

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 A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M124683
(BALLOT MEASURE 37) OF)	
Robert D. Puckett, CLAIMANT)	

Claimant: Robert D. Puckett (the Claimant)

Property: Township 39S, Range 8E, Section 32C, Tax lot 1900, Klamath 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 Robert Puckett's division of tax lot 1900 and Douglas Puckett's division of tax lots 100 (section 6), 100 (section 31C), 800 and 2900 into 11- to 75-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Robert Puckett only to the extent necessary to allow him to use tax lot 1900 for the use described in this report, and only to the extent that use was permitted when he acquired this tax lot in 1974, and to Douglas Puckett to use tax lots 100 (section 6), 100 (section 31C), 800 and 2900 for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots in 1978. The department acknowledges that the relief to which Robert Puckett is entitled under ORS 197.352 may not allow him to use tax lot 1900 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Robert Puckett acquired tax lot 1900 on October 25, 1974, and when Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on May 1, 1978. On October 25, 1974,

tax lot 1900 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On May 1, 1978, tax lots 100 (section 6), 100 (section 31C), 800 and 2900 were subject to the applicable provisions of Goal 3 and ORS 215 then in effect.

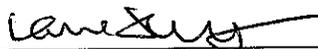
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants 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 subject property imposed by private parties.

4. Any use of the subject 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 subject 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 subject 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 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.

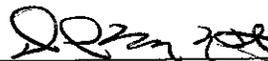
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 20th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 20th day of September, 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, 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.”

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 B
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M124683
(BALLOT MEASURE 37) OF)	
Douglas J. Puckett, CLAIMANT)	

Claimant: Douglas J. Puckett (the Claimant)

Property: Township 39S, Range 8E, Section 31C, Tax lot 100

Township 40S, Range 8E, Section 6, Tax lot 100

Township 39S, Range 8E, Section 31D, Tax lot 2900

Township 40S, Range 8E, Section 5, Tax lot 800, Klamath 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 Robert Puckett's division of tax lot 1900 and Douglas Puckett's division of tax lots 100 (section 6), 100 (section 31C), 800 and 2900 into 11- to 75-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Robert Puckett only to the extent necessary to allow him to use tax lot 1900 for the use described in this report, and only to the extent that use was permitted when he acquired this tax lot in 1974, and to Douglas Puckett to use tax lots 100 (section 6), 100 (section 31C), 800 and 2900 for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots in 1978. The department acknowledges that the relief to which Robert Puckett is entitled under ORS 197.352 may not allow him to use tax lot 1900 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Robert Puckett acquired tax lot 1900 on October 25, 1974, and when Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on May 1, 1978. On October 25, 1974, tax lot 1900 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On May 1, 1978, tax lots 100 (section 6), 100 (section 31C), 800 and 2900 were subject to the applicable provisions of Goal 3 and ORS 215 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 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 subject property imposed by private parties.

4. Any use of the subject 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).

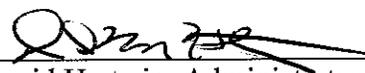
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 subject 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 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 20th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of September, 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, 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.”

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 A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M124683
(BALLOT MEASURE 37) OF)
Robert D. Puckett, CLAIMANT)

Claimant: Robert D. Puckett (the Claimant)

Property: Township 39S, Range 8E, Section 31C, Tax lot 100
Township 39S, Range 8E, Section 31D, Tax lot 2900
Township 40S, Range 8E, Section 5, Tax lot 800
Township 40S, Range 8E, Section 6, Tax lot 100
Klamath 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 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 September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of September, 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 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)

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 B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M124683
(BALLOT MEASURE 37) OF)
Douglas J. Puckett, CLAIMANT)

Claimant: Douglas J. Puckett (the Claimant)

Property: Township 39S, Range 8E, Section 32C, Tax lot 1900, Klamath 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.

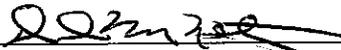
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under 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 September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of September, 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 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)

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 C
COMPENSATION UNDER ORS 197.352) CLAIM NO. M124683
(BALLOT MEASURE 37) OF)
Tyann C. Puckett, CLAIMANT)

Claimant: Tyann C. Puckett (the Claimant)

Property: Township 39S, Range 8E, Section 31C, Tax lot 100
Township 39S, Range 8E, Section 31D, Tax lot 2900
Township 39S, Range 8E, Section 32C, Tax lot 1900
Township 40S, Range 8E, Section 5, Tax lot 800
Township 40S, Range 8E, Section 6, Tax lot 100
Klamath 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

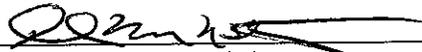
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 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 September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of September, 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 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)

