

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. M129668
(BALLOT MEASURE 37) OF)	
Vita Corrado, CLAIMANT)	

Claimant: Vita Corrado (the Claimant)

Property: Township 2N, Range 11E, Section 6, Tax lot 3400
Township 2N, Range 11E, Section 7, Tax lot 400
Hood River 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 Vita Corrado's division of the 12.38-acre subject property into eight 1.5-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 400 and the 6-acre portion of the subject property on October 23, 1956, and the 0.45-acre portion of tax lot 3400 on March 19, 1999.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on October 23, 1956, for tax lot 400 and the 6-acre portion of tax lot 3400; and on March 19, 1999, for the 0.45-acre portion of tax lot 3400. On March 19, 1999, the 0.45-acre portion of the subject

property was subject to applicable provisions of Goal 14, as implemented by Hood River County's acknowledged comprehensive plan, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property 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 subject property imposed by private parties.

4. Any use of the subject property 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).

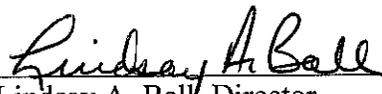
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 the subject property by the claimant.

This Order is entered by the Manager for the Measure 37 Services Division of DLCDC and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCDC AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director


Michael Morrissey, Manager
DLCDC, Measure 37 Division
Dated this 5th day of January, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Lindsay A. Ball, Director

DAS
Dated this 5th day of January, 2007.

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 197.352, 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)

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.”

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

January 5, 2007

STATE CLAIM NUMBER: M129668

NAME OF CLAIMANT: Vita Corrado

MAILING ADDRESS: 2360 Old Dalles Road
Hood River, Oregon 97031

PROPERTY IDENTIFICATION: Township 2N, Range 11E
Section 6: tax lot 3400
Section 7: tax lot 400
Hood River County

OTHER CONTACT INFORMATION: Steven B. Andersen
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: July 14, 2006

180-DAY DEADLINE: January 10, 2007

I. SUMMARY OF CLAIM

The claimant, Vita Corrado, seeks compensation in the amount of \$1,488,422 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 12.38-acre subject property into eight 1.5-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located at 2350 and 2360 Old Dalles Drive, near Hood River, in Hood River 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 valid. 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 Vita Corrado's division of the 12.38-acre subject property into eight 1.5-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide

¹ The subject property includes two tax lots. Tax lot 400 consists of 5.93 acres, and tax lot 3400 consists of 6.45 acres.

Planning Goals 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rule (OAR) 660-004-0040 and 660, division 6, enacted or adopted after she acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 400 and the 6-acre portion of tax lot 3400 on October 23, 1956; and when she acquired the 0.45-acre portion of tax lot 3400 on March 19, 1999. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 24, 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, two written comments were received in response to the 10-day notice.

The comments do 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 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 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 July 14, 2006, for processing under OAR 125, division 145. The claim identifies Hood River County's EFU, forest and rural residential zoning; ORS 92, 197 and 215; and OAR 660, division 33, 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, Vita Corrado, acquired tax lot 400 and the 6-acre portion of tax lot 3400 on October 23, 1956, as reflected by a warranty deed included with the claim. On May 6, 1991, the claimant transferred tax lot 400 and the 6-acre portion of tax lot 3400 to the Vita Corrado Trust with herself as trustee, as reflected by a quitclaim deed included with the claim.² The claimant acquired the 0.45-acre portion of tax lot 3400 on March 19, 1999, as reflected by a quitclaim deed included with the claim. The Hood River County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Vita Corrado, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 23, 1956, for tax lot 400 and the 6-acre portion of tax lot 3400; and as of March 19, 1999, for the 0.45-acre portion of tax lot 3400.

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 12.38-acre subject property into eight 1.5-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.³

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

³ The claimant summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimant’s desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant’s desired use of the property or do not restrict the claimant’s desired use of the property with the effect of reducing its fair market value. In particular, the claimant generally cited ORS 92 and 197 and OAR 660, division 33. However, the

The claim is based generally on the applicable provisions of state law that require forest and rural residential zoning and restrict uses on forest- and rural residential-zoned lands.

Tax lot 400 is zoned Forest (F-1) by Hood River County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Tax lot 3400 is zoned Rural Residential (RR5) by Hood River County. The RR5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Hood River County's RR5 zone was adopted on July 12, 1977, and requires a minimum of five acres for the creation of a new lot or parcel.

Goal 14 was 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,⁴ 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 Hood River County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

The claimant acquired tax lot 400 and the 6-acre portion of tax lot 3400 on October 23, 1956, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

claimant did not establish how those regulations apply to or restrict her desired use of the property. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of her desired use.

⁴ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

When the claimant acquired the 0.45-acre portion of tax lot 3400 on March 19, 1999, it was subject to Hood River County's acknowledged comprehensive plan. Residential development of the 0.45-acre portion of tax lot 3400 at that time would have been subject to the provisions of the county's comprehensive plan and land use ordinances, including the provisions of Goal 14 implemented by those regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, were all enacted or adopted after the claimant acquired the subject property in 1956 and 1999 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimant acquired the property. However, the claim does not establish whether or to what extent the claimant's desired level of development would have been permitted under the laws in effect in 1999 when the claimant acquired the 0.45-acre portion of the subject property.

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 use that the claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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 \$1,488,422 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 the claimant's land use consultant's comparison of properties in Hood River County.

Conclusions

As explained in Section V.(1) of this report, the claimant is Vita Corrado who acquired tax lot 400 and the 6-acre portion of tax lot 3400 on October 23, 1956, and the 0.45-acre portion of tax lot 3400 on March 19, 1999. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property 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 acquired the subject property 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 subject property is a reduction of \$1,488,422.

Without an appraisal or other documentation, 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 the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

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 applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, which Hood River County has implemented through its current F-1 and RR5 zones. With the exception of provisions of Goal 14 in effect when the claimant acquired the 0.45-acre portion of the subject property on March 19, 1999, all of these land use regulations were enacted or adopted after the claimant acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that, with the exception of Goal 14 in effect when the claimant acquired the 0.45-acre portion of tax lot 3400, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant acquired tax lot 400 and the 6-acre portion of tax lot 3400 property in 1956, and the 0.45-acre portion of tax lot 3400 in 1999. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 14 in effect when the claimant acquired the 0.45-acre portion of tax lot 3400 in 1999 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, specifically OAR 660-006-0029, specify standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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 use 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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the subject 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, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. 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 \$1,488,422. 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 the subject property, 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 the subject property was allowed under the standards in effect when she 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 the subject property 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 Vita Corrado to use the subject property for a use permitted at the time she acquired tax lot 400 and the 6-acre portion of the subject property on October 23, 1956, and the 0.45-acre portion of tax lot 3400 on March 19, 1999.

Conclusions

Based on the record, the department recommends that the claim be approved, 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 Vita Corrado's division of the 12.38-acre subject property into eight 1.5-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and

OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 400 and the 6-acre portion of the subject property on October 23, 1956, and the 0.45-acre portion of tax lot 3400 on March 19, 1999.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on October 23, 1956, for tax lot 400 and the 6-acre portion of tax lot 3400; and on March 19, 1999, for the 0.45-acre portion of tax lot 3400. On March 19, 1999, the 0.45-acre portion of the subject property was subject to applicable provisions of Goal 14, as implemented by Hood River County's acknowledged comprehensive plan, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property 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 subject property imposed by private parties.

4. Any use of the subject property 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 the subject property, 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 the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on December 13, 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.