



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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Salem, Oregon 97301-2524

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

April 4, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: *Ballot Measure 37 (ORS 197.352) Claim Number M130277*

Claimants: *Max T., Duane A., and Barbara Jo Sigl*

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

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

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130277  
(BALLOT MEASURE 37) OF )  
Max T. Sigl, CLAIMANT )

Claimant: Max T. Sigl (the Claimant)

Property: Township 2N, Range 10E, Section 3D, Tax lot 1300, Hood River County  
(the Property)

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

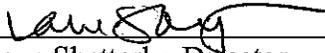
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

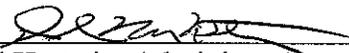
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 4<sup>th</sup> day of April, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 4<sup>th</sup> day of April, 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  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130277  
(BALLOT MEASURE 37) OF )  
Max T. Sigl, CLAIMANT )

Claimant: Max T. Sigl (the Claimant)

Property: Township 2N, Range 10E, Section 3D, Tax lot 1100, Hood River 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 Max Sigl's division of tax lot 1100 and Duane and Barbara Sigl's division of tax lot 1300 into one-third- to one-half-acre parcels and their development of a dwelling on each resulting parcel with onsite wastewater treatment and public domestic water supply: applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, divisions 11, and 33. Goal 11 will not apply only to the extent that it prohibits the claimants from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property. These laws will not apply to the claimants only to the extent necessary to allow Max Sigl to use tax lot 1100 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1100 on March 12, 1971; and to allow Duane and Barbara Sigl to use and tax lot 1300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 1300 on July 15, 2002. The department acknowledges that the relief to which Duane and Barbara Sigl are entitled under ORS 197.352 will not allow them to use tax lot 1300 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Max Sigl to use tax lot 1100 and to Duane and Barbara Sigl to use tax lot 1300 for the use described in this report, subject to the standards in effect when Max Sigl acquired tax lot 1100 on March 12, 1971, and subject to the standards in effect when Duane and Barbara Sigl acquired tax lot 1300 on July 15, 2002. On July 15, 2002, tax lot 1300 was subject to applicable provisions of Goals 3, 11, and 14, ORS 215 and OAR 660, divisions 11 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 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. Under the terms of the order, any use of tax lot 1100 by Max Sigl and tax lot 1300 by Duane and Barbara Sigl 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 Max Sigl to use tax lot 1100 and Duane and Barbara Sigl to use tax lot 1300, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

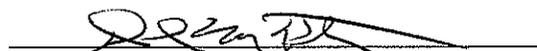
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FOR DLCDC AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:



Lane Shetterly, Director  
DLCDC  
Dated this 4<sup>th</sup> day of April, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator

DAS, State Services Division  
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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.

(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  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130277  
(BALLOT MEASURE 37) OF )  
Duane A. Sigl and Barbara Jo Sigl, CLAIMANTS )

Claimants: Duane A. Sigl and Barbara Jo Sigl (the Claimants)

Property: Township 2N, Range 10E, Section 3D, Tax lot 1100, Hood River County  
(the Property)

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

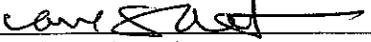
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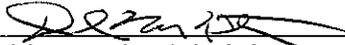
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FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 4<sup>th</sup> day of April, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
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IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130277
(BALLOT MEASURE 37) OF	)	
Duane A. Sigl and Barbara Jo Sigl, CLAIMANTS	)	

Claimants: Duane A. Sigl and Barbara Jo Sigl (the Claimants)

Property: Township 2N, Range 10E, Section 3D, Tax lot 1300, Hood River County  
(the Property)

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

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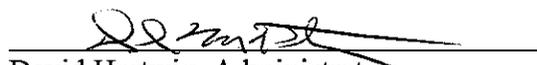
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Lane Shetterly, Director  
DLCD  
Dated this 4<sup>th</sup> day of April, 2007.

