

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. M 118413  
(BALLOT MEASURE 37) OF )  
Radah Ralston, CLAIMANT )

Claimant: Radah Ralston (the Claimant)

Property: TL 200, T 1N, R 2W, S 19, Washington 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 Deputy 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.

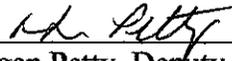
FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 20th day of March, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 20th day of March, 2006.

**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 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. 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 and the Circuit Court in the county in which you reside.
3. A cause of action under ORS 197.352: A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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)

**BALLOT MEASURE 37 (ORS 197.352)  
CLAIM FOR COMPENSATION**

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

March 20, 2006

**STATE CLAIM NUMBER:** M118413

**NAME OF CLAIMANT:** Radah Ralston

**MAILING ADDRESS:** 513 North Sixth<sup>th</sup> Street  
Hillsboro, Oregon 97124

**PROPERTY IDENTIFICATION:** Township 1N, Range 2W, Section 19  
Tax lot 200  
Washington County

**DATE RECEIVED BY DAS:** May 11, 2005

**180-DAY DEADLINE:** March 26, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Radah Ralston, seeks compensation in the amount of \$17,919,140 for the reduction in fair market value as a result of certain 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 91-acre property into two-acre parcels. The property is located at the coordinates listed above, in Washington 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 have enforced laws after September 6, 2005, when Ms. Ralston acquired the property, that restrict the claimant's use of private real property. (See the complete recommendation in Section VI. of this report.)

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of *Macpherson v. Dep't of Admin. Servs.*, 340 Or \_\_\_, 2006 Ore. LEXIS 104 (February 21, 2006).

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

#### **Comments Received**

On June 6, 2005, 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, two written comments, evidence or information were received in response to the 10-day notice.<sup>2</sup>

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law. (See comment letters 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 the Measure (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 the Measure (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 May 11, 2005 for processing under OAR 125 division 145. The claim identifies a list of state and local laws related to exclusive farm use zoning as laws that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

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<sup>2</sup> The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or \_\_, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

## **Conclusions**

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations 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, Radah Ralston, acquired a one-quarter interest in the property from her mother on January 6, 1962, as reflected by a Warranty Deed included with the claim. On January 18, 1962, Radah Ralston acquired an undivided one-half interest in the property from her uncle. Prior to that time, the Ralston family had owned the property since 1889, as reflected by documents submitted with the claim.

In 1996, Ms. Ralston and other family members who had ownership interests in the subject property, formed the Gottlieb Family L.L.C., and transferred ownership of the property to the Company. A copy of a Title Report dated February 22, 2005, indicates that the Gottlieb Family L.L.C., an Oregon Limited Liability Company, is the current owner of the subject property<sup>3</sup>. Based on a phone conversation with the claimant’s agent, the L.L.C. was dissolved on September 6, 2005, and property ownership reverted to individual owners, including Radah Ralston.

### **Conclusions**

The claimant, Radah Ralston, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C). Her current ownership dates to acquisition upon the dissolution of the Gottlieb Family L.L.C. on September 6, 2005. The 1996 conveyance of the property to the L.L.C. transferred Ms. Ralston’s prior ownership of the property, as well as family ownership of the property.

Although a corporation can be a “family member” of an owner as that term is defined by ORS 197.352(11)(C), an “owner” that is a corporate entity cannot claim an individual as a “family member” as defined in ORS 197.352(11)(A). Therefore, none of the individuals who transferred the subject property into the Gottlieb Family L.L.C. can be considered a “family member of the Gottlieb Family L.L.C. under ORS 197.352.

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<sup>3</sup> The Corporation Division of the Oregon Secretary of State’s Office indicates that the Gottlieb Family L.L.C. was registered with the Division as of October 2, 1996, is in inactive status, and that the company filed articles of dissolution on September 6, 2005.

## **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 lists state and county laws and regulations since 1962 that restrict the use of the property. The property is currently zoned Exclusive Farm Use (EFU) and the identified laws consist predominantly of ORS 215, Statewide Planning Goal 3 and OAR 660 division 33.

The claim is based, in part, on Washington County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Goal 3, in accord with OAR 660 division 33 and ORS 215 because the claimant's property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660 division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 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. Subsequent amendments to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Radah Ralston acquired the subject property on September 6, 2005. At that time the subject property was zoned EFU by Washington County and current provisions of Statewide Planning Goal 3, ORS 215 and OAR 660 division 3 applied to the property.<sup>4</sup>

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<sup>4</sup> The Gottlieb Family L.L.C. acquired the subject property on October 2, 1996. At that time the property was zoned for Agricultural Use by Washington County and the use of the property was limited by the provisions of Statewide Planning Goals and County zoning currently in effect. Statewide Planning Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses and also became effective on January 25, 1975.

## **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660 division 33 were enacted before Radah Ralston acquired ownership of the subject property in September 6, 2005. These laws do not allow division of the property, nor do they allow non-farm dwellings on agriculturally zoned property. Based on the record, the claimant has not established that current laws restrict the current owner'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 Radah Ralston acquired it on September 6, 2005.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 \$17, 919,140 as the reduction in the property's fair market value, due to current regulations. This estimate is based on an offer to purchase the property by a development corporation.

## **Conclusions**

As explained in Section V.(1) of this report, the current owner is Radah Ralston, who acquired her current interest in the property on September 6, 2005. Under ORS 197.352, Radah Ralston is not due compensation because no land use regulations adopted since she acquired the property on September 6, 2005, have the effect of reducing the fair market value of the property relative to uses permitted when she acquired the property. (See Section V.(2) of this report.)

### **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 refers to Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660 division 33 which Washington County has implemented through its EFU zone. These laws were in effect when the claimant acquired the property on September 6, 2005, and, therefore, are exempt under ORS 197.352(3)(E), which exempts laws enacted or adopted before the claimant acquired the property.

## **Conclusions**

The general statutory, goal and rule restrictions on dividing property for residential use and the use of farm land apply to the claimant's use of the property. Goal 3, ORS 215 and OAR 660, division 33, in effect when the claimant acquired the property on September 6, 2005, are exempt under ORS 197.352(3)(E) and will continue to apply.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 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.

## **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 a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

## **Conclusion**

Based on the findings and conclusions set forth in this report, the claimant is not entitled to relief under ORS 197.352. Department staff recommends that this claim be denied because neither the Commission nor the department have enforced laws that were enacted after the current owner acquired the property on September 6, 2005, that restrict the claimant's use of the subject private real property.

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

The department issued its draft staff report on this claim on October 14, 2005. 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. A comment on the draft staff report written by the claimant, dated October 22, 2005, was received by the department. The comment objects to the date of current ownership determined by the department. Comments received have been taken into account by the department in the issuance of this final report.