



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

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

May 2, 2007



To: Interested Persons

From: Lane Shetterly, Director

*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130634*

*Claimants: Webster E. Briggs, Mabel J. Briggs, Matthew L. Briggs and Shellie M. Briggs*

---

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. M130634  
(BALLOT MEASURE 37) OF )  
Webster E. Briggs and Mabel J. Briggs, CLAIMANTS )

Claimants: Webster E. Briggs and Mabel J. Briggs (the Claimants)

Property: Township 30S, Range 5W, Section 15: Tax lot 500; Section 22: Tax lot 1000,  
Douglas 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 Webster and Mabel Briggs' division of the 141.72-acre subject property into forty approximately 2- to 40-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each of these claimants acquired the property. These laws will not apply to Webster and Mabel Briggs 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 Webster Briggs acquired the property on December 21, 1971, and only to the extent that use was permitted when Mabel Briggs acquired the property on March 14, 2000. The department acknowledges that the relief to which Mabel Briggs is entitled under ORS 197.352 will not allow her 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 Webster and Mabel Briggs to use the property for the use described in this report, subject to the laws in effect when Webster Briggs acquired the property on December 21, 1971, and when Mabel Briggs acquired the property on March 14, 2000. On March 14, 2000, the property was subject to Douglas

County's acknowledged FF/FG zone, and the provisions of Goals 3 and 4, ORS 215 and OAR 660, division 6, and 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Webster Briggs 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 the subject property by Webster Briggs 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 Webster Briggs to use the subject property, it may be necessary for him 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 Webster Briggs 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 him.


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 2<sup>nd</sup> day of May, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 2<sup>nd</sup> 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. M130634  
(BALLOT MEASURE 37) OF )  
Matthew L. Briggs and Shellie M. Briggs, CLAIMANTS )

Claimants: Matthew L. Briggs and Shellie M. Briggs (the Claimants)

Property: Township 30S, Range 5W, Section 15: Tax lot 500; Section 22: Tax lot 1000,  
Douglas 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 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 2<sup>nd</sup> day of May, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 2<sup>nd</sup> 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 2, 2007

**STATE CLAIM NUMBER:** M130634

**NAMES OF CLAIMANTS:** Webster E. Briggs  
Mabel J. Briggs  
Matthew L. Briggs  
Shellie M. Briggs

**MAILING ADDRESS:** 4422 Gazley Road  
Myrtle Creek, Oregon 97457

**PROPERTY IDENTIFICATION:** Township 30S, Range 5W  
Section 15: Tax lot 500  
Section 22: Tax lot 1000  
Douglas County

**DATE RECEIVED BY DAS:** November 8, 2006

**180-DAY DEADLINE:** May 7, 2007

**I. SUMMARY OF CLAIM**

The claimants, Webster, Mabel, Matthew and Shellie Briggs, seek compensation in the amount of \$6.7 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 141.72-acre subject property into forty approximately 2- to 40-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 205 Hungry U Ranch Lane, near Myrtle Creek, in Douglas 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 Webster and Mabel Briggs' division of the 141.72-acre subject property into forty approximately 2- to 40-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after each of these claimants acquired the property. These laws will not apply to Webster and Mabel Briggs 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 Webster Briggs acquired the property on December 21, 1971, and only to the extent that use was permitted when Mabel Briggs acquired the property on March 14, 2000. The department acknowledges that the relief to which Mabel Briggs is entitled under ORS 197.352 will not allow her to use the property in the manner set forth in the claim.

The department has further determined that the claim is not valid as to Matthew and Shellie Briggs because they have not established their ownership of the 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, 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 November 8, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County zoning 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 Webster Briggs acquired the subject property on December 21, 1971, as reflected by a bargain and sale deed included with the claim. On March 14, 2000, Webster Briggs transferred a one-half undivided interest in the subject property to two revocable trusts, the Webster E. Briggs Living Trust and the Mabel Jane Briggs Living Trust, as reflected by a bargain and sale deed included with the claim.<sup>1</sup> Douglas County’s Assessor’s Office confirms Webster and Mabel Briggs’ current ownership of the subject property.

Although Matthew and Shellie Briggs are claimants on the claim form, they have not submitted any documentation to demonstrate their current ownership of the subject property.

### **Conclusions**

Claimants Webster and Mabel Briggs are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Webster Briggs has been an owner since December 21, 1971, and Mabel Briggs has been an owner since March 14, 2000. Webster Briggs is a “family member” of Mabel Briggs as that term is defined by ORS 197.352(11)(A). Claimants Matthew, and Shellie Briggs have not established that they are “owners” of the subject property as that term is defined by 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 the right to divide the 141.72-acre subject property into forty approximately 2- to 40-acre parcels and to develop a dwelling on each resulting undeveloped parcel, and that the current zoning prohibits the desired use.

