Oregon
Theodore R. Kulongoski, Governor

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March 26, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Numbers M130168

Claimants: David Bud and Janet Combe; Clyde and Marquette Combe

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 David Bud Combe, Janet C. Combe, Clyde C. Combe and Marquette Combe, CLAIMANTS	)))))	FINAL ORDER CLAIM NO. M130168

Claimants: David Bud Combe, Janet C. Combe, Clyde C. Combe and Marquette Combe (the Claimants)

Property: Township 37S, Range 6W, Section 13, Tax lots 1500, 2100, 2200 and 2301 Josephine 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 denied for David Bud Combe and Janet C. Combe for tax lot 2301 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for Clyde C. Combe and Marquette Combe for the subject property and to David Bud Combe and Janet C. Combe for tax lots 1500, 2100 and 2200 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 the claimants' division of tax lots 1500, 2100 and 2200 and Clyde and Marquette Combe's division of tax lot 2301 into one-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 on August 17, 1959, when Janet Combe acquired these tax lots on June 9, 2004, when Marquette Combe

acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301 on July 30, 2004. The department acknowledges that the relief to which Janet and Marquette Combe are entitled under ORS 197.352 will not allow them to use tax lots 1500, 2100 and 2200 and the relief to which Clyde and Marquette are entitled under ORS 197.352 will not allow them to use tax lot 2301 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 David and Clyde Combe acquired 1500, 2100 and 2200 on August 17, 1959, when Janet Combe acquired these tax lots on June 9, 2004, when Marquette Combe acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301 on July 30, 2004. On June 9, 25 and 30, 2004, the subject property was subject to applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, currently 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 Deputy 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

Cora R. Parker, Deputy Director
DLCD
Dated this 26th day of March, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 26th day of March, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

March 26, 2007

STATE CLAIM NUMBER:	M130168
NAMES OF CLAIMANTS:	David Bud Combe Janet C. Combe Clyde C. Combe Marquette Combe
MAILING ADDRESSES:	David Bud and Janet Combe 6211 New Hope Road Grants Pass, Oregon 97527 Clyde and Marquette Combe 6285 New Hope Road Grants Pass, Oregon 97527
PROPERTY IDENTIFICATION:	Township 37S, Range 6W, Section 13 Tax lots 1500, 2100, 2200 and 2301 Josephine County
OTHER CONTACT INFORMATION:	Ben Freudenberg, Attorney 600 NW Fifth Street Grants Pass, Oregon 97526
DATE RECEIVED BY DAS:	October 2, 2006
180-DAY DEADLINE:	March 31, 2007

I. SUMMARY OF CLAIM

The claimants, David, Janet, Clyde and Marquette Combe, seek compensation in the amount of $21,770,790 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 166.25-acre subject property into 166 one-acre parcels and to develop a dwelling on each parcel.[1] The subject property is located at 6211 and 6285 New Hope Road, near Grants Pass, in Josephine County. (See claim.)

[1] The subject property includes four tax lots. Tax lot 1500 consists of 20 acres; tax lot 2100 consists of 0.67 acre; tax lot 2200 consists of 145.07 acres; and tax lot 2301 consists of 0.51 acre.

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 the claimants' division of tax lots 1500, 2100 and 2200 and to Clyde and Marquette Combe's division of tax lot 2301 into one-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660-004-0040 and 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 on August 17, 1959, when Janet Combe acquired these tax lots on June 9, 2004, when Marquette Combe acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301 on July 30, 2004. The department acknowledges that the relief to which Janet and Marquette Combe are entitled under ORS 197.352 will not allow them to use tax lots 1500, 2100 and 2200 and the relief to which Clyde and Marquette are entitled under ORS 197.352 will not allow them to use tax lot 2301 in the manner set forth in the claim.

The department has further determined that the claim is not valid as to David and Janet Combe because they are not owners of tax lot 2301. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 27, 2007, 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, five written comments were received in response to the 10-day notice.

Three of 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.

Two of the comments are relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property.[2] The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

[2] The comments note that the claimants have a contract with the City of Grants Pass to dump the city's sewage sludge on the subject property. The comments also note a portion of the subject property is located within wetlands and flood plains. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the property may be environmentally contaminated under

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 October 2, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS chapters 197 and 215, OAR 660, division 1, Josephine County's development code and "all other statutes, administrative rules and ordinances which prohibit or restrict residential uses" 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

Claimants David and Clyde Combe acquired tax lots 1500, 2100 and 2200 on August 17, 1959, as reflected by a deed included with the claim. Claimants David and Janet Combe originally acquired tax lot 2301 on April 8, 1968, as reflected by a warranty deed included with the claim.

