

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. M129964
(BALLOT MEASURE 37) OF)
Mary Maletis, LLC, CLAIMANT)

Claimant: Mary Maletis, LLC (the Claimant)

Property: Township 1N, Range 1E, Section 21AC, Tax lots 14300, 14400, 14500,
14600 and 14700, City of Portland, Multnomah County (the property)

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

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

ORDER

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

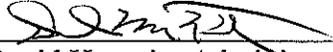
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 27th day of February, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 27th day of February, 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)

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. M129964
(BALLOT MEASURE 37) OF)
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Claimant: Mary Maletis (the Claimant)

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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.

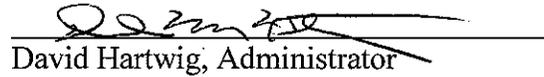
FOR DLCD AND THE LAND
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DEVELOPMENT COMMISSION:



Lane Shetterly, Director
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FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



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THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER C
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129964
(BALLOT MEASURE 37) OF)
Panagula Investment Company, CLAIMANT)

Claimant: Panagula Investment Company (the Claimant)

Property: Township 1N, Range 1E, Section 21AC, Tax lots 14300, 14400,
City of Portland, Multnomah County (the property)

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

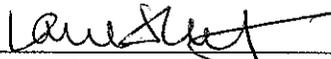
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

ORDER

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

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 27th day of February, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 27th day of February, 2007.

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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.

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IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER D
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(BALLOT MEASURE 37) OF)	
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Claimant: Panagula Investment Company (the Claimant)

Property: Township 1N, Range 1E, Section 21AC, Tax lots 14300 and 14400
City of Portland, Multnomah County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Panagula Investment Company's division of tax lots 14300 and 14400 for residential development: applicable provisions of Goal 5 and OAR 660, divisions 16, and 23. These land use regulations will not apply to Panagula Investment Company only to the extent necessary to allow it to use tax lots 14300 and 14400 for the use described in this report, and only to the extent that use was permitted when it acquired tax lots 14300 and 14400 on December 1, 1972.
2. The action by the State of Oregon provides the state's authorization to Panagula Investment Company to use tax lots 14300 and 14400 for the use described in this report, subject to the standards in effect on December 1, 1972.
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 tax lots 14300 and 14400 unless Panagula Investment Company first obtains that permit, license or other form

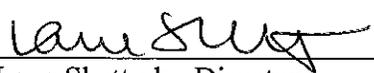
of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of tax lots 14300 and 14400 by 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 Panagula Investment Company to use tax lots 14300 and 14400, it may be necessary for it 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 Panagula Investment Company 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 tax lots 14300 and 14400 by Panagula Investment Company.

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.

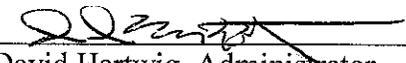
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 27th day of February, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 27th day of February, 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**

February 27, 2007

STATE CLAIM NUMBER: M129964

NAMES OF CLAIMANTS: Panagula Investment Company
Mary Maletis, LLC
Mary Maletis

MAILING ADDRESS: 2338 SW Madison
Portland, Oregon 97205

PROPERTY IDENTIFICATION: Township 1N, Range 1E, Section 21AC
Tax lots 14300, 14400, 14500,
14600 and 14700
City of Portland
Multnomah County

OTHER CONTACT INFORMATION: William C. Cox, Attorney at Law
0244 SW California Street
Portland, Oregon 97219

DATE RECEIVED BY DAS: September 5, 2006

180-DAY DEADLINE: March 4, 2007

I. SUMMARY OF CLAIM

The claimants, Panagula Investment Company, Mary Maletis, LLC and Mary Maletis, seek compensation in the amount of \$540,000 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 2.09-acre subject property¹ into 18 parcels for residential development. The subject property is located south of North Going Street, near the intersection with North Greeley Avenue, in the City of Portland, in Multnomah County. (See claim.)

¹ The subject property includes five tax lots. Tax lot 14300 consists of 22,651 square feet; tax lot 14400 consists of 33,541 square feet; tax lot 14500 consists of 17,424 square feet; tax lot 14600 consists of 5,663 square feet; and tax lot 14700 consists of 22,651 square feet.

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 Panagula Investment Company's division of tax lots 14300 and 14400 for residential development: applicable provisions of Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) and OAR 660, divisions 16, and 23. These land use regulation will not apply to Panagula Investment Company only to the extent necessary to allow it to use tax lots 14300 and 14400 for the use described in this report, and only to the extent that use was permitted when it acquired tax lots 14300 and 14400 on December 1, 1972.

