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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Linda G. Gibson and Joy D. Alvord, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M118727

Claimants: Linda G. Gibson and Joy D. Alvord (the Claimants)

Property: Township 35S, Range 13E, Section 29, Tax lot R-3513-02900-01000, Klamath County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants 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 Linda Gibson and Joy Alvord's development of a private campground on the 81.12-acre parcel: applicable provisions of OAR 660-006-0025(4)(e)(A), adopted after April 3, 1995. This land use regulation will not apply to the claimants only to the extent necessary to allow them to use the property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 3, 1995.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on April 3, 1995. On that date, the property was subject to compliance with Klamath County's acknowledged plan and zoning ordinance, and the provisions of Goal 4, ORS 215 and OAR 660, division 6 (May 1994 edition) then in effect.

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

4. Any use of the property by the claimants 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 claimants to use the property, it may be necessary for them 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 claimants 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 property by the claimants.

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 16th day of May, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 16th day of May, 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 197.352[1], 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

May 16, 2006

STATE CLAIM NUMBER:	M118727
NAMES OF CLAIMANTS:	Linda G. Gibson and Joy D. Alvord
MAILING ADDRESS:	PO Box 354 Beatty, Oregon 97621
PROPERTY IDENTIFICATION:	Township 35S, Range 13E, Section 29 Tax lot R-3513-02900-01000 Klamath County
OTHER CONTACT INFORMATION:	Michael L. Spencer 419 Main Street Klamath Falls, Oregon 97601
OTHER INTEREST IN PROPERTY:	Keith Gibson
DATE RECEIVED BY DAS:	July 7, 2005
180-DAY DEADLINE:	May 22, 2006[1]

I. SUMMARY OF CLAIM

The claimants, Linda Gibson and Joy Alvord, seek compensation in the amount of $250,000 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 claimants desire compensation or the right to develop a private campground on their 81.12-acre parcel. The subject property is located at 48850 Sycan Road, near Beatty, in Klamath 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 law enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to claimants Linda Gibson and Joy Alvord's development of a private campground on the subject property: Oregon Administrative Rules (OAR) 660-006-0025(4)(e)(A) adopted after April 3, 1995. This land use regulation will not apply to the claimants only to the extent

[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. Srvcs.*, 340 Or 117 (2006).

necessary to allow them to use the property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 3, 1995. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 26, 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, one written comment, evidence or information was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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 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 July 7, 2005, for processing under OAR 125, division 145. The claim identifies amendments to OAR 660-06-0025(e)(A)[2] as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

[2] The department believes that the correct citation is OAR 660-006-0025(4)(e)(A).

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 the statute. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

Linda Dickson and Joy Alvord acquired the subject property on April 3, 1995, as reflected by a warranty deed included with the claim. A 2004-05 tax statement lists only the name of Linda Dickson and establishes her current ownership (as Linda Gibson) of the subject property. A bargain and sale deed also included with the claim, dated December 15, 2004, by which Linda Dickson conveyed her interest in the property to herself, as Linda Gibson; her husband, Keith Gibson; and Joy Alvord, establishes Joy Alvord's current ownership.

Conclusions

The claimants, Linda Gibson and Joy Alvord, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of April 3, 1995.

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 claimants' 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 claimants or a family member acquired the property.

Findings of Fact

The claimants desire to develop a private campground on subject property and indicate that revisions to forest land rules OAR 660-006-0025(4)(e)(A), requiring that such a campground must be contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground, prevent them from that desired use.

The claim is based generally on Klamath County's current forest zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned forest as required by Statewide Planning Goal 4 (Forest Lands) in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and required 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 660-006-0025 was amended on February 5, 1990, to implement those statutes (see citations to rule history under OAR 660-015-0000(4)).

OAR 660-006-0025(4)(e), relating to private parks and campgrounds, became effective on February 5, 1990, and defined the types of uses allowed in private campgrounds[3] and conditionally allowed the development of private campgrounds subject to the review standards of OAR 660-06-025(5). Additional requirements of OAR 660-006-0025(4)(e)(A), relating to where campgrounds could be conditionally approved, were adopted on June 1, 1998, and again modified on April 24, 2000, and May 22, 2002.

The claimants acquired the subject property on April 3, 1995. At the time, the property was zoned Forest by Klamath County, and subject to Klamath County's acknowledged Comprehensive Plan and Forest zone.[4] When the claimants acquired the subject property, development of campgrounds would have been governed by the Klamath County Forest zone and state regulations then in effect, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6 (May 1994 edition).

Conclusions

The current requirement that private campgrounds must be contiguous to lands with a park or other outdoor natural amenity established by amendments to OAR 660-006-0025(4) were adopted after the claimants, Linda Gibson and Joy Alvord, acquired the subject property in 1995 and do not allow the claimants' desired development. However, the claim does not establish whether or to what extent the claimants' desired use of the property complies with the standards that conditionally allowed the development of a private campground in Klamath County's forest zone and the standards under Goal 4 and OAR 660-006-0025 in effect when the claimants acquired the property on April 3, 1995.

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 use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' 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 property until there is a specific proposal for that use. When the claimants seek 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 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."

---

[3] The 1990 rule provided, "Campgrounds authorized by OAR 660-06-0025 shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations."

[4] Klamath County's Comprehensive Plan and Forest zone were acknowledged by the Commission on June 1, 1984.

Findings of Fact

The claim includes an estimate of $250,000 as the reduction in the property's fair market value due to current regulations. This amount is based on the claimants' estimate of the reduction.

Conclusions

As explained in Section V.(1) of this report, the claimants, Linda Gibson and Joy Alvord, acquired the property on April 3, 1995. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimants acquired the subject property restrict the desired development of the property. The claimants estimate the reduction in value due to the restrictions to be $250,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not 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

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 the statute.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Klamath County has implemented through its current Forest zone. With the exception of amendments to OAR 660, division 6, adopted after April 3, 1995, these land use regulations were in effect when the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the 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 provisions of OAR 660, division 6, are not exempt under ORS 197.352(3)(E) to the extent they were adopted after the claimants acquired the property on April 3, 1995. Provisions of Goal 4, ORS 215 and OAR 660, division 6, in effect when the claimants acquired the property on April 3, 1995, are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property.

Other laws in effect when the claimants acquired the property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the property. In

addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and for surrounding forest lands. 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 claimants' 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 property until there is a specific proposal for that use. When the claimants seek 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 property based on the uses that the claimants have 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 claimants should be aware that the less information they have 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 their use of 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 current 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 claimants' ability to develop a private campground on the subject property. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by $250,000. However, because the claim does not provide an appraisal or other specific documentation establishing how the specified restrictions reduce the fair market value of the property, and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the 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 Linda Gibson and Joy Alvord to use the subject property for a use permitted at the time they acquired the property on April 3, 1995.

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 Linda Gibson and Joy Alvord's development of a private campground on the 81.12-acre parcel: applicable provisions of OAR 660-006-0025(4)(e)(A), adopted after April 3, 1995. This land use regulation will not apply to the claimants only to the extent necessary to allow them to use the property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 3, 1995.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on April 3, 1995. On that date, the property was subject to compliance with Klamath County's acknowledged plan and zoning ordinance, and the provisions of Goal 4, ORS 215 and OAR 660, division 6 (May 1994 edition) then in effect.

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

4. Any use of the property by the claimants 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 claimants to use the property, it may be necessary for them 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 claimants 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 1, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.