

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. M122718
(BALLOT MEASURE 37) OF)	
Laurel MacDonald Bonnell, CLAIMANT)	

Claimant: Laurel MacDonald Bonnell (the Claimant)

Property: Township 3S, Range 2W, Section 23, Tax lots 101 and 102, Yamhill 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 approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Laurel MacDonald Bonnell's division of tax lot 101 (including the 32.4 acres of the tax lot as it was configured prior to the December 6, 2002, county lot line adjustment) into two parcels or to her development of a dwelling on the resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after July 11, 2002. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the tax lot in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 101 for the use described in this report, subject to the standards in effect on July 11, 2002. At that time, tax lot 101 was subject to applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 101 may not be used without a permit, license or other

form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the tax lot imposed by private parties.

4. Any use of tax lot 101 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lot 101, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lot 101 by the claimant.

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 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

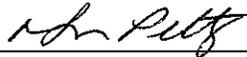


Lane Shetterly, Director

DLCD

Dated this 21st day of August, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator

DAS, State Services Division

Dated this 21st day of August, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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 197.352¹, 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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

¹ By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

August 21, 2006

STATE CLAIM NUMBER: M122718

NAME OF CLAIMANT: Laurel MacDonald Bonnell

MAILING ADDRESS: 1022 Southwest Salmon Street, Suite 222
Portland, Oregon 97205

PROPERTY IDENTIFICATION: Township 3S, Range 2W, Section 23
Tax lots 101 and 102
Yamhill County

OTHER CONTACT INFORMATION: John T. Bridges
Brown, Tarlow, Bridges & Palmer, PC
515 East First Street
Newberg, Oregon 97132

DATE RECEIVED BY DAS: October 12, 2005

180-DAY DEADLINE: August 27, 2006¹

I. SUMMARY OF CLAIM

The claimant, Laurel MacDonald Bonnell, as trustee of the William H. MacDonald Trust, seeks compensation in the amount of \$500,000 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 the subject property, consisting of two tax lots totaling 56.48 acres, into two parcels and to develop a dwelling on the resulting undeveloped parcel.² The subject property is located on Lauren Lane and Parrett Mountain Road in Yamhill County. (See claim.)

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

² Tax lot 101 currently consists of 5.30 acres, and tax lot 102 consists of 51.18 acres. When the claimant acquired tax lot 102 in 2002, it consisted of 24.08 acres, and tax lot 101 consisted of 32.40 acres. Through a subsequent lot line adjustment, dated December 6, 2002, the claimant reconfigured the tax lots in order to separate 5.3 acres, which are environmentally contaminated, from the remaining property. As a result, tax lot 101 is currently 5.3 acres, and tax lot 102 is currently 51.18 acres. Tax lot 101 is identified as a hazardous site and is subject to an easement and equitable servitude held by the Oregon Department of Environmental Quality (DEQ). The December 6, 2002, lot line adjustment specified that no dwelling shall be located on the 5.3-acre hazardous site. It is the hazardous site identification that restricts use of the 5.3-acre portion of the subject property.

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 valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Laurel MacDonald Bonnell's division of tax lot 101 (including the 32.40 acres of the tax lot as it was configured prior to the December 6, 2002, county lot line adjustment) into two parcels and to her development of a dwelling on the resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after July 11, 2002. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lot 101 for the use described in this report, and only to the extent that use was permitted when she acquired the property on July 11, 2002. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the subject property in the manner set forth in the claim.

Based on the preliminary findings and conclusions set forth below, the department has determined that the claim is not valid as to the 24.08 acres of tax lot 102 that the claimant acquired on November 25, 2002, because the claimant's desired use of the subject property was prohibited under the laws in effect when she acquired that portion of tax lot 102 on November 25, 2002. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 12, 2006, pursuant to 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 10-day notice. The comment is relevant to when the claimant became the present owner of the subject property. The comment has been considered by the department in preparing this report. (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 October 12, 2005, for processing under OAR 125, division 145. The claim identifies the "\$80,000 income test" 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, Laurel MacDonald Bonnell, as trustee of the William H. MacDonald Trust, acquired tax lot 101 on July 11, 2002, as reflected in the fourth amendment to the trust, included with the claim. On that date, tax lot 101 consisted of 32.40 acres. The claimant acquired tax lot 102 on November 25, 2002, as reflected by a statutory warranty deed provided by a title report search. At that time, tax lot 102 consisted of 24.08 acres. The claimant's father, William H. MacDonald, acquired the subject property on August 8, 1980, and transferred the property to the William H. MacDonald Trust on October 15, 1999, as reflected by a warranty deed and quitclaim deed included with the claim.³ A September 20, 2005, lot book report submitted with the claim establishes the claimant's current ownership of the subject property.⁴

Conclusions

The claimant, Laurel MacDonald Bonnell, as trustee of the William H. MacDonald Trust, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of

³ Transfer of property to a revocable trust does not result in a change in ownership for the purposes of ORS 197.352.

⁴ William H. MacDonald acquired tax lots 101 and 102 in 1980. On January 14, 2000, Mr. McDonald conveyed tax lot 102, then consisting of 24.08 acres, to Stephen T. Grimwood (not a family member), as reflected by a warranty deed provided by Mr. Grimwood. Stephen T. Grimwood re-conveyed tax lot 102 to the claimant on November 24, 2002, following the identification of environmental contamination on the tax lot. When the claimant acquired an interest in tax lot 101 as trustee of the William H. MacDonald Trust, tax lot 101 consisted of 32.40 acres. As described above, through a lot line adjustment, the county subsequently reconfigured the tax lots, with the result that tax lot 101 presently includes the 5.3 acres that are identified as a DEQ hazardous site and tax lot 102 presently includes the remaining 51.18 acres.