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**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

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

April 4, 2007

**STATE CLAIM NUMBER:** M130277

**NAMES OF CLAIMANTS:** Max T. Sigl  
Duane A. Sigl  
Barbara Jo Sigl

**MAILING ADDRESS:** 1411 Alameda Road  
Hood River, Oregon 97301

**PROPERTY IDENTIFICATION:** Township 2N, Range 10E, Section 3D  
Tax lots 1100 and 1300  
Hood River County

**OTHER CONTACT INFORMATION:** Steven B. Andersen  
400 1st Avenue  
Mosier, Oregon 97040

**DATE RECEIVED BY DAS:** October 12, 2006

**180-DAY DEADLINE:** April 10, 2007

**I. SUMMARY OF CLAIM**

The claimants, Max, Duane and Barbara Sigl, seek compensation in the amount of \$7,332,660 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 15.71-acre subject property<sup>1</sup> into 38 one-third- to one-half-acre parcels and to develop a dwelling on each resulting parcel with onsite wastewater treatment and public domestic water supply. The subject property is located at the northeast corner of the intersection of Barrett Drive and Alameda Road, near Hood River, in Hood River 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

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<sup>1</sup> The subject property includes two tax lots. Tax lot 1100 consists of 9.77 acres, and tax lot 1300 consists of 5.94 acres.

not apply to Max Sigl's division of tax lot 1100 and Duane and Barbara Sigl's division of tax lot 1300 into one-third- to one-half-acre parcels and their development of a dwelling on each resulting parcel with onsite wastewater treatment and public domestic water supply: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 11, and 33, enacted or adopted after each claimant acquired each of the subject tax lots. These laws will not apply to the claimants only to the extent necessary to allow Max Sigl to use tax lot 1100 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1100 on March 12, 1971; and to allow Duane and Barbara Sigl to use and tax lot 1300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 1300 on July 15, 2002. The department acknowledges that the relief to which Duane and Barbara Sigl are entitled to under ORS 197.352 will not allow them to use tax lot 1300 in the manner set forth in the claim.

The department has further determined that this claim is not valid in part because Max Sigl is not a current owner of tax lot 1300, and Duane and Barbara Sigl are not owners of tax lot 1100. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On February 22, 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, four written comments were received in response to the 10-day notice.

Three comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law.

One comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the 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 October 12, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660 and provisions of Hood River's Exclusive Farm Use (EFU), High Value Farmland (HVF) and Stream Protection Overlay (SPO) 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 Max Sigl acquired tax lot 1100 on March 12, 1971, as reflected by a contract included with the claim, and tax lot 1300 on November 14, 1967, as reflected by a warranty deed included with the claim. Max Sigl conveyed tax lot 1300 to his son and daughter-in-law, claimants Duane and Barbara Sigl, on July 15, 2002, as evidenced by a warranty deed included in the claim.<sup>2</sup> The Hood River County Assessor's Office confirms Max Sigl's current ownership of tax lot 1100 and Duane and Barbara Sigl's current ownership of tax lot 1300. Claimant Max Sigl no longer owns tax lot 1300. Claimants Duane and Barbara Sigl do not assert that they have any ownership interest in tax lot 1100.

### **Conclusions**

Claimant Max Sigl is an "owner" of tax lot 1100, and claimants Duane and Barbara Sigl are "owners" of tax lot 1300, as that term is defined by ORS 197.352(11)(C). Max Sigl has been an owner of tax lot 1100 since March 12, 1971. Duane and Barbara have been owners of tax lot 1300 since July 15, 2002. For tax lot 1300, Max Sigl is a "family member" of Duane and

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<sup>2</sup> The claimants' agent states in the claim that Max Sigl now has an interest in tax lot 1300 as a title holder and seller by contract to his son and daughter-in-law. However, documents in the claim and from Hood River County do not substantiate Max Sigl's ownership of that tax lot.

