

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. M129695
(BALLOT MEASURE 37) OF)	
Vincent and Nadine Gillis, CLAIMANTS)	

Claimants: Vincent and Nadine Gillis (the Claimants)

Property: Township 2S, Range 6W, Section 25, Tax lots 302, Yamhill 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 as to the 5-acre portion of tax lot 302 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 as to the 75-acre forest-zoned portion of tax lot 302 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 Vincent and Nadine Gillis' division of the 75-acre forest-zoned portion of tax lot 302 into five parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the 75-acre forest-zoned portion of tax lot 302 for the use described in this report, and only to the extent that use was permitted when they acquired that portion of the property on November 30, 1972.
2. The action by the State of Oregon provides the state's authorization to Vincent and Nadine Gillis to use the 75-acre forest-zoned portion of tax lot 302 for the use described in this report, subject to the standards in effect on November 30, 1972.

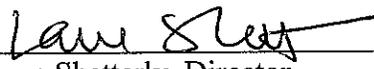
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 75-acre portion of tax lot 302 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless 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 75-acre portion of tax lot 302 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).

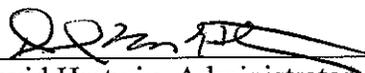
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the 75-acre portion of tax lot 302, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations 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 75-acre portion of tax lot 302 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 9th day of January, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 9th day of January, 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. M129695
(BALLOT MEASURE 37) OF)
Vincent and Nadine Gillis, CLAIMANTS)

Claimants: Vincent and Nadine Gillis (the Claimants)

Property: Township 2S, Range 6W, Section 25, Tax lots 300 and 303.
 Yamhill County (the property)

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

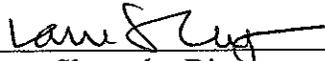
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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 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 9th day of January, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 9th 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 9, 2007

STATE CLAIM NUMBER: M129695

NAMES OF CLAIMANTS: Vincent and Nadine Gillis

MAILING ADDRESS: 623 Elm Drive
Petaluma, California 94952

PROPERTY IDENTIFICATION: Township 2S, Range 6W, Section 25
Tax lots 300, 302 and 303.¹
Yamhill County

DATE RECEIVED BY DAS: July 18, 2006

180-DAY DEADLINE: January 14, 2007

I. SUMMARY OF CLAIM

The claimants, Vincent and Nadine Gillis, seek compensation in the amount of \$500,000 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 240-acre property into five parcels and to develop a dwelling on each parcel.² The subject property is located at 24500 NW Flying M Road, in Yamhill 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 Vincent and Nadine Gillis' division of the 75-acre forest-zoned portion of tax lot 302 into five parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the 75-acre forest-zoned portion of tax lot 302 for the use

¹ The subject property includes three tax lots. Tax lot 300 consists of 120 acres; tax lot 302 consists of 80 acres; and tax lot 303 consists of 40 acres.

²In response to the draft staff report dated December 13, 2006, pursuant to OAR 12-145-0080, the claimants submitted a letter, dated December 20, 2006, requesting to clarify the claimants' intended use of the property.

described in this report, and only to the extent that use was permitted when they acquired that portion of the property in 1972.

The department has further determined that (1) the claim is not valid as to tax lot 300 because Nadine Gillis is not an owner of tax lot 300 and because Vincent Gillis' desired use of the 110-acre forest-zoned portion of tax lot 300 was prohibited under the laws in effect when he acquired that tax lot in 2000; (2) the claim is not valid for the 5-acre portion of tax lot 302 and the 10-acre portion of tax lot 300 zoned Recreation Commercial (RC) district because neither the Commission nor the department has enforced laws that restrict the claimants' desired use of the RC-zoned portion of tax lot 302 and Vincent Gillis' desired use of the RC-zoned portion of tax lot 300; and (3) the claim is not valid as to tax lot 303 because the claimants are not owners of that tax lot. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 25, 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, 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

This claim was submitted to DAS on July 18, 2006, for processing under OAR 125, division 145. The claim identifies Yamhill County's local zoning ordinances section 401(F-80) and OAR 660, division 6, 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

The claimants, Vincent and Nadine Gillis, first acquired the subject property on November 30, 1972, as reflected by a warranty deed included with the claim.³ The claimants transferred all of their interest in tax lot 300 to Charles and Evelyn Egle on March 30, 1978, as reflected by a warranty deed included with the claim. Vincent Gillis reacquired tax lot 300 in 1983, then subsequently conveyed tax lot 300 to a partnership, Flying M Associates. On May 9, 2000, Vincent Gillis reacquired tax lot 300, as reflected by a Chain of Title Report provided by the claimants. On February 13, 2004, the claimants transferred all of their interest in tax lot 303 to Trask Mountain Leasing, as reflected by a bargain and sale deed included with the claim.⁴ The Yamhill County Assessor’s Office confirms Vincent and Nadine Gillis’ current ownership of tax lot 302 and Vincent Gillis’ current ownership of tax lot 300.

