



**DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**LAND USE REGULATION COMPENSATION CLAIM**

**PLANNING DIRECTOR'S STAFF REPORT and  
RECOMMENDATION**

**CASE FILE:** 11-LURCC-05

**DATE FILED:** 05/24/05

**CLAIMANT:** Nancypat Dundas; Dawn Pavitt, agent

**REQUEST:** The claimant seeks compensation for, or the modification or removal of, land use regulations that establish an 80-acre minimum parcel size for land divisions and restrict the establishment of additional single family dwellings on the subject property.

**A. REPORT OF FACTS:**

1. **Lot Size:** 78 acres
2. **Property Location:** The property is located 7.3 miles east of Siletz on Bell Lane off of Logsdan Road, and is further identified on Lincoln County Assessor's map #09-09-33 as tax lot 902.
3. **Zoning Designation:** A-C (Agricultural Conservation)
4. **Plan Designation:** Agricultural Land
5. **Surrounding Land Use:** Adjacent uses along Logsdan Road and Moonshine Park Road are comprised primarily of scattered rural residences, with some small scale agricultural activities.

6. **Topography & Vegetation:** The property consists of an alluvial terrace between Logsden Road and the Siletz River. Most of the property has been subject to surface mining activities in the past, and has been recontoured and seeded with pasture grasses.
7. **Existing Structures:** None
8. **Utilities:** The following utilities are proposed to serve the subject property:
  - a. Sewer: On-site sewage disposal
  - b. Water: On-site well
  - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:** A small portion of the property, immediately along the river bank, is within the regulated flood hazard area of the Siletz River.

## **B. EVALUATION OF THE REQUEST:**

### **1. Background:**

Dawn Pavitt acting as agent filed a Land Use Regulation Compensation Claim on behalf of property owner Dundas on May 24, 2005. This claim was filed with the Department of Planning and Development in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The Dundas property is located on the Siletz River at Logsden, north of Logsden Road. The current zoning of the property is A-C, Agricultural Conservation. The claimant asserts a diminution in the value of her property resulting from the restrictions of the A-C zone applied after the date of acquisition, more specifically, those restrictions that preclude the division of and the development of additional residences on the subject property. The claimant states that her desired remedy to the claim is the removal or modification of the A-C zone restrictions in a manner that will permit the division of the subject property into twelve parcels and permit the establishment of one single-family dwelling on each resulting parcel.

Planning staff met with claimant prior to the filing of her claim and discussed in detail the basic elements of the claim. Deed records submitted with the claim document the claimant's acquisition of the subject property in February of 1974. There were no land use regulations in effect in this area of Lincoln County in February of 1974.

On August 8, 2005, a public hearing was held on the subject claim for the purpose of receiving facts and evidence related to determining the validity of the claim. Notice of the hearing was provided in accordance with Board of Commissioners order #4-

05-120. The claimant's representative provided testimony in support of the claim. There was no testimony in opposition to the claim.

2. **Measure 37 Claim Requirements:** Measure 37 provides the following criteria for establishing eligibility for the supplemental right of compensation created by the measure:
  - a. **Ballot Measure 37 provides for payment of compensation or relief from specific laws for "owners" of property, which is defined in Measure 37 as the "present owner of the property, or any interest therein."**

The claimant, Nancypat Dundas, acquired her original interest in the property through a land sales contract entered into on February 28, 1974, and recorded at Book 47, pages 1489-1591, Lincoln County Deed Records. In 1997, the property was transferred to the Nancypat Dundas Trust, a revocable trust with Nancypat Dundas appointed as trustee. Records of the Lincoln County Assessor's office confirm that Nancypat Dundas as trustee remains the owner of the subject property.

- b. **A public entity enacts or enforces a land use regulation that restricts the use of private real property:**

The current A-C zone regulations (LCC 1.1373) at issue in the subject claim were enacted by Lincoln County in their present form by ordinance #347 in 1994. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the A-C zone. These regulations restrict the use of this private real property to only those uses expressly authorized in the A-C zone. Specifically, in the case of the subject property, these regulations prohibit the further division and the placement of any additional dwellings on the property.

- c. **The land use regulation has the effect of reducing the fair market value of the property:**

As noted, the requirements of the A-C zone currently in effect prohibit any division of the subject property; these restrictions also prohibit the placement of any additional dwellings on the property.

Claimant asserts that these restrictions reduce fair market value of the property. In support of this claim, claimant has submitted an appraisal prepared by a State of Oregon Certified Appraiser. The appraisal states that the value of the twelve proposed residential parcels is \$765,000. This value is based on the retail price

of each parcel individually. The appraisal provides no independent statement of current fair market value of the property; however it references the county's current appraised value for tax purposes of \$153,410. Because the estimated retail value of the proposed parcels does not take into account development and other costs associated with bringing the properties to market, the difference in value of the property as is, versus as subject to regulations at the time of acquisition by the present owner, is likely less than the stated \$611,590. However, based on the information and evidence provided, the department concludes that there has been at least some diminution in value as a result of the current land use regulations imposed after the current owner's date of acquisition.