---

<sup>1</sup> Webster Briggs’ transfer of the property to his revocable trust does not result in a change in his ownership under ORS 197.352. On June 8, 2000, Mabel Briggs resigned as trustee of the Mabel Jane Briggs Living Trust and appointed Webster Briggs as the sole successor trustee of her Trust, as reflected by a trust document included with the claims. Her resignation as trustee does not affect her ownership of her trust property.

The claim is based generally on the applicable provisions of state law that require mixed farm-forest zoning and restrict uses on land zoned mixed farm-forest. The claimants' property is zoned by Douglas County as Farm Forest/Forest Grazing (FF/FG), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.<sup>2</sup> Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Douglas County's FF/FG zone is 80 acres. The claimants' property cannot be divided into parcels smaller than 80 acres.

Webster Briggs acquired the subject property on December 21, 1971, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established under Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after Webster Briggs acquired the subject property in 1971 and do not allow the desired division and development of the property. These laws restrict the use of the subject property relative to the uses allowed when Webster Briggs acquired the property.

Claimants Matthew and Shelly Briggs have not established their ownership of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict their 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 may have acquired 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 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."

---

<sup>2</sup> No information was provided to the department regarding the predominant use of the property on January 1, 1993.

## **Findings of Fact**

The claim includes an estimate of \$6.7 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 the claimants' assessment of the subject property's value.

## **Conclusions**

As explained in Section V.(1) of this report, the claimants are Webster Briggs who acquired the subject property on December 21, 1971, and his wife, Mabel, and his son and daughter-in-law, Matthew and Shellie Briggs. Matthew and Shellie Briggs have not established their ownership of the subject property. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of the subject property.

Under ORS 197.352, Webster and Mabel Briggs 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 Webster Briggs acquired the subject property restrict his 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 \$6.7 million.

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 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 Webster Briggs 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 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its FF/FG zone. All of these land use regulations were enacted or adopted after Webster Briggs acquired the subject property.

## **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 Webster Briggs acquired it in 1971. As a result, these laws are not exempt under ORS 197.352(3)(E) and do not provide a basis for

compensation. In addition other 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, Matthew and Shellie Briggs have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(C).

Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the record, the department finds that the claim for Matthew and Shellie Briggs is not valid because they have not demonstrated their ownership of the subject property. The department has further determined that the laws enforced by the Commission or the department restrict Webster and Mabel Briggs' 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 \$6.7 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when Webster Briggs 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 Webster Briggs to use the subject property for a use permitted at the time he acquired the property on December 21, 1971, and to allow Mabel Briggs to use the subject property for a use permitted at the time she acquired the property on March 14, 2000.

At the time Mabel Briggs acquired the subject property, it was it was subject to Douglas County's acknowledged FF/FG zone, and the state land use regulations currently in effect, as described in Section V.(2) of this report.

In addition to the provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, in effect when Mabel Briggs acquired the property in 2000, and other laws in effect when either Webster or Mabel Briggs acquired the property, there may be other laws that apply to the property that have not been 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. The provisions include fire protection standards for dwellings and for surrounding forest zones. 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. . . .” To the extent they are applicable to the claimants’ property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

The department also notes that a portion of the property is located in a flood plain zone. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety. . . .” To the extent the county’s flood plain regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B). Nothing in this report alters the application of state land use regulations restricting uses within a floodplain, including but not limited to Goal 7 (Areas Subject to Natural Hazards).

There may be other laws that continue to apply to Webster and Mabel Briggs’ use of the subject 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 property until there is a specific proposal for that use. When Webster Briggs 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 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. 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 subject property.

### **Conclusions**

Based on the record before the department, Matthew and Shellie Briggs have not established that they are entitled to relief under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department because they have not established their ownership of the property. Therefore, the department recommends that this claim be denied as to Matthew and Shellie Briggs.

The department otherwise recommends that the claim be approved for Webster and Mabel Briggs, 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 Webster and Mabel Briggs’ division of the 141.72-acre subject property into forty approximately 2- to 40-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or

adopted after each of these claimants acquired the property. These laws will not apply to Webster and Mabel Briggs 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 Webster Briggs acquired the property on December 21, 1971, and only to the extent that use was permitted when Mabel Briggs acquired the property on March 14, 2000. The department acknowledges that the relief to which Mabel Briggs is entitled under ORS 197.352 will not allow her 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 Webster and Mabel Briggs to use the property for the use described in this report, subject to the laws in effect when Webster Briggs acquired the property on December 21, 1971, and when Mabel Briggs acquired the property on March 14, 2000. On March 14, 2000, the property was subject to Douglas County's acknowledged FF/FG zone, and the provisions of Goals 3 and 4, ORS 215 and OAR 660, division 6, and 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Webster Briggs 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 the subject property by Webster Briggs 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 Webster Briggs to use the subject property, it may be necessary for him 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 Webster Briggs 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 him.

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 11, 2007. OAR 125-145 0100(3), provided an opportunity for the claimant or the claimant's 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.