Barbara Sigl, as that term is defined by ORS 197.352(11)(A), as of November 14, 1967. Max Sigl is not a current “owner” of tax lot 1300, and Duane and Barbara Sigl are not “owners” of tax lot 1100, 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 to divide the 15.71-acre subject property into 38 one-third- to one-half-acre parcels and to develop a dwelling on each resulting parcel with onsite wastewater treatment and public domestic water supply. It also indicates that the desired use is not allowed under current land use regulations.<sup>3</sup>

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. Tax lot 1100 is zoned by Hood River County as EFU-HVF with Flood Plain (FP), Stream Protection Overlay (SPO) and Health Hazard Overlay (HHO) zones; tax lot 1300 is zoned by Hood River County as EFU-HVF with HHO. Hood River County’s zoning of the subject property as EFU-HVF, as required by Goal 3, is in accordance with ORS 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.<sup>4</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under

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<sup>3</sup> The claimants summarily list numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the subject property or do not restrict the use of the property with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimants’ desired use of the property, the department cannot evaluate how or whether they apply. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ desired use of the subject property, based on the claimants’ description of their desired use.

<sup>4</sup> The subject property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

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

Goal 11, effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an Urban Growth Boundary (UGB). Goal 11 and its implementing rules have two components: one that prohibits an owner from utilizing urban-level facilities or services to serve the property, and another that prohibits service providers from extending their facilities to serve property outside a UGB. The former can restrict a claimant's use of property. The latter is a restriction on service providers. Goal 11 and OAR 660, division 11, apply to the claimants' use of the subject property only to the extent that they would restrict the development of urban-level public or community sewer or water facilities on the subject property.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the subject property into parcels less than two acres. Goal 14 generally requires that land outside of UGBs be used for rural uses.

Max Sigl acquired tax lot 1100 on March 12, 1971, and tax lot 1300 on November 14, 1967, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. When Max Sigl acquired tax lot 1100 in 1971 and tax lot 1300 in 1967, both tax lots were subject to Hood River County's A-2 farm zone, which required a minimum of 7,500 square feet for the creation of a new parcel with public sewer service.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, divisions 11, and 33, were all enacted or adopted after Max Sigl acquired the subject property and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when Max Sigl acquired tax lot 1100 in 1971 and tax lot 1300 in 1967.

Those elements of Goal 11 that prohibit a public service provider from extending or establishing public facilities or services outside of a UGB restrict the actions of local government rather than the claimants' use of the property. That component of Goal 11 is not subject to ORS 197.352 and will continue to apply to those service providers. Only the general prohibition under Goal 11 on the claimants' establishment of an urban level of public facilities and services is subject to ORS 197.352 and restricts the claimants' desired use of the property.

As explained in Section V.(1), claimant Max Sigl is not a current "owner" of the tax lot 1300 and claimants Duane and Barbara Sigl are not "owners" as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Max Sigl's use of tax lot 1300 and Duane and Barbara Sigl's use of tax lot 1100 with the effect of reducing the fair market value of the subject private real 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 may be other laws that currently apply to Max Sigl's use of tax lot 1100, and that may continue to apply to Max Sigl's use of tax lot 1100, 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 Max Sigl 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 regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

#### **Findings of Fact**

The claim includes an estimate of \$7,332,660 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' consulting land use planner's assessment of the property's value.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Max Sigl who acquired tax lot 1100 on March 12, 1971, and Duane and Barbara Sigl, whose family member, Max Sigl, acquired tax lot 1300 on November 14, 1967. As explained in Section V.(1) of this report, claimant Max Sigl is not a current "owner" of tax lot 1300 and claimants Duane and Barbara Sigl are not "owners" of tax lot 1100, as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict Max Sigl's use of tax lot 1300 or Duane and Barbara Sigl's use of tax lot 1300 with the effect of reducing the fair market value of the subject property.

Under ORS 197.352, the claimants are otherwise due compensation for land use regulations that restrict the claimants' desired 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 Max Sigl acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the property is a reduction of \$7,332,660.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since Max Sigl acquired the subject 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, 11 and 14, ORS 215 and OAR 660, divisions 11 and 33, which Hood River County has implemented through its current EFU-HVF zone. All of these land use regulations were enacted or adopted after the Max Sigl 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 division and development of the subject property were in effect when Max Sigl acquired tax lot 1100 in 1971 and tax lot 1300 in 1967. As a result, these laws are not exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and do not provide a basis for compensation..

As explained in Section V.(1) of this report, claimant Max Sigl is not a current "owner" of tax lot 1300 and claimants Duane and Barbara Sigl are not "owners" of tax lot 1100 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 Max Sigl for tax lot 1300 and is not relevant to Duane and Barbara Sigl for tax lot 1100.