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

September 20, 2006

STATE CLAIM NUMBER: M124683

NAMES OF CLAIMANTS: Robert D. Puckett
Douglas J. Puckett
Tyann C. Puckett

MAILING ADDRESS: PO Box 300
Keno, Oregon 97627

PROPERTY IDENTIFICATION: Township 39S, Range 8E, Section 31C
Tax lot 100

Township 39S, Range 8E, Section 31D
Tax lot 2900

Township 39S, Range 8E, Section 32C
Tax lot 1900

Township 40S, Range 8E, Section 5
Tax lot 800

Township 40S, Range 8E, Section 6
Tax lot 100

Klamath County

DATE RECEIVED BY DAS: March 30, 2006

180-DAY DEADLINE: September 26, 2006

I. SUMMARY OF CLAIM

The claimants, Robert, Douglas and Tyann Puckett, seek compensation in the amount of \$900,000 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 divide the 172.41-acre subject property into parcels of approximately 11 to 75 acres.¹ The

¹ The subject property includes five tax lots. Tax lot 100 (section 6) consists of 93.13 acres; tax lot 100 (section 31C) consists of 5.90 acres; tax lot 800 consists of 19.50 acres; tax lot 1900 consists of 1.53 acres; and tax lot 2900 consists of 52.32 acres.

subject property is located at the geographic coordinates listed above, near Keno, 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 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 Robert Puckett's division of tax lot 1900 or to Douglas Puckett's division of tax lots 100 (section 6), 100 (section 31C), 800 and 2900 into 11- to 75-acre parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Robert Puckett only to the extent necessary to allow him to use tax lot 1900 for the use described in this report, and only to the extent that use was permitted when he acquired this tax lot in 1974, and to Douglas Puckett to use tax lots 100 (section 6), 100 (section 31C), 800 and 2900 for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots in 1978. The department acknowledges that the relief to which Robert Puckett is entitled under ORS 197.352 may not allow him to use tax lot 1900 in the manner set forth in the claim.

The department has further determined that Robert Puckett's claim for tax lots 100 (section 6), 100 (section 31C), 800 and 2900 is not valid because he is not an owner of these tax lots, Douglas Puckett's claim for tax lot 1900 is not valid because he is not an owner of this tax lot, and Tyann Puckett's claim is not valid because she is not an owner of any of the tax lots that composes the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 13, 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 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 March 30, 2006, for processing under OAR 125, division 145. The claim identifies Senate Bill 100, ORS 215, "predecessor statutes" and "all laws, regulations, rules and goals enacted or enforced since July 9, 1971 which restrict the use of the property," 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

Robert Puckett first acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on July 9, 1971, as reflected by a deed included with the claim. Robert Puckett subsequently conveyed all of his interest in tax lots 100 (section 6), 100 (section 31C), 800 and 2900 to Douglas Puckett on May 1, 1978, as reflected by a contract of sale included with the claim. Robert Puckett acquired tax lot 1900 on October 25, 1974, as reflected by a warranty deed included with the claim. The Klamath County Assessor's Office confirms Robert Puckett's current ownership of tax lot 1900 and Douglas Puckett's current ownership of tax lots 100 (section 6), 100 (section 31C), 800 and 2900.

The claimants have provided no evidence or documentation to establish Tyann Puckett's ownership of the subject property, and the county assessor's office does not indicate that she has any ownership interest in the subject property.

Conclusions

Robert Puckett is an "owner" of tax lot 1900, as that term is defined by ORS 197.352(11)(C), as of October 25, 1974. Douglas Puckett is an "owner" of tax lots 100 (section 6), 100 (section 31C), 800 and 2900 as of May 1, 1978. Robert Puckett is a "family member" of Douglas Puckett, as that term is defined by ORS 197.352(11)(A), and acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on July 9, 1971. Robert Puckett is not an "owner" of tax lots 100 (section 6), 100 (section 31C), 800 and 2900. Douglas Puckett is not an "owner" of tax lot 1900. Tyann Puckett is not an "owner" of any of the subject property.

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 claim indicates that the claimants desire to divide the 172.41-acre subject property into parcels ranging in size from 11 to 75 acres, and that the use is not allowed under current land use regulations.²

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Klamath County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.³ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

² The claimants summarily cited numerous state land use laws as applicable to this claim but did not establish how the laws either apply to the claimants' 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 claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

³ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class (NRCS) I-VI soils.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses allowed in an EFU zone.

The Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 in 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the property in 1971.

Robert Puckett acquired tax lot 1900 on October 25, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, it was zoned by Klamath County as AF-20, which allowed a 20-acre minimum lot size for new lots or parcels.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). Robert Puckett's desired use includes subdivision of his land. If Robert Puckett had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.⁴

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

⁴ The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

One of the interim goals was to “conserve prime farm lands for the production of crops.” Soil types are a determinant of prime farm land. One hundred percent of the soils on 1.53-acre tax lot 1900 are rated as “farm land of statewide importance” by the Natural Resource Conservation Service.⁵ It is unclear whether division of tax lot 1900 could satisfy the interim goal requirement to “conserve prime farm lands for the production of crops.”

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Robert Puckett acquired tax lot 1900. These laws restrict the use of the subject property relative to the uses allowed when the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Robert Puckett acquired tax lot 1900. However, the claim does not establish whether or to what extent Robert Puckett’s desired use of tax lot 1900 could comply with the interim planning goals in effect when he acquired tax lot 1900 on October 25, 1974.

