BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR	) FINAL ORDER
COMPENSATION UNDER ORS 197.352	) CLAIM NO. M129655, M129656
(BALLOT MEASURE 37) OF	) and M129657
Grants Pass School District No. 7, CLAIMANT	)

Claimant: Grants Pass School District No. 7 (the Claimant)

Property: Township 37S, Range 6W, Section 2, Tax lot 100

Township 37S, Range 6W, Section 3, Tax lot 2100

Township 37S, Range 6W, Section 10, Tax lot 100

Josephine 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 8th day of January, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of January, 2007.

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

January 8, 2007

STATE CLAIM NUMBERS:	M129655, M129656 and M129657
NAME OF CLAIMANT:	Grants Pass School District No. 7
MAILING ADDRESS:	725 NE Dean Drive Grants Pass, Oregon 97526
PROPERTY IDENTIFICATION:	Township 37S, Range 6W Section 2: tax lot 100 Section 3: tax lot 2100 Section 10: tax lot 100 Josephine County
OTHER CONTACT INFORMATION:	Willard L. Ransom PO Box 398 Grants Pass, Oregon 97528
DATE RECEIVED BY DAS:	July 13, 2006
180-DAY DEADLINE:	January 9, 2007

I. SUMMARY OF CLAIM

In the three consolidated claims, the claimant, Grants Pass School district, seeks compensation in the amount of $1.2 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to "develop the subject property into an unspecified number of lots." The subject property is located near Stringer Gap Road and Elk Lane, at the geographic coordinates listed above, in Josephine County. (See claims.)

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 claims are not valid because the subject property is not "private real property" for purposes of ORS 197.352(1). (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 24, 2006, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

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

The claims were submitted to DAS on July 13, 2006, for processing under OAR 125, division 145. The claims identify Statewide Planning Goal 4 (Forest Lands) and rural residential zoning as the basis for the claims. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claims have 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 are therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claimant, Grants Pass School District, acquired the subject property on November 12, 1942, as reflected by deeds included with the claims. The Josephine County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Grants Pass School District, a public school district, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of November 12, 1942.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

The claims indicate that the claimant desires to develop school district-owned property into a "maximum number of lots possible" and that Goal 4 and rural residential zoning prohibit the desired use.

ORS 197.352(1) states:

> If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 29004, that restricts the use of ***private real property*** or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation. (Emphasis added.)

The subject property, owned by the claimant, Grants Pass School District, is not "private real property." Rather, the claimant, which owns the subject property, is a public school district, and the subject property is publicly owned property.

The claimant has not established that land use regulations restrict the use of ***private real property***, and therefore, has not established a basis for compensation under ORS 197.352.[1]

[1] In comments received from the Grants Pass School District in response to the draft staff report on this claim, the district asserts that even though the subject properties are publicly owned, they are nevertheless "private real property" within the meaning of ORS 197.352 because they were acquired for and are used solely for investment purposes by the district. The District provides no legal support for its argument that property owned by a public entity for investment purposes is "private real property" for purposes of ORS 197.732. The ordinary meaning of "private" in this context is "belonging to or concerning an individual person, company, or interest <our ~ goods> <~ property> <a ~ house> <~ means>. . . ." Webster's 3rd International Dictionary, at 1805. The department finds and concludes that the district has failed to establish that the subject property is "private real property" under ORS 197.352.

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."

The claims include an estimate of $1.2 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. However, ORS 197.352(1) allows a claim for compensation only for the reduction in value for land use regulations that restrict the use of ***private real property***. Because the subject property is not private real property, the claimant, Grants Pass School District, has not established a basis for compensation under ORS 197.352(1).

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.

The claimant has not established a valid claim for compensation under ORS 197.352(1) because the subject property is not private real property. Therefore, the issue of whether any regulations that restrict the claimant's use of the property are exempt under ORS 197.352(3) is not relevant to this claim.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Land Use Conservation and Development Commission (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.

Based on the record and the foregoing findings and conclusions, the claimant has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the subject property is not private real property. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on December 21, 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.