



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Web Address: <http://www.oregon.gov/LCD>

May 3, 2007



To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130653

Claimants: Ollie Virginia (Gorham) Bojorquiz and Mark W. and Rodger S. Gorham

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) FINAL ORDER A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130653
(BALLOT MEASURE 37) OF)
Mark W. Gorham and Rodger S. Gorham, CLAIMANTS)

Claimants: Mark W. Gorham and Rodger S. Gorham (the Claimants)

Property: Township 17S, Range 5W, Section 32: tax lots 100, 101, 102 and 103;
Section 32-1: tax lot 1500, Lane County (the Property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Mark and Rodger Gorham's division of the 115.18-acre subject property into 18 parcels and to their development of a dwelling on each resulting parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, enacted or adopted after these claimants acquired the subject property in 2007. These land use regulations will not apply to Mark and Rodger Gorham 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 they acquired the property on March 12, 2007. The department acknowledges that the relief to which Mark and Rodger Gorham are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Mark and Rodger Gorham to use the subject property for the use described in this report, subject to the standards in effect on March 12, 2007. On that date, the property was subject to applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, 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 Mark and Rodger Gorham 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 Mark and Rodger Gorham 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).

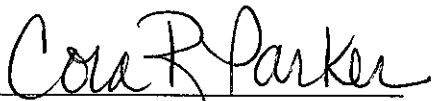
5. Without limiting the generality of the foregoing terms and conditions, in order for Mark and Rodger Gorham to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Mark and Rodger Gorham 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 Mark and Rodger Gorham.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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:

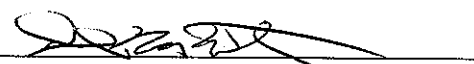
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 3rd day of May, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 3rd day of May, 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."

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. M130653
(BALLOT MEASURE 37) OF)
Ollie Virginia (Gorham) Bojorquiz, CLAIMANT)

Claimant: Ollie Virginia (Gorham) Bojorquiz (the Claimant)

Property: Township 17S, Range 5W, Section 32: tax lots 100, 101, 102 and 103;
Section 32-1: tax lot 1500, Lane County (the property)

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

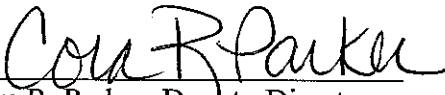
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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 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 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


Cora R. Parker, Deputy Director
DLCD
Dated this 3rd day of May, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 3rd day of May, 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**

May 3, 2007

STATE CLAIM NUMBER: M130653

NAMES OF CLAIMANTS: Ollie Virginia (Gorham) Bojorquiz
Mark W. Gorham
Rodger S. Gorham

MAILING ADDRESSES: Virginia Bojorquiz
PO Box 185
Aguanga, California 92536

Mark W. and Rodger S. Gorham
87900 Huston Road
Veneta, Oregon 97487

Rodger S. Gorham
25982 Highway 126
Veneta, Oregon 97487

PROPERTY IDENTIFICATION: Township 17S, Range 5W
Section 32: tax lots 100, 101, 102 and 103
Section 32-1: tax lot 1500
Lane County¹

OTHER CONTACT INFORMATION: Norman Waterbury, LLC
28788 Gimpl Hill Road
Eugene, Oregon 97402

DATE RECEIVED BY DAS: November 9, 2006

180-DAY DEADLINE: May 8, 2007

I. SUMMARY OF CLAIM

The claimants, Virginia Bojorquiz and Mark and Rodger Gorham, seek compensation in the amount of \$3 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 claimants desire compensation or the right to divide the 115.81-acre subject property into 18 parcels, and to develop a dwelling

¹ The subject property includes five tax lots. Tax lot 100 consists of 11.64 acres; tax lot 101 consists of 33.23 acres; tax lot 102 consists of 39.59 acres; tax lot 103 consists of 21.63 acres; and tax lot 1500 consists of 9.72 acres.

on each resulting parcel. The subject property is located at 25982 Highway 126, along Fernridge Reservoir, near Veneta, in Lane 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 Mark and Rodger Gorham's division of the 115.81-acre subject property into 18 parcels and to their development of a dwelling on each resulting parcel: applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660-004-0040 and 660, division 6, enacted or adopted after these claimants acquired the property in 2007. These laws will not apply to Mark and Rodger Gorham 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 they acquired the property on March 12, 2007. The department acknowledges that the relief to which Mark and Rodger Gorham are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

The department has further determined that the claim is not valid as to Virginia Bojorquiz because she is no longer an owner of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 23, 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, two written comments were received in response to the 10-day notice.

One comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject 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.

One comment is relevant to whether the claimants are owners. The comment has been considered by the department in preparing this report. (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 November 9, 2006, for processing under OAR 125, division 145. The claim identifies Goal 4, provisions of ORS 215, OAR 660 division 6, and provisions of Lane County Code 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

Claimant Virginia Bojorquiz first acquired the subject property on February 24, 1953, as reflected by a warranty deed included with the claim. On May 22, 1988, and June 3, 1998, Virginia Bojokrquiz conveyed the subject property to her son, claimant Mark Gorham, as reflected by bargain and sale deeds included with the claim.² On June 20, 2000, Mark Gorham

² A warranty deed dated May 3, 1999, reflects that Virginia Bojorquiz transferred the subject property to a revocable trust, the Ollie Virginia Gorham Trust, with herself as trustee on that date. However, based on other deeds included in the claim, Virginia Bojorquiz did not have an ownership interest in the subject property on the date she purported to have transferred it to the trust.

subsequently transferred the property back to Virginia Bojorquiz, as evidenced by correction bargain and sale deeds included with the claim. Virginia Bojorquiz then conveyed the property to her sons, claimants Mark and Rodger Gorham, on June 21, 2000, as evidenced by bargain and sale deeds included with the claim. However, the deeds by which Virginia Bojorquiz conveyed the property to her sons expressly reserved in Virginia Bojorquiz a life estate, whereby she reserved in herself the exclusive right to use the property during her lifetime. Claimants Mark and Rodger Gorham acquired their present ownership interest in the subject property upon Virginia Bojorquiz's death on March 12, 2007. The claimants' agent confirms Ms. Bojorquiz's death. The Lane County Assessor's Office confirms Mark and Rodger Gorham's current ownership of the subject property.

