



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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March 28, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130201*

*Claimants: Gordon and Janice Miles*

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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. M130201  
(BALLOT MEASURE 37) OF )  
Gordon C. and Janice M. Miles, CLAIMANTS )

Claimants: Gordon C. and Janice M. Miles (the Claimants)

Property: Township 35S, Range 4W, Section 9D, Tax lot 2500  
Jackson County (the property)

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

Claimants 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

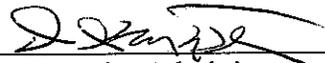
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 29<sup>th</sup> day of March, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 29<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 29, 2007

**STATE CLAIM NUMBER:** M130201

**NAMES OF CLAIMANTS:** Gordon C. and Janice M. Miles

**MAILING ADDRESS:** 620 Queens Branch Road  
Rogue River, Oregon 97537

**PROPERTY IDENTIFICATION:** Township 35S, Range 4W, Section 9D  
Tax lot 2500  
Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew, Attorney  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** October 4, 2006

**180-DAY DEADLINE:** April 2, 2007

**I. SUMMARY OF CLAIM**

The claimants, Gordon and Janice Miles, seek compensation in the amount of \$160,100 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 claimants desire compensation or the right to divide the 4.97-acre subject property into two approximately 2.5-acre parcels.<sup>1</sup> The subject property is located at 620 Queens Branch Road, near Rogue River, in Jackson 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

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<sup>1</sup> The claim also indicates that the claimants desire to sell or transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

enforced laws that restrict the claimants' desired use of the subject property. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 2, 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 4, 2006, for processing under OAR 125, division 145. The claim identifies Jackson County's Land Development Ordinance and "any statues or regulations requiring a ten-acre minimum lot size" 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 claimants, Gordon and Janice Miles, acquired the subject property on June 9, 1989, as reflected by a warranty deed included with the claim. The Jackson County Assessor's Office confirms the claimants' current ownership of the subject property.

## **Conclusions**

The claimants, Gordon and Janice Miles, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of June 9, 1989.

## **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 claimants' 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 claimants or a family member acquired the property.

## **Findings of Fact**

The claim indicates that the claimants desire to divide the 4.97-acre subject property into two approximately 2.5-acre parcels and that current land use regulations prohibit the desired use.

The claim is based on the provisions of state law that regulate rural residential zoning. The claimants' property is zoned by Jackson County as Rural Residential-2.5 (RR-2.5). The RR-2.5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Jackson County's RR-2.5 zone was adopted on September 1, 1975, and requires a minimum of 2.5 acres for the creation of a new lot or parcel.

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>2</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)). Some 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). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Jackson County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of 2.5 acres, the minimum lot size for any new lot or parcel must equal or exceed 2.5 acres.

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<sup>2</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

When the claimants acquired the property on June 6, 1989, it was subject to Jackson County's acknowledged comprehensive plan. At that time, as now, the subject property was zoned Suburban Residential-2.5 (SR-2.5), which required a minimum of 2.5 acres for the creation of a new parcel.

### **Conclusions**

The minimum lot size requirements for rural residential lots or parcels established by amendments to Goal 14 and OAR 660-004-0040 were adopted after the claimants acquired the subject property in 1989. However, these regulations do not restrict the claimants' use of the subject property relative to uses permitted when they acquired it. Nor do they restrict the claimants' desired division of the 4.97-acre subject property into two approximately 2.5-acre parcels.

### **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 claimants, Gordon and Janice Miles, have not established that any state laws restrict their desired use of the subject property. The department has not identified any state laws that restrict the claimants' desired use of the subject property. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (the Commission) or the department.

### **4. Exemptions Under ORS 197.352**

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 claimants, Gordon and Janice Miles, have not established that any state laws restrict their desired use of the subject property. The department has not identified any state laws that restrict the claimants' desired use of the subject property. Therefore, the issue of whether any laws are exempt from ORS 197.352(3) is not relevant.

## **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 claimants have not established that any state laws enforced by the Commission or the department restrict their 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 and the foregoing findings and conclusions, the claimants have not established that they are 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 March 7, 2007. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.