Oregon
Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**
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September 28, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

*Re: Ballot Measure 37 (ORS 197.352) Claim Number M131210*

*Claimant: Loretta C. Johnson*

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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

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| IN THE MATTER OF THE CLAIM FOR<br>COMPENSATION UNDER ORS 197.352<br>(BALLOT MEASURE 37) OF<br>Loretta C. Johnson, CLAIMANT | )<br>)<br>)<br>) | FINAL ORDER<br>CLAIM NO. M131210 |

Claimant: Loretta C. Johnson (the Claimant)

Property: Township 12S, Range 6W, Section 1CD, Tax lots 100 and 200
Benton 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 Manager of the Measure 37 Services Division 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 of 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

Michael Morrissey

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 28th day of September, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 28th day of September, 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**

September 28, 2007

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|---|---|
| **STATE CLAIM NUMBER:** | M131210 |
| **NAME OF CLAIMANT:** | Loretta C. Johnson |
| **MAILING ADDRESS:** | 2929 NW Highland Drive<br>Corvallis, Oregon 97330 |
| **PROPERTY IDENTIFICATION:** | Township 12S, Range 6W, Section 1CD<br>Tax lots 100 and 200<br>Benton County |
| **OTHER CONTACT INFORMATION:** | George B. Heilig<br>PO Box 546<br>Corvallis, Oregon 97339 |
| **DATE RECEIVED BY DAS:** | November 24, 2006 |
| **DEADLINE FOR FINAL ACTION:**[1] | May 17, 2008 |

## I. SUMMARY OF CLAIM

The claimant, Loretta Johnson, seeks compensation in the amount of $1,031,125 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 19.88-acre subject property into nine 2-acre parcels and develop a dwelling on each resulting undeveloped parcel. The property is located at 903 N 12th Street, within the City of Philomath's Urban Growth Boundary (UGB), in Benton 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

[1] 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.

enforced laws that restrict the claimant's use of the subject private real property. (See the complete recommendation in Section VI of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On July 6, 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 15-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 criterion 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 criterion, whichever is later.

### Findings of Fact

This claim was submitted to DAS on November 24, 2006, for processing under OAR 125, division 145. The claim identifies Benton County's Urban Residential (UR-5) zoning as the basis for the 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, Loretta Johnson, acquired the subject property on June 9, 1979, as reflected by a warranty deed included with the claim. The Benton County Assessor's Office confirms the claimant's current ownership of the subject property.

**Conclusions**

The claimant, Loretta Johnson, is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C), as of June 9, 1979.

**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 19.88-acre property into nine 2-acre parcels and develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.

The subject property is currently zoned UR-5 by Benton County. The UR-5 district is a residential urban holding zone with a minimum lot size of five acres. The subject property is within the City of Philomath's UGB.

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimant has not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of the subject property.

**Conclusions**

The claim does not establish that any state laws currently restrict the claimant's desired use of her property. Because the subject property is located within the City of Philomath's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the claimant's desired use of the subject 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 regulation(s) (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, Loretta Johnson, has not established that any state land use regulations restrict the use of the subject property. Accordingly, the department cannot determine 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, Loretta Johnson, has not established that any state land use regulations restrict her 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 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 has not established that any state laws enforced by the Commission or the department restrict the use of the subject property, and have the effect of reducing the fair market value of the subject property. Because the subject property is located within the City of Philomath's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property.

### Conclusions

Based on the record before the department, the claimant, Loretta Johnson, 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 no state land use regulations restrict the claimant's desired use of 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 August 31, 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.