



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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September 4, 2007

To: Interested Persons
From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130878

Claimants: Lone Rock Timberland Co. and Richard Fohs Sohn

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

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

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130878
(BALLOT MEASURE 37) OF)	
Lone Rock Timberland Co., CLAIMANT)	

Claimant: Lone Rock Timberland Co. (the Claimant)

Property: Township 26S, Range 12W, Section 30A, Tax lot 500
Coos 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 for the RR-2 zoned portion of the subject property located south of Coos City Sumner Road, 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 Lone Rock Timberland Co.'s division and development of the RR-2 zoned portion of the subject property located south of Coos City Sumner Road: the applicable provisions of Goal 14 and OAR 660-004-0040 adopted after June 1, 1994. These land use regulations will not apply to Lone Rock Timberland Co. only to the extent necessary to allow it to use a portion of the subject property below Coos City Sumner Road for the use described in this report, and only to the extent that use was permitted when it acquired the property on June 1, 1994.
2. The action by the State of Oregon provides the state's authorization to Lone Rock Timberland Co. to use the RR-2 zoned portion of the subject property for the use described in this report, subject to the standards in effect on June 1, 1994. On that date, the property was subject to applicable provisions of Goal 14, as implemented by Coos County's acknowledged comprehensive plan, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 Lone Rock Timberland Co. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the property imposed by private parties.

4. Any use of the property by Lone Rock Timberland Co. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for Lone Rock Timberland Co. to use the property, it may be necessary for it 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 Lone Rock Timberland Co. 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 its use of the property.

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.

The Claim is denied for the remainder of the subject property 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 Manager for the Measure 37 Services Division of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Cora R. Parker, Acting Director


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 4th day of September, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Division
Dated this 4th day of September, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

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

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130878
(BALLOT MEASURE 37) OF)
Richard Fohs Sohn, CLAIMANT)

Claimant: Richard Fohs Sohn (the Claimant)

Property: Township 26S, Range 12W, Section 30A, Tax lot 500
Coos 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 Director 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:
Cora R. Parker, Acting Director


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 4th day of September, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Division
Dated this 4th day of September, 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

September 4, 2007

STATE CLAIM NUMBER: M130878

NAMES OF CLAIMANTS: Lone Rock Timberland Co.
Richard Fohs Sohn

MAILING ADDRESS: PO Box 1127
Roseburg, Oregon 97470

PROPERTY IDENTIFICATION: Township 26S, Range 12W, Section 30A
Tax lot 500
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 \$732,062 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 the 70.99-acre subject property into one 35-acre parcel and three 10-acre parcels and to develop a dwelling on each resulting 10-acre parcel. The subject property is located on Coos City Sumner Road, south of Coos Bay, in Coos County. (See claim.)

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 18, 2007, the claimants' attorney requested that the State of Oregon hold a contested case hearing 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).

At this time, the request for a contested case hearing is denied without prejudice. 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, *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.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Lone Rock Timberland Co.'s division and development of the RR-2 zoned portion of the subject property located south of Coos City Sumner Road: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rule (OAR) 660-004-0040, adopted after June 1, 1994. These land use regulations will not apply to Lone Rock Timberland Co. only to the extent necessary to allow it to use the RR-2 zoned portion of the subject property south of Coos City Sumner Road for the use described in this report, and only to the extent that use was permitted when it acquired the property on June 1, 1994. (See the complete recommendation in Section VI. of this report.)

The department has further 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. for the remainder of the subject property because its desired use of that portion of the property was prohibited under the laws in effect when it acquired property in 1994. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 28, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 15-day notice.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 17, 2006, for processing under OAR 125, division 145. The claim identifies Coos County's Forest (F) and Rural Residential (RR-2) zones 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.³ 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 subject property to Crooked River Properties, Inc.⁴ on April 1, 1984, as evidenced by a warranty deed included with the claim. Crooked River Properties, Inc. conveyed 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.

Claimant Lone Rock Timberland Co., a Washington corporation, acquired the property under its former name, Lone Rock Timber Co.,⁵ on June 1, 1994, by merger with Lone Rock Timber Co., an Oregon corporation, as evidenced by the articles of merger received from the Oregon Secretary of State's Corporation Division. Lone Rock Timber Company, a Washington

³ 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.

⁴ Crooked River Properties, Inc., an Oregon corporation, is currently an inactive domestic business corporation registered with the Oregon Secretary of State.

⁵ 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.

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.

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.⁶ 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. 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 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).⁷

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 70.99-acre subject property into one 35-acre parcel and three 10-acre parcels and to develop a dwelling on each resulting 10-acre parcel. The claim indicates that the property's current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that regulate rural residential zoning and require forest zoning and restrict uses on rural residential- and forest-zoned lands.

A portion of the subject property located south of Coos City Sumner Road is zoned RR-2 by Coos County. The RR-2 zone is a rural residential zone, in accordance with Goal 14, which prohibits urban use of rural lands. The county's RR-2 zone requires two acres for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and

⁶ Lone Rock Timberland Co., a Washington corporation, is a foreign business corporation registered with the Oregon Secretary of State.