Conclusions

Vincent and Nadine Gillis are “owners” of tax lot 302, and Vincent Gillis is an “owner” of tax lot 300 as that term is defined by ORS 197.352(11)(C). Vincent and Nadine Gillis have owned tax lot 302 since November 30, 1972. Vincent Gillis has owned tax lot 300 since May 9, 2000. Vincent and Nadine Gillis are not “owners” of tax lot 303, and Nadine Gillis is not an “owner” of tax lot 300 as that term is defined by ORS 197.352(11)(C).

³ In 1993, Vincent and Nadine Gillis transferred tax lot 302 to the Vincent and Nadine Gillis Trust, a revocable trust, with themselves as trustees. Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

⁴ Under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are “owners” of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, Flying M Associates could be considered a family member of claimant Vincent Gillis. However, the claim does not include any documentation or information regarding the date Flying M Associates acquired the property from Vincent Gillis, and because Vincent Gillis cannot be a family member of the legal entity of Flying M Associates, the department has no information regarding a date of family acquisition for tax lot 300. Therefore, the claim for compensation for tax lot 300 cannot be based on family ownership. In addition, the claimants who transferred property to Trask Mountain Leasing are not considered family members under the definition of family member in 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 acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 240-acre property into five parcels and to develop a dwelling on each parcel, and that the current zoning prohibits the desired use.

The claim is based in part on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land and in part on the applicable provisions of state law that permit recreational commercial zoning.

A 110-acre portion of tax lot 300 and a 75-acre portion of tax lot 302 are zoned Forestry District (F-80) by Yamhill County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because these portions 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 of less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

A ten-acre portion of tax lot 300 and a five-acre portion of tax lot 302 are currently zoned RC district by Yamhill County. The RC district has a minimum lot size of two acres. In this case, the claimants have not alleged how a specific state land use regulation restricts the claimants' desired use of the RC-zoned portions of tax lots 300 and 302 with the effect of reducing the fair market value of that real property. Based on the information in the claim, the department has not identified any state laws that restrict the claimants' desired development of the ten-acre portion tax lot 300 and the five-acre portion of tax lot 302 zoned RC.

Vincent and Nadine Gillis acquired the 75-acre forest-zoned portion of tax lot 302 on November 30, 1972, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

When Vincent Gillis acquired tax lot 300, it was subject to Yamhill County's acknowledged comprehensive plan. At that time, the 110-acre portion was zoned by Yamhill County as F-80 and the 10-acre portion was zoned by Yamhill County as an RC district. Division of the subject property would have been subject to the county's acknowledged F-80 and RC district zones.

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, were all enacted or adopted after Vincent and Nadine Gillis acquired the 75-acre portion of tax lot 302 in 1972 and before Vincent Gillis acquired tax lot 300 in 2000, and do not allow the desired division or development of the property. These laws restrict the use of the 75-acre portion of tax lot 302 relative to the uses allowed when the claimants acquired tax lot 302. However, laws enacted or adopted since Vincent Gillis acquired tax lot 300 in 2000 do not restrict his desired use of the forest-zoned portion of tax lot 300 relative to when he acquired that tax lot in 2000.

The claim does not establish any state laws that currently restrict Vincent Gillis' desired use of the ten-acre portion of tax lot 300 or the claimants' desired use of the five-acre portion of tax lot 302 zoned RC district. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the claimants' desired use of those portions of tax lots 300 and 302.

As explained in Section V.(1) of this report the claimants, Vincent and Nadine Gillis, are not "owners" of tax lot 303 and Nadine Gillis is not an "owner" of tax lot 300 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict the claimants' use of private real property with the effect of reducing the fair market value of tax lot 303, or restrict Nadine Gillis' use of private real property with the effect of reducing the fair market value of tax lot 300.

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 \$500,000 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' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Vincent and Nadine Gillis. The claimants acquired tax lot 302 on November 30, 1972, and Vincent Gillis acquired tax lot 300 on May 9, 2000. The claimants are not present owners of tax lot 303. No state laws enacted or adopted since Vincent Gillis acquired the forest-zoned portion of tax lot 300 restrict his use of the property relative to the uses allowed when he acquired that tax lot in 2000; and the claimants have not established that any state land use regulations restrict their desired use of the RC-zoned portions of tax lots 300 and 302. Therefore, the fair market value of tax lots 300 and 303 and the RC-zoned portion of tax lot 302 have not been reduced as a result of land use regulations enforced by the Commission or the department.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 75-acre portion tax lot 302 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 Vincent and Nadine Gillis acquired tax lot 302 restrict the claimants' desired use of the 75-acre portion of tax lot 302. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$500,000.

