Oregon
Theodore R. Kulongoski, Governor

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August 17, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130875

Claimant: Lone Rock Timberland Co.

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. M130875

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

Property: Township 28S, Range 11W, Section 10, Tax lot 900
Coos 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 17th day of August, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 17th day of August, 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

August 17, 2007

STATE CLAIM NUMBER:	M130875
NAMES OF CLAIMANTS:	Lone Rock Timberland Co. Richard Fohs Sohn
MAILING ADDRESS:	PO Box 1127 Roseburg, Oregon 97470
PROPERTY IDENTIFICATION:	Township 28S, Range 11W, Section 10 Tax lot 900 Coos County
OTHER CONTACT INFORMATION:	Danny L. Cawthon, Agent Lone Rock Timberland Co.
DATE RECEIVED BY DAS:	November 17, 2006
DEADLINE FOR FINAL ACTION:[1]	May 10, 2008

I. SUMMARY OF CLAIM

The claimants, Lone Rock Timberland Co. and Richard Fohs Sohn, seek compensation in the amount of $2,484,801 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.[2] The claimants desire compensation or the right to divide a 143-acre portion of the 189.67-acre subject property into

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[1] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

[2] On July 10, 2007, the claimants' attorney requested that the State of Oregon hold a contested case on the pending claim. The request appears to be based on ORS 183.310(2)(a) and the decision of the Oregon Court of Appeals in *Corey v. DLCD*, 210 Or App 542 (2007).

The request for a contested case hearing is denied. The decision of the Court of Appeals in *Corey* is not final, and DLCD is petitioning the Oregon Supreme Court for review. The petition for review will contend that the Court of Appeals' decision in *Corey* was incorrect. In addition, by its terms, and as further articulated by the Court of Appeals in *Emmel v. DLCD* (A135136, July 5, 2007), *Corey* would require a contested case only after a state agency had made a final determination that a claimant is entitled to relief. No such determination has been made in this case.

thirty-three 2- to 8-acre parcels and to develop a dwelling on each parcel.[3] The subject property is located northeast of Myrtle Point in Coos 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 it has not established its ownership of the northern flagpole portion of the subject property. The department has further determined the claim is not valid as to Lone Rock Timberland Co. because its desired use of the remaining portion of the subject property was prohibited under the laws in effect when it acquired that portion in 2005. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 4, 2007, 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, one written comment was received in response to the 10-day notice.

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

[3] The claim indicates that the claimants desire to continue allowed forest uses on a 46.67-acre portion of the property.

Findings of Fact

This claim was submitted to DAS on November 17, 2006, for processing under OAR 125, division 145. The claim identifies Coos County's Forest (F) zone 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 May 1, 1973, when Sun Studs, Inc.[4] acquired the majority of the subject property. However, 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.

The documents submitted with the claim establish that Sun Studs, Inc. conveyed the majority of the subject property (excluding the northern flagpole portion) to Crooked River Properties, Inc.[5] on April 1, 1984, as evidenced by a warranty deed included with the claim. Crooked River Properties, Inc. conveyed the majority of the subject property to Sun Holding Co., Inc., an Oregon corporation, by merger on December 31, 1986, as evidenced by an affidavit concerning real property ownership included with the claim. Sun Holding Co., Inc. changed its name to Lone Rock Timber Co. on January 14, 1987. Lone Rock Timber Co. conveyed the majority of the subject property to Umpqua Growth Limited Partnership[6] on December 29, 1989, as evidenced by a quitclaim deed included with the claim. 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. Umpqua Growth Limited Partnership conveyed the majority of the subject property to

[4] Based on the information in the record for this claim, Sun Studs, Inc., an Oregon corporation, is currently an inactive domestic business corporation registered with the Oregon Secretary of State.
[5] Crooked River Properties, Inc., an Oregon corporation, is currently an inactive domestic business corporation registered with the Oregon Secretary of State.
[6] Umpqua Growth Limited Partnership is an active domestic limited partnership registered with the Oregon Secretary of State.

claimant Lone Rock Timberland Co. on December 31, 2005, as reflected by a bargain and sale deed included with the claim.

