

Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF SERVICE

I certify that I served the attached M129639 KROUSE RANCH, INC.
AMENDED FINAL ORDER and AMENDED FINAL STAFF REPORT
AND RECOMMENDATION on:

(See Attached List)

by mailing a full, true and correct copy in a sealed, first-class postage-
prepaid envelope, addressed to the person(s) listed above, and deposited
with the United States Postal Service at Salem, Oregon, on the date set forth
below.

DATED this 29th day of October, 2007.

Name:


Measure 57 Support Specialist

10/29/2007

M129639 Krouse Ranch, Inc. (2739)

Krouse Ranch, Inc.
15877 North Applegate Road
Grants Pass, OR 97527

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22275 SW Loganberry Lane
Sheridan, OR 97378

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Grants Pass, OR 97527

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PO Box 3305
Applegate, OR 97530

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Medford, OR 97504

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Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

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

October 29, 2007

Krouse Ranch, Inc.
15877 North Applegate Road
Grants Pass, Oregon 97527



Re: Ballot Measure 37 (ORS 197.352) Claim Number M129639

Claimant: Krouse Ranch, Inc.

Dear Claimant:

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

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

Thank you for your courtesies.

Yours very truly,

CORA R. PARKER
Acting Director

Enclosure



Oregon

Theodore R. Kulongoski, Governor

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October 29, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M129639

Claimant: Krouse Ranch, Inc.

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

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

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

IN THE MATTER OF THE CLAIM FOR) AMENDED FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129639
(BALLOT MEASURE 37) OF)
Krouse Ranch, Inc., CLAIMANT)

Claimant: Krouse Ranch, Inc., an Oregon corporation (the Claimant)

Property: Township 38S, Range 4W, Section 7, Tax lots 1100 and 1101
Township 38S, Range 4W, Section 8, Tax lot 200
Jackson 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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCDD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Amended Final Staff Report and Recommendation of DLCDD (the DLCDD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following state land use regulations to Krouse Ranch Inc.'s use of the two portions of the subject property shown in the attached Exhibit A-1 and A-2 (incorporated by this reference) for aggregate extraction (not including the on-site crushing or processing of aggregate) for a temporary period of five to ten years: ORS 197.180, 215.283(2)(b), 215.298, OAR 660-033-0120 and 660-033-0130. These state land use regulations will not apply to the claimant only to the extent necessary for it to use the two portions of the subject property shown in Exhibit A-1 and A-2 for the use described in this report, and only to the extent that this use was permitted when it acquired the property on March 26, 1971.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on March 26, 1971.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this order will not authorize the use of the property unless the claimant 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, or other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

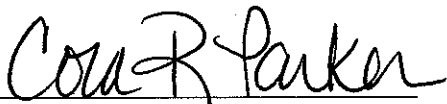
4. Any use of the subject property by the claimant under the terms of this order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3). These laws may include the requirement for a removal-fill permit from the Oregon Department of State Lands.

5. Without limiting the generality of the forgoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for the claimant to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

6. Nothing in this order constitutes a determination concerning what ownership or other rights the state may hold with respect to the Applegate River.

This Order is entered by the Acting 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 125, division 145, and by the Manager for the Measure 37 Services Unit 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
DLCD

Dated this 29th day of October, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Unit

Dated this 29th day of October, 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.”

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

October 29, 2007

OREGON CLAIM NUMBER: M129639

NAME OF CLAIMANT: Krouse Ranch, Inc., an Oregon corporation

MAILING ADDRESS: 15877 North Applegate Road
Grants Pass, Oregon 97527

IDENTIFICATION OF PROPERTY: Township 38S, Range 4W, Section 7
Tax lots 1100 and 1101

Township 38S, Range 4W, Section 8
Tax lot 200
Jackson County

OTHER CONTACT INFORMATION: Daniel B. O'Connor
Huycke, O'Connor, Jarvis & Lohman, LLP
823 Alder Creek Drive
Medford, Oregon 97504

OTHER INTEREST IN PROPERTY: Bridgeview Vineyards, Inc.
PO Box 609
Cave Junction, Oregon 97523