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 75-acre forest-zoned portion of tax lot 302. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the 75-acre forest-zoned portion of tax lot 302 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, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Yamhill County has implemented through its current Forestry District zone. All of these land use regulations were enacted or adopted after Vincent and Nadine Gillis acquired tax lot 302. All of these regulations were in effect when Vincent Gillis acquired tax lot 300. None of these regulations restrict the claimants' desired use of the RC-zoned portions of tax lots 300 and 302.

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 residential division and development of the subject property were in effect when Vincent and Nadine Gillis acquired the 75-acre portion of tax lot 302. As a result, these laws are not exempt under ORS 197.352(3)(E).

All of the state land use regulations that restrict Vincent Gillis' desired use of the forest-zoned portion of tax lot 300 were in effect when he acquired that tax lot. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Vincent Gillis acquired tax lot 300.

As explained in Section V.(2) of this report claimants, Vincent and Nadine Gillis have not established that any state laws restrict their use of the ten-acre portion of tax lot 300 and the five-acre portion of tax lot 302 zoned RC. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to those portions of the property.

As explained in Section V.(1) of this report, Vincent and Nadine Gillis are not "owners" of tax lot 303, and Nadine Gillis is not an "owner" of tax lot 300 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant as to Vincent and Nadine Gillis for tax lot 303, and as to Nadine Gillis for tax lot 300.

Laws in effect when Vincent and Nadine Gillis acquired the 75-acre forest-zoned portion of tax lot 302 are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. 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). These standards include OAR 660-006-0029.

There may be other laws that continue to apply to the claimants' use of the 75-acre forest-zoned portion of tax lot 302 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 property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 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 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 75-acre forest-zoned portion of tax lot 302.

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 do not restrict Vincent Gillis' desired use of RC-zoned portion of tax lot 300 and the claimants' desired use of the five-acre RC-zoned portion of tax lot 302; do not restrict Vincent Gillis' desired use of the forest-zoned portion of tax lot 300 relative to uses permitted when he acquired that tax lot in 2000; and do not restrict the claimants' use of tax lot 303 or Nadine Gillis' use of tax lot 300 because the claimants are not owners of tax lot 303 and Nadine Gillis is not an owner of tax lot 300.

The department has further determined laws enforced by the Commission or the department restrict the claimants' desired use of the 75-acre forest-zoned portion of tax lot 302. 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 \$500,000. 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 75-acre forest-zoned portion of tax lot 302 was allowed under the standards in effect when Vincent and Nadine Gillis acquired that tax lot. 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 75-acre forest-zoned portion of tax lot 302 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 Vincent and Nadine Gillis to use the 75-acre forest-zoned portion of tax lot 302 for a use permitted at the time they acquired that tax lot on November 30, 1972.

Conclusions

Based on the record and the foregoing findings and conclusions, Vincent Gillis has not established that he is entitled to relief under ORS 197.352(1) for the ten-acre RC-zoned portion tax lot 300 and the claimants are not are entitled to relief for the five-acre RC-zoned portion of tax lot 302, as a result of land use regulations enforced by the Commission or the department because the claimants have not identified any state land use regulations that restrict their desired use of those portions of the subject property. In addition, Vincent Gillis is not entitled to relief for the 110-acre forest-zoned portion of tax lot 300 because no state land use regulations enforced by the Commission or the department restrict his use of that portion of tax lot 300 relative to uses permitted when he acquired it in 2000. Vincent and Nadine Gillis also have not established that they are entitled to relief for tax lot 303 and Nadine Gillis has not established that she is entitled to relief for tax lot 300 under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimants are not owners of tax lot 303 and Nadine Gillis is not an owner of tax lot 300. Therefore, the department

recommends that the claim be denied as to tax lots 300 and 303 and as to the RC-zoned portion of tax lot 302.

The department further recommends that the claim be approved as to the 75-acre forest-zoned portion of tax lot 302, 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 Vincent and Nadine Gillis' division of the 75-acre forest-zoned portion of tax lot 302 into five parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the 75-acre forest-zoned portion of tax lot 302 for the use described in this report, and only to the extent that use was permitted when they acquired that portion of the property on November 30, 1972.
2. The action by the State of Oregon provides the state's authorization to Vincent and Nadine Gillis to use the 75-acre forest-zoned portion of tax lot 302 for the use described in this report, subject to the standards in effect on November 30, 1972.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 75-acre portion of tax lot 302 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 75-acre portion of tax lot 302 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 75-acre portion of tax lot 302, 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 75-acre portion of tax lot 302 by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on December 13, 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.