- d. The land use regulation complained of is not a regulation; (a) restricting or prohibiting activities commonly and historically recognized as nuisances under common law; (b) restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; (c) required to comply with federal law; (d) restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or (e) enacted prior to the date of acquisition of the property by the owner or a family member of the owner.**

The regulations addressed by the subject claim are the restrictions on land divisions and dwellings imposed by the A-C zone. The A-C zone was enacted to comply with Statewide Planning Goal 3, which mandates the placement of defined agricultural lands into exclusive farm use zones meeting the requirements of ORS Chapter 215. The purpose of the A-C zone is to preserve agricultural lands for agricultural uses. It does not directly address common nuisances, health and safety, adult businesses or activities, nor does it have any federal nexus.

The claimant has provided documentation that the claimant's original interest in the property was acquired on February 28, 1974 (Book 47, pages 1489-1591). The A-C zone, in its present form, was enacted in 1994, so the regulation giving rise to the claim was enacted after the date of acquisition of the present owner.

- e. For claims arising from land use regulations enacted prior to December 3, 2004 (the effective date of Ballot Measure 37), written demand for compensation shall be made within two years of the effective date of the act.**

The land use regulations for which compensation is sought, the A-C zone restrictions on land divisions and dwellings, were enacted in their present form

in 1994, prior to the effective date of Ballot Measure 37. The subject claim was filed on May 24, 2005, within two years of the December 3, 2004 effective date of Ballot Measure 37.

**C. Recommended Findings and Conclusions:**

The director recommends for the board's consideration the following findings and conclusions:

Findings:

1. Nancypat Dundas filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on May 24, 2005.
2. The claim is based on an assertion of a reduction in fair market value of real property due to the enforcement of land use regulations by Lincoln County.
3. The subject property is identified as tax lot 902 on Lincoln County Assessor's map 09-09-33, which is taxed as real property by Lincoln County.
4. The A-C zone provisions (LCC 1.1373) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The A-C zoning restricts uses; specifically, the A-C zone standards prohibit the division of the subject property and the establishment of additional single-family dwellings.
6. The claimant has submitted evidence of a diminution in value caused by the A-C zone restrictions in the form of an appraisal prepared by a State of Oregon Certified Appraiser. The appraisal concludes that the land use regulations that prohibit the division of and the establishment of additional dwellings on the subject property have the effect of reducing the fair market value of the subject property by \$611,590.
7. According to the Lincoln County deed records, the claimant, Nancypat Dundas, first acquired an interest in the subject property on February 28, 1974, and has maintained an ownership interest continuously since that time.
8. The A-C zone regulations currently in effect governing the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimant's date of

acquisition.

9. The A-C zone restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in Subsection (3) of Ballot Measure 37.
10. The subject claim was filed on May 24, 2005, which is less than two years from the December 3, 2004 effective date of Ballot Measure 37.

**Conclusions:**

Based on the above findings of fact, the Board reaches the following conclusions:

1. The subject claim for compensation for reduction in value of private real property from the enforcement of land use regulations was timely filed on behalf of the owner, Nancypat Dundas, pursuant to Subsection (5) of Ballot Measure 37.
2. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions and dwellings imposed by LCC 1.1373 (A-C zone), are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37; they restrict the use of the subject private real property; and they have the effect of reducing the fair market value of the property.
3. The owner of the property, Nancypat Dundas, is therefore entitled to the payment of just compensation equal to the reduction in the fair market value of the subject property caused by the enforcement of the A-C zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of the A-C zone restrictions, may modify, remove or not apply these restrictions in order to permit the owner to use the property for a use permitted at the time of her acquisition.

**D. Recommended Decision**

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires either the payment of just compensation, or the modification, removal or non-application of the offending land use regulations. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of the subject land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that the Board direct that the minimum parcel size requirements and the restrictions on dwellings in the A-C zone not

be applied to the subject property. This would allow the claimant to divide the subject property into twelve additional parcels as proposed and to establish one single-family dwelling on each of the resultant parcels. As there were no zoning regulations in place at the time of the claimant's acquisition of the subject property in 1974, the allowance to partition the subject property and establish dwellings on the resultant parcels would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the time of the owner's acquisition. This recommendation is based on the following considerations:

1. No funds are currently budgeted in the county general fund for the payment of monetary compensation.
2. Not applying the dwelling restrictions of the A-C zone in the manner requested would permit the claimant owner to create twelve additional rural home sites on a parcel of approximately 78 acres. The claimant's stated intent to create up to twelve additional parcels ranging from roughly four to nine acres in size would be generally consistent with the prevailing land use pattern in the area.
3. Not applying the land division and dwelling restrictions of the A-C zone in order to permit the establishment of additional rural home sites is the claimant's desired resolution.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the minimum parcel size requirements and restrictions on dwellings provided for in LCC 1.1373 in order to permit the creation of up to twelve additional land parcels and the placement of one single family residence on each resultant parcel. All other provisions of the Lincoln county code would continue to apply.
- Establishment of additional land parcels and dwellings on the subject property would be subject to all applicable public health and safety regulations, including but not limited to land division procedures, building codes, on-site sewage disposal rules and requirements, flood hazard area regulations, and county road approach permit requirements.

If the Board concurs with the above recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation. This order will incorporate the above-recited findings of fact and conclusions, and the appropriate directives to not apply the minimum parcel size requirements and dwelling restrictions of the A-C zone on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director

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