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 November 22, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County's Exclusive Farm Use-Grazing (FG) zone 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, Santos Ranches, Inc., states in the claim that it acquired the subject property on January 17, 1974, when Santos & Rose and Sons, Inc. acquired the subject property. Santos & Rose and Sons, Inc. changed its name to Santos Ranches, Inc. on December 22, 1980, as reflected by a certificate of amendment included with the claim.<sup>2</sup> The subject property was transferred to Santos Ranches, Inc. on October 30, 1981, as evidenced by a quitclaim deed included with the claim. On that same day, Santos Ranches, Inc. conveyed the subject property to Gilbert and Mary Santos, Paul and Rexene Santos, Donald and Marcis Santos, Susan King and Nancy Winchell, a partnership, as evidenced by a warranty deed included with the claim. The partnership then conveyed the subject property to Santos Ranches, Inc. on February 22, 1990, as evidenced by a quitclaim deed included with the claim. The Douglas County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### Conclusions

The claimant, Santos Ranches, Inc., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of February 22, 1990.

### 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 two approximately 10-acre parcels from the 382.84-acre subject property and to develop a dwelling on each resulting undeveloped parcel, and that the property’s current zoning prevents the desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant’s property is zoned FG by Douglas County as required by Statewide Planning Goal 3 (Agricultural Lands), in accordance with ORS 215 and OAR 660, division 33, because the claimant’s property is

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<sup>2</sup> Santos Ranches, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

“agricultural land” as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.<sup>4</sup>

At the time the claimant acquired the subject property on February 22, 1990, it was subject to Douglas County’s acknowledged comprehensive plan and FG zone.<sup>5</sup> At that time, the FG zone required a 200-acre minimum lot size and only allowed dwellings in conjunction with farm use. The claimant’s desired use would not have been permitted under Douglas County’s FG zone, in effect when the claimant acquired the property

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired the subject property in 1990 and do not allow the claimant’s desired division or development of the property. However, based on the record before the department, the claimant’s desired use of the subject property was also prohibited by the zoning in effect when it acquired the property in 1990. The claim does not establish that state laws enforced by the Commission or the department restrict the claimant’s desired use of the subject property relative to the uses permitted when the claimant acquired the property in 1990.

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<sup>3</sup> The claimant’s property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>4</sup> The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

<sup>5</sup> Douglas County’s FG zone was acknowledged by the Commission for compliance with Goal 3 on December 24, 1985.

### **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.”

#### **Findings of Fact**

The claim includes an estimate of \$400,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimant’s desired use of the property. This amount is based on market analysis included with the claim.

#### **Conclusions**

As explained in Section V.(2) of this report, the claimant’s desired use of the property was prohibited by the zoning in effect at the time it acquired the property. Therefore, land use regulations enforced by the Commission or the department since the claimant acquired the property in 1990 do not have the effect of reducing the fair market value of the property relative to uses allowed when the claimant acquired the 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.

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property including Goal 3, ORS 215 and OAR 660, division 33, which Douglas County has implemented through its current FG zone. With the exception of amendments enacted or adopted after February 22, 1990, Goal 3, ORS 215 and OAR 660 were in effect when the claimant acquired the subject property.

#### **Conclusions**

It appears that the general statutory, goal and rule restrictions on division and development of the subject property apply to and restrict the claimant’s desired use of the property. These laws were enacted or adopted since the claimant acquired the property and therefore, are not exempt under ORS 197.352(3)(E). However, as discussed in Section V.(2) of this report, the claimant’s desired use was prohibited by the zoning in effect when it acquired the property.

## **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.

### **Conclusions**

Based on the record before the department, the claimant, Santos Ranches, Inc., has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. The department recommends that this claim be denied because the claimant's desired use of the property was prohibited under the zoning in effect when it acquired the property in 1990. Neither the Commission nor the department has enforced laws that restrict the claimant's desired use of the subject property relative to the uses permitted when it acquired the property, and therefore, no laws enforced by the Commission or the department have the effect of reducing the property's fair market value.

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

The department issued its draft staff report on this claim on September 24, 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. Comments received have been taken into account by the department in the issuance of this final report.