Conclusions

Claimants Mark and Rodger Gorham are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of March 12, 2007. Virginia Bojorquiz is a "family member" of Mark and Rodger Gorham as that term is defined by ORS 197.352(11)(A), as of February 24, 1953. Virginia Bojorquiz is not an "owner" of the subject property as that term is defined by ORS 197.325(11)(C).

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 115.81-acre subject property into 18 parcels and to develop a dwelling on each resulting parcel, and that current land use regulations prohibit the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land, and the provisions of state law that regulate rural residential zoning.

Tax lots 100, 101, 102 and 103 are zoned by Lane County as Impacted Forest Land (F-2) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because these tax lots are "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Tax lot 1500 is zoned by Lane County as Rural Residential Zone (RR-5). The RR-5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Lane County's RR-5 zone was adopted in 1984 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,³ the Commission amended Goal 14 and adopted OAR 660-004-0040 (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 Lane 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.

Virginia Bojorquiz first acquired the subject property on February 24, 1953, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, and the minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040, were all enacted or adopted after Virginia Bojorquiz first acquired the subject property in 1953, and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when Virginia Bojorquiz first acquired the property.

As explained in Section V.(1), Virginia Bojorquiz is no longer an owner of the subject property. Therefore, no laws enforced by the Commission or the department restrict her use of the subject property in a manner that reduces the fair market value of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

³ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

Findings of Fact

The claim includes an estimate of \$3 million 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 an appraisal included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Virginia Bojorquiz who acquired the subject property on February 24, 1953, and is no longer an owner of the subject property, and her family members Mark and Rodger Gorham. Because she is no longer an owner, no laws restrict Virginia Bojorquiz's use of the subject property with the effect of reducing the fair market value of the subject property and therefore, she is not entitled to compensation under ORS 197.352. Under ORS 197.352, Mark and Rodger Gorham are due compensation for land use regulations that restrict the use of the subject 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 Virginia Bojorquiz first acquired the subject property restrict Mark and Rodger Gorham's 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 \$3 million.

Without additional evidence and documentation to establish whether or the extent to which the land use regulations identified in Section V.(2) have the effect of reducing the property's fair market value since Virginia Bojorquiz first acquired the property, 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 the Virginia Bojorquiz first acquired the property.

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 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, which Lane County has implemented through its current F-2 and RR-5 zones. All of these land use regulations were enacted or adopted after Virginia Bojorquiz first acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on division and development of the subject property were in effect when Virginia Bojorquiz first acquired the subject property in 1953. As a result, these laws are not exempt under ORS 197.352. Laws in effect when Virginia Bojorquiz first acquired the subject property 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, Virginia Bojorquiz is no longer an owner of the subject property under ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to her.

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, the claim is not valid as to Virginia Bojorquiz because she is no longer an owner of the subject property. The department further finds that laws enforced by the Commission or the department restrict Mark and Rodger Gorham's 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 \$3 million. However, without further documentation 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 Mark and Rodger Gorham's desired use of the subject property was allowed under the standards in effect when Virginia Bojorquiz first acquired the property. 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 Mark and Rodger Gorham to use the subject property for a use permitted at the time they acquired the property on March 12, 2007.

At the time Mark and Rodger Gorham acquired the subject property, tax lots 100, 101, 102 and 103 were zoned F-2, and tax lot 1500 was zoned RR-5 by Lane County, and the property was subject to the current lot size and dwelling standards under Goals 4 and 14, ORS 215, and OAR 660-004-0040 and 660 division 6, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, in effect when Mark and Rodger Gorham acquired the subject property, there

may be other laws that apply to the subject property that are not identified in the claim. The department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes....” Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

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 uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. Mark and Rodger Gorham should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

Based on the record before the department, Virginia Bojorquiz is not entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because she is no longer an owner of the subject property. Therefore, the department recommends that this claim be denied as to Virginia Bojorquiz.

The department otherwise recommends that the claim be approved as to Mark and Rodger Gorham, 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 Mark and Rodger Gorham’s division of the 115.18-acre subject property into 18 parcels and to their development of a dwelling on each resulting parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, enacted or adopted after these claimants acquired the subject property in 2007. These land use regulations will not apply to Mark and Rodger Gorham 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 they acquired the property on March 12, 2007. The department acknowledges that the relief to which Mark and Rodger Gorham are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state’s authorization to Mark and Rodger Gorham to use the subject property for the use described in this report, subject to the standards in effect on March 12, 2007. On that date, the property was subject to applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, 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 Mark and Rodger Gorham 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 Mark and Rodger Gorham 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 Mark and Rodger Gorham 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 Mark and Rodger Gorham 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 Mark and Rodger Gorham.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 12, 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.