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state law and the county's flood plain regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B).

On June 9, 2004, David Combe transferred his interest in tax lots 1500, 2100, 2200 and 2301 to the Combe Family Trust, and Janet Combe transferred her interest in tax lot 2301 to the Combe Family Trust, as reflected by warranty deeds included with the claim. The Combe Family Trust is a revocable trust, with David and Janet Combe as trustees. On June 25, 2004, Clyde Combe transferred his interest in tax lots 1500, 2100 and 2200 to a different revocable trust, the Combe Living Trust, with Clyde and Marquette Combe as trustees, as reflected by a warranty deed included with the claim.[3]

On July 30, 2004, David and Janet Combe, as trustees of the Combe Family Trust, conveyed their interest in tax lot 2301 to Clyde and Marquette Combe, as trustees of the Combe Living Trust, as reflected by a warranty deed included with the claim.[4]

The Josephine County Assessor's Office confirms the claimants' current ownership of tax lots 1500, 2100 and 2200. Although the County Assessor's Office indicates that claimants David and Janet Combe own tax lot 2301, the July 30, 2004, deed submitted with the claim shows that Clyde and Marquette Combe are the current owners of tax lot 2301.

Conclusions

Claimants David and Janet Combe are "owners" of tax lots 1500, 2100 and 2200 as that term is defined by ORS 197.352(11)(C), as of August 17, 1959, for David Combe and as of June 9, 2004, for Janet Combe. Claimants David and Janet Combe are not "owners" of tax lot 2301 as that term is defined in ORS 197.352(11)(C). Claimants Clyde and Marquette Combe are "owners" of tax lots 1500, 2100, 2200 and 2301 as that term is defined by ORS 197.352(11)(C). Clyde Combe has been an owner of tax lots 1500, 2100 and 2200 since August 17, 1959, and an owner of tax lot 2301 since July 30, 2004. Marquette Combe has been an owner of tax lots 1500, 2100 and 2200 since June 25, 2004, and an owner of tax lot 2301 since July 30, 2004. David Combe is a "family member" of Janet Combe and Clyde Combe is a "family member" of Marquette Combe for tax lots 1500, 2100 and 2200, and David and Janet Combe are "family members" of Clyde and Marquette Combe for tax lot 2301 as that term is defined by ORS 197.352(11)(A).

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 166.25-acre subject property into 166 one-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.[5]

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[3] Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.
[4] In response to the draft staff report dated March 5, 2007, the claimants' attorney submitted a letter dated March 14, 2007, demonstrating the family relationship between David and Janet Combe and Clyde and Marquette Combe.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and rural residential zoning and restrict uses on EFU- and rural residential-zoned lands.

Tax lots 1500, 2200 and 2301 are zoned EF (Exclusive Farm) by Josephine County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because they are "agricultural land" as defined by Goal 3.[6] 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.

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 and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Tax lot 2100 is zoned RR-5 (Rural Residential – 5 Acre) by Josephine County. The RR-5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Josephine County's RR-5 zone was adopted on June 29, 1973, and requires a minimum of five acres for the creation of a new lot or parcel.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,[7] the Commission amended Goal 14 and adopted OAR 660-004-

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[5] The claimants summarily list numerous state land use laws as applicable to this claim, but do 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 with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimants' desired use of the property, the department cannot evaluate how or whether they apply. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

[6] Tax lots 1500, 2200 and 2301 are "agricultural land" because they contain National Resources Conservation Service Class I–IV soils.

[7] *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Josephine County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

Claimants David and Clyde Combe acquired tax lots 1500, 2100 and 2200 in 1959 and Clyde and Marquette Combe's family acquired tax lot 2301 in 1968, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lots 1500, 2100 and 2200 in 1959 and tax lot 2301 in 1968.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, were enacted or adopted after David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and after Clyde and Marquette Combe's family acquired tax lot 2301. These laws restrict the use of the subject property relative to the uses allowed when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and when Clyde and Marquette Combe's family acquired tax lot 2301.

As explained in Section V.(1), David and Janet Combe are not "owners" of tax lot 2301 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their use of tax lot 2301 with the effect of reducing the fair market value of this tax lot.