### **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 laws that restrict the use of the subject 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 subject 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 laws enforced by the Commission or the department do not restrict Max Sigl's use of tax lot 1300 or Duane and Barbara Sigl's use of tax lot 1100 because Max Sigl is not a current owner of tax lot 1300 and Duane and Barbara Sigl are not owners of tax lot 1100. Laws enforced by the Commission or the department do restrict Max Sigl's desired use of tax lot 1100, and Duane and Barbara Sigl's desired use of tax lot 1300 relative to the uses permitted when Max Sigl acquired 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 \$7,332,660. 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 each tax lot, 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 Max Sigl's desired use of tax lot 1100 and Duane and Barbara Sigl's desired use of tax lot 1300 were allowed under the standards in effect when Max Sigl acquired the subject 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 each tax lot 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 Max Sigl to use tax lot 1100 for a use permitted at the time he acquired tax lot 1100 on March 12, 1972; and to allow Duane and Barbara Sigl to use tax lot 1300 for a use permitted at the time they acquired tax lot 1300 on July 15, 2002.

At the time Duane and Barbara Sigl acquired tax lot 1300, it was zoned EFU by Hood River County and subject to the current lot size and dwelling standards under Goals 3, 11 and 14, ORS 215 and OAR 660, divisions 11, and 33, and as described in Section V.(2) of this report.

In addition to the provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, divisions 11 and 33, in effect when Duane and Barbara Sigl acquired tax lot 1300, and other laws in effect when Max Sigl acquired tax lot 1100, there may be other laws that apply to the subject property and will continue to apply to the property.

Hood River County notes that a portion of the subject property, near the northern portion of tax lot 1100 through which Indian Creek runs, is located in a FP zone, and that the subject property is also subject to a HHO. 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 and health hazard 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 flood plain, including but not limited to Goal 7 (Natural Hazards).

There may be other laws that continue to apply to the claimants' 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 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. 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 Max Sigl's use of tax lot 1100 and Duane and Barbara Sigl's use of tax lot 1300.

### Conclusions

Based on the record before the department, claimant Max, Sigl has not established that he is entitled to relief under ORS 197.352(1) for tax lot 1300, and claimants Duane and Barbara Sigl have not established that they are entitled to relief under ORS 197.352(1) for tax lot 1100 as a result of land use regulations enforced by the Commission or the department because Max Sigl is not a current owner of tax lot 1300 and Duane and Barbara Sigl are not owners of tax lot 1100. Therefore, the department recommends that this claim be denied as to tax lot 1300 for Max Sigl and be denied as to tax lot 1100 for Duane and Barbara Sigl.

The department otherwise recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Max Sigl's division of tax lot 1100 and Duane and Barbara Sigl's division of tax lot 1300 into one-third- to one-half-acre parcels and their development of a dwelling on each resulting parcel with onsite wastewater treatment and public domestic water supply: applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, divisions 11, and 33. Goal 11 will not apply only to the extent that it prohibits the claimants from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property. These laws will not apply to the claimants only to the extent necessary to allow Max Sigl to use tax lot 1100 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1100 on March 12, 1971; and to allow Duane and Barbara Sigl to use and tax lot 1300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 1300 on July 15, 2002. The department acknowledges that the relief to which Duane and Barbara Sigl are entitled under ORS 197.352 will not allow them to use tax lot 1300 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Max Sigl to use tax lot 1100 and to Duane and Barbara Sigl to use tax lot 1300 for the use described in this report, subject to the standards in effect when Max Sigl acquired tax lot 1100 on March 12, 1971, and subject to the standards in effect when Duane and Barbara Sigl acquired tax lot 1300 on July 15, 2002. On July 15, 2002, tax lot 1300 was subject to applicable provisions of Goals 3, 11, and 14, ORS 215 and OAR 660, divisions 11 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 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. Under the terms of the order, any use of tax lot 1100 by Max Sigl and tax lot 1300 by Duane and Barbara Sigl 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 Max Sigl to use tax lot 1100 and Duane and Barbara Sigl to use tax lot 1300, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

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 March 14, 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.