Copeland Sand & Gravel, Inc.
PO Box 608
Grants Pass, Oregon 97528

DATE RECEIVED BY DAS: July 11, 2006

180-DAY DEADLINE: January 7, 2007

I. SUMMARY OF CLAIM

The claimant, Krouse Ranch, Inc., seeks compensation¹ in an amount between \$737,906 and \$824,720 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain real property. The claimant desires compensation or the right to excavate aggregate from two portions of the 236.1-acre subject property. The subject property

¹ The claimant included a written demand for compensation in the amount set forth in Section 8 of the claim form.

is located at 15877 North Applegate Road, Applegate, in Jackson County and is identified as tax lots 200 (117.92 acres), 1100 (37.57 acres) and 1101 (80.61 acres). (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 or DLCD) has determined that the claim is valid. Department staff recommends that in lieu of compensation, the requirements of the following state land use regulations enforced by the Land Conservation and Development Commission (LCDC) or the department not apply to Krouse Ranch, Inc.'s use of the portions of the 236.1-acre property shown in Exhibit A to this Report for aggregate extraction for a temporary period of five to ten years: ORS 197.180, 215.283(2)(b) and 215.298 and Oregon Administrative Rule (OAR) 660-033-0120 and 660-033-0130, enacted or adopted after March 26, 1971. These laws will not apply to the claimant only to the extent necessary to allow it to use the portions of the subject property shown in Exhibit A for the use described in this report, and only to the extent that use was permitted when it acquired the property on March 26, 1971. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

Comments Received

On November 2, 2006, 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, 11 written comments, including a petition signed by 527 citizens of Jackson County and Josephine County, were received in response to the 10-day notice.

Some of the comments do 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.

Some comments are relevant to when the claimant became the present owner of the subject property and whether state land use regulations restricting the claimant's desired use of the subject property have the effect of reducing the fair market value of the property. The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

Additional evidence concerning this claim was received by the department in connection with litigation (Wooldridge Creek Winery LLC v. Department of Land Conservation and Development, Marion County Circuit Court No. 07C13277). As a result of that evidence, the department withdrew its prior final order on this claim, and reopened the record for this claim to include all materials received in the above-referenced litigation.

The Department then issued a proposed amended report, based on the new evidence, and provided for a 15-day comment period on the proposed amended report. Additional evidence and argument was submitted by both the claimant and other persons during this comment period. The department has considered the new evidence and argument, as well as the rest of the record in making its decision. The department's final decision is different from what was recommended in the proposed amended report because of the new evidence and argument submitted during the comment period. The reasons for the final decision are explained in detail below.

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

The claim was submitted to the DAS on April 3, 2006, for processing under OAR 125, Division 145. The claim identifies statutes and administrative rules enacted since the claimant acquired interest in the property as the basis for the claim. Only laws that were enacted 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 enforced 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 claimant acquired the subject property on March 26, 1971, as reflected by deeds included with the claim. The Jackson County Assessor's Office confirms the claimant's current ownership of the subject property. The claim includes a "Public Records Report – Measure 37" from a title company showing that title is vested in Krouse Ranch, Inc., an Oregon corporation. The report specifically excepts matters relating to public rights related to the Applegate River.

On March 9, 2007, Krouse Ranch, Inc. was administratively dissolved by the Oregon Secretary of State, pursuant to ORS 60.647. However, Krouse Ranch, Inc. was reinstated as a corporation authorized to do business in Oregon on October 12, 2007. Under ORS 60.654(3), the reinstatement "relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred." As a result, the claimant once again has the right to use the property for the desired use that is alleged to be restricted, and because of the relation back provisions of ORS 60.654(3) there was no break in the claimant's ownership or right to use the property creating a new acquisition date.

Tax lots 1101 and 1100 of the property are encumbered by a trust deed granted by Krouse Ranch, Inc. to Copeland Sand & Gravel, Inc. The trust deed (dated May 2, 2002) was granted to secure performance of an agreement for the Sale and Removal of Aggregate, dated April 17, 2002 (hereafter, the Aggregate Agreement). The trust deed was executed by Philip R. Krouse.