The department has also determined that the claim is not valid as to Mary Maletis, LLC because its desired use of the subject property was prohibited under the laws in effect when it acquired the subject property on December 30, 1998.

The department has further determined that this claim is not valid as to Mary Maletis because she is not an owner of the subject property nor is the claim valid as to Panagula Investment Company for tax lots 14500, 14600 and 14700 because it is not an owner of these tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On December 8, 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, fourteen written comments were received in response to the 10-day notice.

Thirteen of the comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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 of the comments is relevant to whether the claimants are owners and when the claimants became the present owners of the subject property. 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 September 5, 2006, for processing under OAR 125, division 145. The claim identifies Goal 5; OAR 660-016-0000 to 660-016-0020 and 660-023-0000 to 660-023-0250; City of Portland zoning code; and “all statewide planning goals and administrative rules, statutes adopted and enforced since purchase of property” as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimant Mary Maletis first acquired tax lot 14500 on June 16, 1964, and acquired tax lots 14600 and 14700 on July 24, 1964, as reflected by warranty deeds included with the claim. Mary Maletis also acquired a one-half interest each in tax lots 14300 and 14400 on August 23, 1966. Panagula Investment Company (a partnership) acquired a one-half interest in tax lots 14300 and 14400 on December 1, 1972, as reflected by a bargain and sale deed included with the

claim. On December 30, 1998, Mary Maletis transferred all of her individual interest in the subject property to Mary Maletis, LLC,² as reflected by a warranty deed included with the claim.

The Multnomah County Assessor's Office confirms Panagula Investment Company's current ownership of tax lots 14300 and 14400 and Mary Maletis, LLC's current ownership of the subject property. Mary Maletis, as an individual, no longer owns the subject property.

Conclusions

Claimant Panagula Investment Company is an "owner" of tax lots 14300 and 14400 as that term is defined by ORS 197.352(11)(C), as of December 1, 1972.³ Claimant Mary Maletis, LLC is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 30, 1998. Claimant Mary Maletis is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Claimant Panagula Investment Company is not an "owner" of tax lots 14500, 14600 and 14700 as that term is defined in ORS 197.352(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 2.09-acre subject property into 18 parcels for residential development and that the use is not allowed under current land use regulations.⁴

The subject property is within the City of Portland and Metro Urban Growth Boundary (UGB). The subject property is currently zoned R5 (Residential Single Dwelling) with an Environmental Conservation overlay. The maximum density in the R5 zone is generally one dwelling per 5,000 square feet.

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a

² Mary Maletis, LLC is a domestic limited liability company registered with the Oregon Secretary of State.

³ 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, individuals cannot be "family members" of legal entities under the statute. Therefore, individuals who transferred property to the Mary Maletis, LLC and Panagula Investment Company are not considered family members under the definition of family member in ORS 197.352(11)(A).

⁴ The claimants summarily cite 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. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' description of their desired use.

city or UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property.

In this case, the claimants' property is subject to the City of Portland's Environmental Conservation overlay zone, which was adopted in 1993 and has been acknowledged to implement Goal 5.⁵ Under Goal 5, as adopted and effective January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to adoption of local government programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development. Under OAR 660, division 16, requirements and application procedures for complying with Goal 5 became effective on June 29, 1981. OAR 660, division 23, established additional procedures and requirements for complying with Goal 5, and became effective on September 1, 1996.

Claimant Panagula Investment Company acquired tax lots 14300 and 14400 in 1972, prior to the adoption of the statewide planning goals and their implementing statutes and rules.

Claimant Mary Maletis, LLC acquired the subject property on December 30, 1998, after the state land use regulations identified above were adopted or enacted.

Conclusions

The current zoning requirements established by Goal 5 and OAR 660, divisions 16, and 23, were adopted after Panagula Investment Company acquired tax lots 14300 and 14400 in 1972 and do not allow the desired division of the property. These regulations restrict the use of tax lots 14300 and 14400 relative to uses permitted when Panagula Investment Company acquired them.

However, the current zoning requirements established by Goal 5 and OAR 660, divisions 16, and 23, were all enacted or adopted before Mary Maletis, LLC acquired the subject property on December 30, 1998, and do not allow outright the desired division and development of the subject property. Laws enacted or adopted since Mary Maletis, LLC acquired the subject property in 1998 do not restrict its desired use of the property relative to when it acquired the property in 1998.

As explained in Section V.(1), Mary Maletis is not an "owner" of the subject property and Panagula Investment Company is not an "owner" of tax lots 14500, 14600 and 14700 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Mary Maletis' use of the subject property and Panagula Investment Company's use of tax lots 14500, 14600 and 14700 with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There

⁵ The City of Portland's Environmental Conservation overlay zone was acknowledged by the Commission for compliance with Goal 5 on June 25, 1993.