As explained in Section V.(1), Douglas Puckett is not an “owner” of tax lot 1900, Robert Puckett is not an “owner” of tax lots 100 (section 6), 100 (section 31C), 800 and 2900, and Tyann Puckett is not an “owner” of any of the subject property. Therefore, no laws enforced by the Commission or the department restrict the claimants’ use of those portions of the property they do not own in a manner that reduces the fair market value of the 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 claimants have identified. There may be other laws that currently apply to the claimants’ use of the subject 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 the subject 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 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 \$900,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the subject property. This amount is based on the claimants’ comparison of other similar property sales in the area.

⁵ NRCS soil survey for Klamath County.

Conclusions

As explained in Section V.(1) of this report, the claimants are Douglas Puckett whose family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 in 1971, Robert Puckett who acquired tax lot 1900 in 1974 and Tyann Puckett who is not an owner of any of the subject property. Because claimant Tyann Puckett is not an owner, she is not entitled to relief under ORS 197.352. Claimants Douglas and Robert Puckett are due compensation under ORS 197.352 for land use regulations that restrict the use of the 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 Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Robert Puckett acquired tax lot 1900 restrict the claimants' desired use of the subject property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$900,000.

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 relative to the uses permitted when the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Robert Puckett acquired tax lot 1900, including the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Klamath County has implemented through its current EFU-CG zone. With the exception of applicable provisions of ORS 215 in effect when Robert Puckett acquired tax lot 1900, these land use regulations were enacted or adopted after the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Robert Puckett acquired tax lot 1900.

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. With the exception of applicable provisions of ORS 215 in effect when Robert Puckett acquired tax lot 1900, it appears that none of general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Robert Puckett acquired tax lot 1900. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900, and when Robert Puckett acquired tax lot 1900 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.

As explained in Section V.(1) of this report, Tyann Puckett has not established that she is an "owner" of the subject property. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Tyann Puckett's 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 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 claimants' 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 \$900,000. 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 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 claimants' desired use of the subject property was allowed under the standards in effect when the Puckett family acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900, and when Robert Puckett acquired tax lot 1900. 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 Robert and Douglas Puckett to use the subject property for a use permitted at the time Robert Puckett acquired tax lot 1900 on October 25, 1974, and Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on May 1, 1978.

Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 after the adoption of the statewide planning goals, but before the Commission acknowledged Klamath County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the Douglas Puckett acquired tax lots 100 (section 6), 100 (section

31C), 800 and 2900 on May 1, 1978, the statewide planning goals, and Goal 3 in particular, applied directly to Douglas Puckett's property when he acquired it.⁶

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, Douglas Puckett's opportunity to divide tax lots 100 (section 6), 100 (section 31C), 800 and 2900 when he acquired it in 1978 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

No information has been presented in the claim to establish that the claimants' desired division of the subject property into 11- to 75-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition).

In addition to the applicable provisions of Goal 3 and ORS 215 in effect when Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on May 1, 1978, and applicable provisions of ORS 215 in effect when Robert Puckett acquired tax lot 1900 on October 25, 1974, there may be other laws that 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 the subject 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, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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 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 their claim, the

⁶ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

Based on the record before the department, claimant Douglas Puckett has not established that he is entitled to relief for tax lot 1900, claimant Robert Puckett has not established that he is entitled to relief for tax lots 100 (section 6), 100 (section 31C), 800 and 2900, and claimant Tyann Puckett has not established that she is entitled to relief for any the subject property under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that Douglas Puckett's claim for tax lot 1900, Robert Puckett's claim for tax lots 100 (section 6), 100 (section 31C), 800 and 2900 and Tyann Puckett's claim for the subject property be denied.

Based on the record, the department further recommends that Robert Puckett's claim for tax lot 1900 and Douglas Puckett's claim for tax lots 100 (section 6), 100 (section 31C), 800 and 2900 otherwise 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 Robert Puckett's division of tax lot 1900 and Douglas Puckett's division of tax lots 100 (section 6), 100 (section 31C), 800 and 2900 into 11- to 75-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Robert Puckett only to the extent necessary to allow him to use tax lot 1900 for the use described in this report, and only to the extent that use was permitted when he acquired this tax lot in 1974, and to Douglas Puckett to use tax lots 100 (section 6), 100 (section 31C), 800 and 2900 for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots in 1978. The department acknowledges that the relief to which Robert Puckett is entitled under ORS 197.352 may not allow him to use tax lot 1900 in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Robert Puckett acquired tax lot 1900 on October 25, 1974, and when Douglas Puckett acquired tax lots 100 (section 6), 100 (section 31C), 800 and 2900 on May 1, 1978. On October 25, 1974, tax lot 1900 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On May 1, 1978, tax lots 100 (section 6), 100 (section 31C), 800 and 2900 were subject to the applicable provisions of Goal 3 and ORS 215 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 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 subject property imposed by private parties.

4. Any use of the subject 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 subject 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 subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 5, 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.