⁷ 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).

efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁸ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size then in effect (OAR 660-004-0040(7)(c)).⁹ Because Coos County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of two acres, the minimum lot size for all new lots or parcels must equal or exceed two acres.

The majority of the subject property is zoned F by Coos County as required by Goal 4 (Forest Lands), in accordance with ORS 215 and OAR 660, division 6, because a majority of 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.

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 subject property on June 1, 1994. At that time, forest-zoned portion of the property was subject to the current laws in effect, as described above. At that time, Lone Rock Timberland Co.'s desired residential development of the rural residentially zoned portion of the subject property located south Coos City Summer Road would have been subject to the provisions of the county's comprehensive plan and RR-2 zone, including the provision of Goal 14 implemented by those regulations.

⁸ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

⁹ Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)).

Conclusions

The minimum lot size requirements for rural residential lots or parcels established by amendments to Goal 14 and OAR 660-004-0040 were adopted after Lone Rock Timberland Co. acquired the subject property in 1994, and do not allow the desired division of the RR-2 zoned portion of the property south of Coos City Sumner Road. However, the claim does not establish whether or to what extent Lone Rock Timberland Co.'s desired level of development would have been permitted under the laws in effect in 1994 when it acquired the property.

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 subject property on June 1, 1994. These land use regulations do not allow the division and development of the majority of the subject property zoned for forest use. Laws enacted or adopted since Lone Rock Timberland Co. acquired the forest-zoned portion of the property in 1994 do not restrict its desired use of that portion 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. Therefore, no laws enforced by the Commission or the department restrict Richard Fohs Sohn's use of the subject 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 \$732,062 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. Therefore, no laws restrict Richard Fohs Sohn's use of the property with the effect of reducing its fair market value. Claimant Lone Rock Timberland Co. acquired the subject property on June 1, 1994. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since Lone Rock Timberland Co. acquired the subject property restrict its desired use of the portion of the property south of Coos City Sumner Road. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$732,062.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the RR-2-zoned portion of the subject property was allowed

under the standards in effect when it acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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.

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 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, which Coos County has implemented through its RR-2 and F zones. With the exception of amendments enacted or adopted after June 1, 1994, Goals 4 and 14, ORS 215 and OAR 660, division 6, were in effect when Lone Rock Timberland Co. acquired the subject property.

Conclusions

Without a specific development proposal for the 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 goal and rule restrictions on residential division of the portion of the property south of Coos County Sumner Road are not exempt under ORS 197.352(3)(E) to the extent they were adopted after Lone Rock Timberland Co. acquired the property. Provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, in effect when Lone Rock Timberland Co. acquired the subject property in 1994 are exempt under ORS 197.352(3)(E) and will continue to apply to the 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 to Richard Fohs Sohn.

Other laws in effect when Lone Rock Timberland Co. acquired the property are also exempt under ORS 197.352(3)(E) and will continue to apply to its use of the property. There may be other laws that continue to apply to Lone Rock Timberland Co.'s use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until there is a specific proposal for that use. When Lone Rock Timberland Co. seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 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 Lone Rock Timberland Co.'s use 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 Lone Rock Timberland Co. for the forest-zoned portion of the subject property because no state land use regulations restrict its desired use of that portion 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. The department further finds laws enforced by the Commission or the department restrict Lone Rock Timberland Co.'s desired use of the RR-2 zoned portion of the subject property south of Coos City Sumner Road. 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 \$732,062. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which Lone Rock Timberland Co.'s desired use of the property was allowed under the standards in effect when it acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the RR-2 zoned portion of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Lone Rock Timberland Co. to use the RR-2 zoned portion of the subject property south of Coos City Sumner Road for a use permitted at the time it acquired the property on June 1, 1994.

Conclusions

Based on the record before the department, under ORS 197.352(1), Richard Fohs Sohn has not established that he is entitled to relief for the subject property and Lone Rock Timberland Co. has not established that it is entitled to relief for the forest-zoned portion of the subject property as a result of land use regulations enforced by the Commission or the department. Therefore, the

department recommends that this claim be denied as to Richard Fohs Sohn and as to Lone Rock Timberland Co. for the forest-zoned portion of the subject property.

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 Lone Rock Timberland Co.'s division and development of the RR-2 zoned portion of the subject property located south of Coos City Sumner Road: the applicable provisions of Goal 14 and OAR 660-004-0040 adopted after June 1, 1994. These land use regulations will not apply to Lone Rock Timberland Co. only to the extent necessary to allow it to use a portion of the subject property below Coos City Sumner Road for the use described in this report, and only to the extent that use was permitted when it acquired the property on June 1, 1994.
2. The action by the State of Oregon provides the state's authorization to Lone Rock Timberland Co. to use the RR-2 zoned portion of the subject property for the use described in this report, subject to the standards in effect on June 1, 1994. On that date, the property was subject to applicable provisions of Goal 14, as implemented by Coos County's acknowledged comprehensive plan, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 Lone Rock Timberland Co. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the property imposed by private parties.
4. Any use of the property by Lone Rock Timberland Co. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for Lone Rock Timberland Co. to use the property, it may be necessary for it 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 Lone Rock Timberland Co. 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 its use of the property.
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 July 16, 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.