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 $21,770,790 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' attorney's comparison of similar property values in Josephine County.

Conclusions

As explained in Section V.(1) of this report, the claimants are David and Clyde Combe who acquired tax lots 1500, 2100 and 2200 in 1959, and their wives, Janet and Marquette Combe. Clyde and Marquette Combe's family members acquired tax lot 2301 in 1968. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use the subject property and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and since Clyde and Marquette Combe's family acquired tax lot 2301, restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of $21,770,790.

As explained in Section V.(1) of this report, David and Janet Combe are not "owners" of tax lot 2301 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict these claimants' use of tax lot 2301 with the effect of reducing its fair market value.

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 since David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and since Clyde and Marquette Combe's family acquired tax lot 2301.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, which Josephine County has implemented through its current EF and RR-5 zones. These land use regulations were enacted or adopted after David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and after Clyde and Marquette Combe's family acquired tax lot 2301.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the subject property were in effect when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 in 1959 and when Clyde and Marquette Combe's family acquired tax lot 2301 in 1968. As a result, these laws are not exempt under ORS 197.352. Laws in effect when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and when Clyde and Marquette Combe's family acquired tax lot 2301 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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, David and Janet Combe, are not "owners" of tax lot 2301 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 as to tax lot 2301 is not relevant for these claimants.

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 record, the department finds that the claim is not valid as to David and Janet Combe for tax lot 2301 because they are not owners of the tax lot. The department has further determined laws enforced by the Commission or the department restrict the claimants' desired use of tax lots 1500, 2100 and 2200 and Clyde and Marquette Combe's use of tax lot 2301. 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 $21,770,790. 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 David and Clyde Combe acquired tax lots 1500, 2100 and 2200 and when Clyde and Marquette Combe's family acquired tax lot 2301. 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 David, Janet, Clyde and Marquette Combe to use tax lots 1500, 2100 and 2200 for a use permitted at the time they each acquired these tax lots on August 17, 1959, for David and Clyde Combe, on June 9, 2004, for Janet Combe and on June 25, 2004, for Marquette Combe, and to allow Clyde and Marquette Combe to use tax lot 2301 for a use permitted at the time they acquired that tax lot on July 30, 2004.

At the time Janet and Marquette Combe acquired an interest in tax lots 1500 and 2200 and at the time Clyde and Marquette Combe acquired an interest in tax lot 2301, the property was zoned by Josephine County as EF. When they acquired tax lot 2100, it was zoned by Josephine County as RR-5. When Janet and Marquette Combe acquired tax lots 1500, 2200 and 2200 and when Clyde and Marquette acquired tax lot 2301 in 2004, the tax lots were subject to the current lot size and dwelling standards under Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, in effect when Janet Combe acquired tax lots 1500, 2100 and 2200 on June 9, 2004, when Marquette Combe acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301, and other laws in effect when the claimants acquired these tax lots, 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 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 and the foregoing findings and conclusions, David and Janet Combe have not established that they are entitled to relief under ORS 197.352(1) for tax lot 2301 as a result of land use regulations enforced by the Commission or the department because they are not owners of tax lot 2301. Therefore, the department recommends that this claim be denied as to tax lot 2301 for David and Janet Combe.

The department otherwise 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 the claimants' division of tax lots 1500, 2100 and 2200 and Clyde and Marquette Combe's division of tax lot 2301 into one-acre parcels or to their development of a dwelling on

each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when David and Clyde Combe acquired tax lots 1500, 2100 and 2200 on August 17, 1959, when Janet Combe acquired these tax lots on June 9, 2004, when Marquette Combe acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301 on July 30, 2004. The department acknowledges that the relief to which Janet and Marquette Combe are entitled under ORS 197.352 will not allow them to use tax lots 1500, 2100 and 2200 and the relief to which Clyde and Marquette are entitled under ORS 197.352 will not allow them to use tax lot 2301 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 David and Clyde Combe acquired 1500, 2100 and 2200 on August 17, 1959, when Janet Combe acquired these tax lots on June 9, 2004, when Marquette Combe acquired these tax lots on June 25, 2004, and when Clyde and Marquette Combe acquired tax lot 2301 on July 30, 2004. On June 9, 25 and 30, 2004, the subject property was subject to applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, currently 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 March 5, 2007. 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.