

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. M130010
(BALLOT MEASURE 37) OF)
Wyland Ranches, Inc. and Gerald E. Wyland, CLAIMANTS)

Claimants: Wyland Ranches, Inc. and Gerald E. Wyland (the Claimants)

Property: Township 2N, Range 3E, Section 20, Tax lot 1004
Umatilla County (the property)

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


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

ORDER

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


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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 6th day of March, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 6th day of March, 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

March 6, 2007

STATE CLAIM NUMBER: M130010

NAMES OF CLAIMANTS: Wyland Ranches, Inc.
Gerald E. Wyland

MAILING ADDRESS: 71656 Schroeder Road
Pendleton, Oregon 97801

PROPERTY IDENTIFICATION: Township 2N, Range 3E, Section 20
Tax lot 1004
Umatilla County

OTHER CONTACT INFORMATION: Sam Tucker
Monahan, Grove & Tucker
105 North Main Street
Milton-Freewater, Oregon 97862

DATE RECEIVED BY DAS: September 11, 2006

180-DAY DEADLINE: March 10, 2007

I. SUMMARY OF CLAIM

The claimants, Wyland Ranches, Inc. and Gerald Wyland, seek compensation in the amount of \$1.4 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 114.97-acre subject property into four-acre parcels and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above, southwest of Pendleton, in Umatilla 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 not valid as to Wyland Ranches, Inc. because neither the Land Conservation and Development Commission (the Commission), nor the department, has enforced laws that restrict its use of the private real property relative to uses permitted when it acquired the property, with the effect of reducing the property's fair market value. The department has further determined that this claim is not valid as to Gerald Wyland because he is not an owner of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On December 26, 2006, pursuant to Oregon Administrative Rule (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 September 11, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660 and Umatilla County's Exclusive Farm Use (EFU) 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 Gerald Wyland first acquired a one-half interest in the subject property with Raley Peterson on September 9, 1983, from Triad Development Company, as reflected by a bargain and sale deed included with the claim.¹ On June 10, 1993, Gerald Wyland transferred his individual one-half interest in the subject property to Wyland Ranches, Inc., as reflected by a bargain and sale deed included with the claim.²

The Umatilla County Assessor's Office confirms Wyland Ranches, Inc.'s current ownership of the subject property. Claimant Gerald Wyland no longer owns the subject property.

Conclusions

Claimant Wyland Ranches, Inc. is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 10, 1993. Claimant Gerald Wyland is not an "owner" of the subject property 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 114.97-acre subject property into four-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.³

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimant's property is zoned by Umatilla County as EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

¹ Claimant Gerald Wyland asserts he acquired the subject property on June 7, 1979. However, on that date Triad Development Company (a partnership with Raley Peterson and Gerald Wyland) acquired the subject property.

² Wyland Ranches, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

³ The claimants summarize 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 in a manner that reduces 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' asserted desired use.

⁴ The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I-VI soils.

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 the development of dwellings on existing or any proposed parcel 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). Umatilla County's EFU zone requires a minimum of 160 acres for the creation of a new lot or parcel. 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 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.)

At the time Wyland Ranches, Inc. acquired the subject property in 1993, it was subject to Umatilla County's acknowledged EFU zone, which established a 160-acre minimum lot size for the creation of new lots or parcels and allowed the development of dwellings primarily in conjunction with farm use.⁵ When Wyland Ranches, Inc. acquired the subject property, its desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.⁶ In 1993, ORS 215.263 (1993 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1993 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish that Wyland Ranches, Inc.'s desired division of the subject property would have been allowed at the time it acquired the property in 1993. To the contrary, Wyland Ranches, Inc.'s desired use would not have been permitted under Goal 3 and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the provisions of ORS 215, in effect and applicable to the property when Wyland Ranches, Inc. acquired it.

⁵ Umatilla County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on November 6, 1985.

⁶ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after Wyland Ranches, Inc. acquired the subject property in 1993 and do not allow its desired division or development of the property. However, Wyland Ranches, Inc.'s desired use of the subject property was also prohibited under the provisions of Goal 3 and OAR 660, as implemented through Umatilla County's comprehensive plan and EFU zone, and applicable provisions of ORS 215, in effect when Wyland Ranches, Inc. acquired the property on June 10, 1993. The claim does not establish that any state laws enforced by the Commission or the department restrict Wyland Ranches, Inc.'s desired use of the subject property relative to uses permitted when it acquired the property in 1993.

As explained in Section V.(1), Gerald Wyland is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Gerald Wyland's use of the subject property with the effect of reducing the fair market value of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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 \$1.4 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimants' attorney's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Wyland Ranches, Inc., which acquired the property on June 10, 1993, and Gerald Wyland. As explained in Section V.(1) of this report, Gerald Wyland is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, Gerald Wyland is not entitled to compensation under ORS 197.352 because no laws restrict his use of the subject property with the effect of reducing the fair market value of the subject property. Wyland Ranches, Inc. has also not established its entitlement to compensation under ORS 197.352 because Wyland Ranches, Inc.'s desired use of the property was prohibited under the laws in effect at the time it acquired the property. Accordingly, state land use regulations enacted or adopted by the Commission or the department since Wyland Ranches, Inc. acquired the property do not have the effect of reducing the fair market value of the property relative to uses allowed in 1993.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Umatilla County has implemented through its current EFU zone. With the exception of amendments enacted or adopted after June 10, 1993, Goal 3, ORS 215 and OAR 660 were in effect when Wyland Ranches, Inc. 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 the general statutory, goal and rule restrictions on division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Wyland Ranches, Inc. acquired the property on June 10, 1993. However, as discussed in Section V.(2) of this report, Wyland Ranches, Inc.'s desired use was prohibited by the laws in effect when it acquired the property.

As explained in Section V.(1) of this report, Gerald Wyland is not an "owner" of the subject property 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 Gerald Wyland's claim.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, the department finds that claimant Wyland Ranches Inc.'s claim is not valid because its desired use of the property was prohibited at the time it acquired the property. Therefore, neither the Commission nor the department has enforced laws enacted or adopted after Wyland Ranches, Inc. acquired the subject property that restrict its use of the subject property relative to uses permitted when it acquired the property with the effect of reducing the property's fair market value. The department further finds that the claim is not valid as to Gerald Wyland because he is not an owner of the subject property.

Conclusions

Based on the record before the department, Wyland Ranches, Inc. has not established that it is entitled to relief under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department because its desired use of the property was prohibited under the zoning in effect when Wyland Ranches, Inc. acquired the property in 1993. The department further finds that Gerald Wyland has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because he is not an owner of the subject property. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on February 12, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.