July 11, 2002, for tax lot 101 and as of November 25, 2002, for tax lot 102. William H. MacDonald is a "family member," as defined by ORS 197.352(11)(A), as to tax lot 101 and acquired it on August 8, 1980.

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 subject 56.48-acre property into two parcels and to develop a dwelling on the resulting undeveloped parcel, and that current county zoning prevents the desired use.

The claim is based generally on the applicable provisions of state law that require exclusive farm use and forest zoning. The claimant's property is zoned by Yamhill County as Agriculture/Forest (AF-20), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁵ Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Yamhill County's AF-20 zone is 20 acres. The claimant's property cannot be divided into parcels smaller than 20 acres.

At the time the claimant's family acquired tax lot 101, it was subject to Yamhill County's acknowledged mixed agriculture and forest zone.⁶ When the claimant's family acquired tax lot 101, the claimant's desired use of the property would have been governed by the county's acknowledged mixed agriculture and forest zone and the applicable provisions of ORS 215 then in effect.

When the claimant acquired tax lot 102 (then consisting of 24.08 acres), it was subject to the current laws in effect, as described above.

⁵ No information was provided to the department regarding the predominant use of the subject property on January 1, 1993.

⁶ Yamhill County's comprehensive plan was acknowledged on June 12, 1980.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimant's family acquired tax lot 101 and before the claimant acquired 24.08 acres of tax lot 102. These laws restrict the use of tax lot 101 relative to the uses allowed when the claimant's family acquired the property. However, the claim does not establish whether or to what extent the claimant's desired use of tax lot 101 complies with the standards for land division and development under Goal 3 or 4 applicable and in effect when the claimant's family acquired the property on August 8, 1980. The claim does not establish that any laws restrict use of the 24.08 acres of tax lot 102 relative to uses allowed when the claimant acquired this tax lot in 2002.

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."

Findings of Fact

The claim includes an estimate of \$500,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's use of the property. This amount is based on the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Laurel MacDonald Bonnell, as trustee for the William H. MacDonald Trust, whose family member acquired tax lot 101 in 1980. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lot 101 and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant's family acquired tax lot 101 restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the entire subject property (including tax lot 102) is a reduction of \$500,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimant's desired use of tax lot 101 was allowed under the standards in effect when the claimant's family acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lot 101 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimant's family acquired tax lot 101.

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 relative to the uses permitted when the claimant's family acquired tax lot 101, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Yamhill County has implemented through its current AF-20 zone. All of these regulations were in effect when the claimant acquired tax lot 102 in 2002. With the exception of Goals 3 and 4 and ORS 215 in effect on August 8, 1980, these land use regulations were enacted or adopted after the claimant's family acquired tax lot 101.

Conclusions

It appears that, with the exception of Goals 3 and 4 and applicable provisions of ORS 215, the general statutory, goal and rule restrictions on residential division and development of the subject property were not in effect when the claimant's family acquired tax lot 101 on August 8, 1980. Those laws enacted or adopted after 1980 are not exempt under ORS 197.352(3)(E) as to tax lot 101. Laws in effect when the claimant's family acquired tax lot 101 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

All of the state land use regulations that restrict the claimant's desired use of tax lot 102 were in effect when the claimant acquired the tax lot in 2002. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant 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.

Findings of Fact

Based on the findings and conclusions set forth in this report, the department finds that laws enforced by the Commission or the department do not restrict the claimant's desired use of the 24.08 acres of tax lot 102 the claimant acquired in 2002 relative to what was permitted when the

claimant acquired this tax lot and do not reduce the fair market value of the property. All state laws restricting the use of tax lot 102 are exempt under ORS 197.352(3)(E).

The department further finds that laws enforced by the Commission or the department restrict the claimant's desired use of tax lot 101. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$500,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of tax lot 101, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of tax lot 101 was allowed under the standards in effect when her family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lot 101 to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Laurel MacDonald Bonnell to use tax lot 101 for a use permitted at the time she acquired the property as trustee on July 11, 2002.

At the time the claimant acquired an interest in tax lot 101, it was zoned AF-20 by Yamhill County and subject to the current lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, and as described in Section V.(2) of this report.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of tax lot 101.

Conclusions

Based on the record, the department recommends that the claim for the 24.08 acres of tax lot 102 be denied because 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 that portion of tax lot 102 in 2002.

The department further recommends that the claim be approved for tax lot 101, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Laurel MacDonald Bonnell's division of tax lot 101 (including the 32.4 acres of the tax lot as it was configured prior to the December 6, 2002, county lot line adjustment) into two parcels or to her development of a dwelling on the resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after July 11, 2002. The department acknowledges that the relief to which the claimant is

entitled under ORS 197.352 will not allow the claimant to use the tax lot in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 101 for the use described in this report, subject to the standards in effect on July 11, 2002. At that time, tax lot 101 was subject to applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 101 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the tax lot imposed by private parties.

4. Any use of tax lot 101 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lot 101, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lot 101 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 3, 2006. 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.