Oregon
Theodore R. Kulongoski, Governor

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March 13, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Numbers M130061

Claimant: Lone Rock Timberland Company

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Lone Rock Timberland Co. and Richard Fohs Sohn, CLAIMANTS	)))))	FINAL ORDER CLAIM NO. M130061

Claimants: Lone Rock Timberland Co. and Richard Fohs Sohn (the Claimants)

Property: Township 26S, Range 3W, Section 2, Tax lot 1300
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 15th day of March, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 15th 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 15, 2007

STATE CLAIM NUMBER:	M130061
NAMES OF CLAIMANTS:	Lone Rock Timberland Co. Richard Fohs Sohn
MAILING ADDRESS:	PO Box 1127 Roseburg, Oregon 97470
PROPERTY IDENTIFICATION:	Township 26S, Range 3W, Section 2 Tax lot 1300 Douglas County
OTHER CONTACT INFORMATION:	Danny L. Cawthon, Agent Lone Rock Timberland Co.
DATE RECEIVED BY DAS:	September 19, 2006
180-DAY DEADLINE:	March 18, 2007

I. SUMMARY OF CLAIM

The claimants, Lone Rock Timberland Co. and Richard Fohs Sohn, seek compensation in the amount of $390,659 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 develop a dwelling on the 10.61-acre subject property. The subject property is located at the intersection of North Umpqua/State Highway 316 and Rock Creek Road, along the Umpqua River, near Glide, 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 this claim is not valid as to Richard Fohs Sohn because he is not an owner of the subject property; and is not valid as to Lone Rock Timberland Co. because its desired use of the subject property was prohibited under the laws in effect when it acquired the property in 1994. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On December 28, 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 19, 2006, for processing under OAR 125, division 145. The claim identifies "Farm Forest and Forest regulation" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Lone Rock Timberland Co. and Richard Fohs Sohn, state in the claim that they acquired the subject property on September 25, 1973, and January 18, 1974, when Sun Studs, Inc.[1] acquired the property. Although claimant Richard Fohs Sohn has had an ownership interest in both Sun Studs, Inc. and claimant Lone Rock Timberland Co., Sun Studs, Inc. was a separate and distinct legal entity from both claimants.

Claimant Richard Fohs Sohn asserts that he is an owner of the property because he is an owner, stockholder and president of Lone Rock Timberland Co.[2] However, according to title information provided in the claim and Douglas County records, claimant Richard Fohs Sohn has no ownership interest in the property.

Claimant Lone Rock Timberland Co., a Washington corporation, acquired the property under its former name, Lone Rock Timber Co., a Washington corporation,[3] on June 1, 1994, by merger with Lone Rock Timber Co., an Oregon corporation,[4] as evidenced by the articles of merger received from the Oregon Secretary of State's Corporation Division.

The Douglas County Assessor's Office confirms Lone Rock Timberland Co.'s current ownership of the subject property. Claimant Richard Fohs Sohn does not own the subject property.

Conclusions

Claimant Lone Rock Timberland Co. is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 1, 1994. Claimant Richard Fohs Sohn is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C).[5]

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.

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[1] Based on the information in the record for this claim, Sun Studs, Inc., is an inactive partnership of domestic business corporations registered with the Oregon Secretary of State.

[2] Lone Rock Timberland Co., a Washington corporation, is a foreign business corporation registered with the Oregon Secretary of State.

[3] Lone Rock Timber Company, a Washington corporation, changed its name to Lone Rock Timberland Co. on November 28, 2003, according to Oregon Secretary of State's Business Registry documentation included with the claim.

[4] Lone Rock Timber Company, an Oregon corporation, is an inactive domestic business corporation registered with the Oregon Secretary of State.

[5] Under ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the Lone Rock Timberland Co. are not considered family members under the definition of family member in ORS 197.352(11)(A).

Findings of Fact

The claim indicates that the claimants desire to develop a dwelling on the 10.61-acre subject property and that current land use regulations prohibit the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. Lone Rock Timberland Co.'s property is zoned Timberland Resource (TR) by Douglas County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, establish standards for development of dwellings on existing or proposed parcels on forest lands.

Claimant Lone Rock Timberland Co. acquired the property on June 1, 1994. At that time, the property was subject to the current laws in effect, as described above.

Conclusions

The current zoning requirements and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted before Lone Rock Timberland Co. acquired the subject property on June 1, 1994. These land use regulations do not allow the development of a dwelling on the subject property. Laws enacted or adopted since Lone Rock Timberland Co. acquired the subject property in 1994 do not restrict the claimants' desired use of the property relative to when Lone Rock Timberland Co. acquired it in 1994.

As explained in Section V.(1), Richard Fohs Sohn 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 Land Conservation and Development Commission (the Commission) or the department restrict his use of private real 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 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 $390,659 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 a comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, claimant Richard Fohs Sohn is not an "owner" of the subject property and therefore, no laws restrict his use of the subject property with the effect of reducing the fair market value of the subject property. Claimant Lone Rock Timberland Co. acquired the property on June 1, 1994. No state laws enacted or adopted since Lone Rock Timberland Co. acquired the subject property restrict the use of the property relative to the uses allowed in 1994. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department since Lone Rock Timberland Co. 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 Goal 4, ORS 215 and OAR 660, division 6, which Douglas County has implemented through its TR zone. All of these laws were in effect when Lone Rock Timberland Co. acquired the property in 1994.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when Lone Rock Timberland Co. acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Lone Rock Timberland Co. acquired the subject property.

As explained in Section V.(1) of this report, Richard Fohs Sohn 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 as to Richard Fohs Sohn.

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 the claim is not valid as to claimant Richard Fohs Sohn because he is not an owner of the subject property; and is not valid as to claimant Lone Rock Timberland Co. because no state laws restrict its desired use of the subject property relative to what was permitted when it acquired the property in 1994 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record before the department, the claimants, Lone Rock Timberland Co. and Richard Fohs Sohn, 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 Therefore, the department recommends that this claim be denied.

Nothing in this report of the state's 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 February 22, 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.