The department did not have the Aggregate Agreement in its record for this claim at the time it issued its Amended Final Order on February 1, 2007. The Aggregate Agreement is between KB Bar, LLC, an Oregon limited liability company (not Krouse Ranch, Inc.), and Copeland Sand & Gravel, Inc., an Oregon corporation, and is dated April 17, 2002. KB Bar, LLC (a domestic LLC) has been administratively dissolved by the Oregon Secretary of State, pursuant to ORS 60.647. Copeland Sand & Gravel, Inc. is an active Oregon corporation.

The Aggregate Agreement provides, among other things, for prepayment of \$35,000 in royalties for aggregate by Copeland to KB Bar. An additional \$30,000 was to be prepaid if the property was designated for aggregate removal under Jackson County's Comprehensive Plan. The department understands that the property has not been designated for aggregate removal and, as a result, the department believes the prepayment was limited to \$35,000. The Aggregate Agreement further provides that if Copeland reasonably believes it is not reasonably likely to obtain the permits needed for aggregate removal, it may request refund of prepaid royalties, and that the Trust Deed is for the purpose of securing refund of pre-paid royalties. Based on the Aggregate Agreement and the Trust Deed, the department finds that, at most, Copeland has a *potential* right to foreclose on the Trust Deed if Copeland is unable to proceed with aggregate removal *and* if KB Bar, LLC then does not repay the prepaid royalties. Based on information in the department's record, the department finds that at most the Aggregate Agreement and the Trust Deed have the effect of increasing the cost to Krouse Ranch, Inc. of using the property for a use that precludes aggregate extraction as contemplated by the Aggregate Agreement. The most that those costs would be increased by is \$35,000 (the amount of prepaid royalties).

Conclusions

The claimant, Krouse Ranch, Inc., currently is an "owner" of the subject property, as that term is defined by ORS 197.352. Krouse Ranch, Inc. acquired the property on March 26, 1971. As a result of the trust deed granted Copeland Sand & Gravel, and if KB Bar did not repay prepaid royalties, Krouse Ranch, Inc. may be required to refund Copeland Sand & Gravel, Inc. \$35,000 if tax lots 1100 and 1101 are used for a use that precludes the aggregate removal called for under the Aggregate Agreement. Nothing in this report constitutes a determination concerning public rights or ownership (if any) relating to the Applegate River.

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 claimant's 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 claimant or family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to excavate aggregate from two portions of the subject property shown on the attached Exhibit A-1 and A-2. The desired use does not include the crushing or processing of aggregate. The claim identifies the following state land use regulations as restricting that use of the property: ORS 197.180, 215.283(2)(b) and 215.298(2) and OAR 660, division 33.² The claim includes the following statements regarding the effect of these state land use regulations on the desired use of the property:

1. Oregon Administrative Rules

The following Oregon Administrative Rules limit or prevent the proposed use.

- a) OAR 660, division 33. Implements regulations and restrictions on agricultural land. *Initial effective date of August 7, 1993.*

2. Oregon Revised Statutes.

The following Oregon Revised Statutes limit or prevent the proposed use.

- a) ORS 197.180. Requires state agencies to act in compliance with Statewide Planning Goals, acknowledged comprehensive plans and land use regulations and amendments thereof.
- b) ORS 215.283 (specifically ORS 215.283(2)(b)). Regulates uses allowed in areas zoned for exclusive farm use. *Originally Enacted in 1983.*
- c) ORS 215.298(2). States that a permit for mining of aggregate in areas zoned for exclusive farm use shall only be issued if the site is included on an

² The claimant also refers to several provisions of the Jackson County Land Development Ordinance. However, the state has no authority to provide relief as to provisions of the county's land development ordinance.

inventory in an acknowledged comprehensive plan. *Enacted in 1989.* (Claim “Exhibit A,” p. 6.) [Emphasis in original.]

The claimant first acquired the subject property in 1971, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to the subject property in 1971.

OAR 660-033-120 and 660-033-130 provide that aggregate mining may be allowed on land zoned exclusive farm use, subject to ORS 215.296 (requiring that the use not force a significant change in farm or forest practices on surrounding lands, and not significantly increase the cost of such practices). As a result, OAR 660-033-0120 and 660-033-0130 restrict the claimant’s desired use of the property.