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 Panagula Investment Company seeks 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 \$540,000 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 Panagula Investment Company who acquired tax lots 14300 and 14400 on December 1, 1972, Mary Maletis, LLC who acquired the subject property on December 30, 1998, and Mary Maletis.

As explained in Section V.(1) of this report, Mary Maletis is not an "owner" of the subject property and Panagula Investment is not an "owner" of tax lots 14500, 14600 and 14700 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict Mary Maletis' use of the subject property and Panagula Investment Company's use of tax lots 14500, 14600 and 14700 with the effect of reducing the fair market value of the property.

No state laws enacted or adopted since Mary Maletis, LLC acquired the subject property restrict the use of the property relative to the uses allowed in 1998. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department.

Under ORS 197.352, Panagula Investment Company is due compensation for land use regulations that restrict the use of tax lots 14300 and 14400 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 Panagula Investment Company acquired tax lots 14300 and 14400 restrict its 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 \$540,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lots 14300 and 14400 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 Goal 5 and OAR 660, divisions 16, and 23, which the City of Portland has implemented through its Environmental Conservation overlay zone. These land use regulations were adopted after Panagula Investment Company acquired tax lots 14300 and 14400. As set forth in Section V.(2) of this report, the state land use regulations restricting Mary Maletis, LLC's desired use of the subject property were in effect when she acquired the property in 1998.

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 goal and rule restrictions on division of resource land as enacted by Goal 5 and OAR 660, divisions 16, and 23, were in effect when Panagula Investment Company acquired tax lots 14300 and 14400 in 1972. As a result, these laws are not exempt under ORS 197.352(3)(E). All of the state land use regulations that restrict Mary Maletis, LLC's desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Mary Maletis, LLC acquired the subject property.

As explained in Section V.(1) of this report, Mary Maletis is not an "owner" of the subject property and Panagula Investment Company is not an "owner" of tax lots 14500, 14600 and 14700 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 to her claim.

Laws in effect when Panagula Investment Company acquired tax lots 14300 and 14400 are exempt under ORS 197.352(3)(E) and will continue to apply to its use of the tax lots. There may be other laws that continue to apply to Panagula Investment Company's use of tax lots 14300 and 14400 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 property until there is a specific proposal for that use. When Panagula Investment Company seeks 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 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.

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 Mary Maletis, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 1998 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E). The department also finds that the claim is not valid as to Mary Maletis because she is not an owner of the subject property and Panagula Investment Company because it is not an owner of tax lots 14500, 14600 and 14700.

The department has further determined laws enforced by the Commission or the department restrict Panagula Investment Company's desired use of tax lots 14300 and 14400. 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 \$540,000. 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 Panagula Investment Company's desired use of tax lots 14300 and 14400 was allowed under the standards in effect when it acquired them. 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 tax lots 14300 and 14400 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 Panagula Investment Company to use tax lots 14300 and 14400 for a use permitted at the time it acquired them on December 1, 1972.

Conclusions

Based on the record and the foregoing findings and conclusions, Mary Maletis, LLC and Mary Maletis have not established that they are entitled to relief for the subject property and Panagula Investment Company has not established that it is entitled to relief for tax lots 14500, 14600 and 14700 under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied as to Mary Maletis because she is not an owner of the subject property, Panagula Investment Company for tax lots 14500, 14600 and 14700 because it is not an owner of these tax lots and Mary Maletis,

LLC because no laws enacted or enforced by the Commission or the department restrict its desired use of the subject property relative to uses allowed when it acquired the property in 1998.

The further department recommends that the claim be approved as to Panagula Investment Company for tax lots 14300 and 14400, 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 Panagula Investment Company's division of tax lots 14300 and 14400 for residential development: applicable provisions of Goal 5 and OAR 660, divisions 16, and 23. These land use regulations will not apply to Panagula Investment Company only to the extent necessary to allow it to use tax lots 14300 and 14400 for the use described in this report, and only to the extent that use was permitted when it acquired tax lots 14300 and 14400 on December 1, 1972.
2. The action by the State of Oregon provides the state's authorization to Panagula Investment Company to use tax lots 14300 and 14400 for the use described in this report, subject to the standards in effect on December 1, 1972.
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 tax lots 14300 and 14400 unless Panagula Investment Company first obtains 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 tax lots 14300 and 14400 by 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 Panagula Investment Company to use tax lots 14300 and 14400, it may be necessary for it 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 Panagula Investment Company 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 tax lots 14300 and 14400 by Panagula Investment Company.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on February 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.