The claim does not state when claimant Lone Rock Timberland Co. acquired the northern flagpole portion of the subject property and does not include copies of any deeds or otherwise establish that Lone Rock Timberland Co. is an owner of that portion of the property.

Claimant Richard Fohs Sohn also asserts that he is a current owner of the property because he is an owner, stockholder and president of Lone Rock Timberland Co.[7] However, according to the title information provided in the claim and Coos County records, claimant Richard Fohs Sohn has no individual ownership interest in the subject property.

The Coos County Assessor's Office confirms Lone Rock Timberland Co.'s current ownership of the subject property, with the exception of the northern flagpole portion of the property. Claimant Richard Fohs Sohn does not own the subject property.

Conclusions

Claimant Lone Rock Timberland Co. is an "owner" of the majority subject property as that term is defined by ORS 197.352(11)(C), as of December 31, 2005. In addition, claimant Lone Rock Timberland Co. has not established that it is an "owner" of the northern flagpole portion of the subject property as that term is defined in ORS 197.352(11)(C). Claimant Richard Fohs Sohn is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C).[8]

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 a 143-acre portion of the 189.67-acre subject property into thirty-three 2- to 8-acre parcels and to develop a dwelling on each parcel, and that the property's current zoning prohibits 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. The subject property is zoned F by Coos County as required by Statewide Planning Goal 4 (Forest Lands), 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.

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

[8] 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 Lone Rock Timberland Co. are not considered family members under the definition of family member in ORS 197.352(11)(A).

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). Coos County's F zone requires a minimum of 160 acres for the creation of a new lot or parcel. ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

Claimant Lone Rock Timberland Co. acquired the majority of the subject property on December 31, 2005. At that time, the property was subject to the current laws in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size 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 majority of the subject property on December 31, 2005. These land use regulations do not allow the division and development of the subject property. Laws enacted or adopted since Lone Rock Timberland Co. acquired the property in 2005 do not restrict the claimants' desired use of the property relative to when Lone Rock Timberland Co. acquired it in 2005.

As explained in Section V.(1), Richard Fohs Sohn is not an "owner" of the subject property and Lone Rock Timberland Co. has not established that it is an "owner" of the northern flagpole portion 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 Richard Fohs Sohn's use of the subject private real property and Lone Rock Timberland Co.'s use of the northern flagpole portion 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 $2,484,801 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, the claimants are Richard Fohs Sohn and Lone Rock Timberland Co. Claimant Richard Fohs Sohn is not an owner of the subject property and Lone Rock Timberland Co. has not established its ownership of the northern flagpole portion of the subject property. Therefore, no laws restrict Richard Fohs Sohn's use of the property or Lone Rock Timber land Co.'s use of the northern flagpole portion of the property with the effect of reducing its fair market value. Claimant Lone Rock Timberland Co. acquired the majority of the subject property on December 31, 2005. No state laws enacted or adopted since Lone Rock Timberland Co. acquired the majority of the subject property restrict the use of the property relative to the uses allowed in 2005. 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 majority of 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 Goal 4, ORS 215 and OAR 660, division 6, which Coos County has implemented through its F zone. As set forth in Section V.(2) of this report, 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 majority of the property in 2005.

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 majority of the subject property.

As explained in Section V.(1) of this report, Richard Fohs Sohn is not an "owner" of the subject property and Lone Rock Timberland Co. has not established that it is an "owner" of the northern flagpole portion 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 Richard Fohs Sohn and is not relevant to Lone Rock Timberland Co. for the northern flagpole portion of the property.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, 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. as to the northern flagpole portion of the property because it has not demonstrated its ownership of that portion of the property. The department has further determined that the claim is not valid as to claimant Lone Rock Timberland Co. for the remainder of the property because no state land use regulations restrict its desired use of that portion of the property relative to what was permitted when it acquired that portion in 2005, 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.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 9, 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.