ORS 215.283(2)(b) authorizes counties to permit operations for mining aggregate on land zoned for exclusive farm use, subject to ORS 215.298.

ORS 215.298 authorizes counties to permit operations for mining aggregate if the site of the mining is on an acknowledged inventory of aggregate sites in the county’s comprehensive plan. The subject property is not on Jackson County’s acknowledged inventory of aggregate sites. As a result, ORS 215.283(2)(b) and 215.298 restrict the claimant’s desired use of the property.

ORS 197.180 requires state agencies to take actions affecting land use in compliance with the Statewide Planning Goals and in a manner that is consistent with acknowledged county comprehensive plans and land use regulations. The claimant’s desired use of the property does not comply with Goal 3 because the goal requires counties to limit uses, which can have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices; and provides that non-farm uses of agricultural land permitted under ORS 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity. The desired use also is not allowed under Jackson County’s comprehensive plan and land use regulations. As a result, ORS 197.180 restricts the desired use of the property.

When the claimant acquired the subject property, none of the identified laws were in effect.

Conclusions

The claim is based on specific provisions of state law that restrict aggregate excavation on land zoned for exclusive farm use. These provisions restrict the claimant’s desired use of the subject property by requiring it to meet certain standards in the case of OAR 660-033-0120 and 660-033-0130 by requiring the site to be on an acknowledged inventory in the case of ORS 215.283(2)(b) and 215.298, and by prohibiting the issuance of state agency permits authorizing the use under ORS 197.180.

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 asserts that the identified land use regulations have had the effect of reducing the fair market value of the subject property by an amount between \$737,906 and \$824,720. This amount is based on a letter from Copeland Sand & Gravel, Inc. estimating the royalty value to the owner of the property, as well as the likely net profit to the owner from conducting the desired use itself. As described above, Copeland and KB Bar, LLC entered into an agreement in 2002, which provides for the refund of prepaid royalties in certain circumstances, secured by a trust deed granted by Krouse Ranch, Inc.

The North Applegate Watershed Protection Association has submitted evidence that the growing and harvesting of wine grapes will yield a higher level of income than aggregate extraction. However, that evidence and argument assumes that the two uses are mutually exclusive. Krouse Ranch has submitted evidence that the areas of the property where it desires to carry out aggregate extraction are not suitable for the growing and harvesting of wine grapes. That evidence includes two site specific soil surveys. The first survey, dated September 19, 2007 analyzes an area of 16.3 acres (which appears to be located within tax lot 1101) proposed for aggregate excavation. The survey concludes that the area is generally unsuited to growing commercial wine grapes. The area addressed by the survey does not include the existing vineyard on the property, as shown in the attached Exhibit A-1.

The second survey is dated December 16, 2004. This survey analyzes a 48-acre site, a portion of which is within tax lot 1100. That survey concludes that the “non-resource overburden soil on the site was fundamentally non-existent over much of the site due to apparent stripping of the site during the 1997 flood event.” The area of tax lot 1100 where Krouse Ranch desires to carry out aggregate extraction is shown in the attached Exhibit A-2. It does not include any area now planted for vineyards.

In sum, Krouse Ranch Inc. has submitted site-specific soils information that documents that the areas of the property where it desires to carry out aggregate extraction are not suitable for commercial wine grape growing. Wooldridge Creek also has submitted a soils report from Cascade Environmental Geographics dated October 14, 2007. That report contains general information about the mapped soil types on the Krouse Ranch property, but does not focus on the actual soil conditions for the two specific areas (shown in Exhibit A-1 and A-2) where gravel extraction is anticipated. As a result, the department finds the two site-specific studies submitted by Krouse Ranch, Inc. to be more persuasive in terms of whether the specific areas proposed for aggregate extraction are suitable for commercial wine growing. Based on those studies, the department finds that the portions of tax lots 1100 and 1101 where aggregate extraction is the claimant’s desired use (as shown in Exhibit A-1 and A-2) are not suitable for wine grape growing.

