

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

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M129760  
(BALLOT MEASURE 37) OF )  
Arnold and Maralou Cross and )  
B. L. and Marionann Kaufman, CLAIMANTS )

Claimants: Arnold and Maralou Cross and B. L. and Marionann Kaufman  
(the Claimants)

Property: Township 37S, Range 1E, Section 7: tax lots 300, 400 and 500  
Township 37S, Range 1E, Section 8: tax lot 5500  
Township 37S, Range 1E, Section 17: tax lots 100, 200 and 300  
Township 37S, Range 1E, Section 18: tax lot 200  
Township 37S, Range 1E, Section 19: tax lots 100 and 600  
Township 37S, Range 1E, Section 20: tax lots 200, 300 and 400  
Township 37S, Range 1E, Section 28: tax lot 200  
Township 37S, Range 1E, Section 29: tax lot 200  
Township 37S, Range 1E, Section 30: tax lots 100 and 200  
Township 37S, Range 1E, Section 32: tax lots 300 and 400  
Township 37S, Range 1E, Section 33: tax lots 100 and 200  
Township 38S, Range 1E, Section 5, Tax lot 300  
Jackson 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.

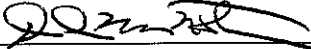
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and  
the Land Conservation and Development Commission under ORS 197.352, OAR 660-  
002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State

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 22<sup>nd</sup> day of January, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 22<sup>nd</sup> day of January, 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**

January 22, 2007

**STATE CLAIM NUMBER:** M129760

**NAMES OF CLAIMANTS:** Arnold and Maralou Cross  
B. L. and Marionann Kaufman

**MAILING ADDRESS:** 7575 Hillcrest Road  
Medford, Oregon 97504

**PROPERTY IDENTIFICATION:** Township 37S, Range 1E  
Section 7: tax lots 300, 400 and 500  
Section 8: tax lot 5500  
Section 17: tax lots 100, 200 and 300  
Section 18: tax lot 200  
Section 19: tax lots 100 and 600  
Section 20: tax lots 200, 300 and 400  
Section 28: tax lot 200  
Section 29: tax lot 200  
Section 30: tax lots 100 and 200  
Section 32: tax lots 300 and 400  
Section 33: tax lots 100 and 200

Township 38S, Range 1E  
Section 5: tax lot 300

Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew  
Hornecker, Cowling, Hassen & Heysell, LLP  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** July 27, 2006

**180-DAY DEADLINE:** January 23, 2007

**I. SUMMARY OF CLAIM**

The claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, seek compensation in the amount of \$142,875,600 for the reduction in fair market value as a result of land use regulations that are alleged to restrict their use of certain private real property. The

claimants desire compensation or the right to divide the 3,680-acre subject property into 460 five-acre parcels and 69 twenty-acre parcels and to develop a dwelling on each parcel. The subject property is located on Hillcrest Road, near Medford, in Jackson 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 because the claimants have not established their ownership of the subject property. (See the complete recommendation in Section VI of this report.)

## **III. COMMENTS ON THE CLAIM**

### **Comments Received**

On October 31, 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, five written comments were received in response to the 10-day notice.

Three 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.

Two of the comments are relevant to whether the claimants are owners; when the claimants became the present owners of the subject property; whether a state law restricts the claimants' use of the subject property; whether the restriction of the claimants' use of the subject property reduces the fair market value of the property; and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (See the comment letters 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 criterion, whichever is later.

## **Findings of Fact**

This claim was submitted to DAS on July 27, 2006, for processing under OAR 125, division 145. The claim identifies a considerable number of goals, administrative rules and non-specific “regulations” and “standards” 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 assert that they acquired all 23 tax lots of the subject property on November 1, 1977, by a land sale contract (Jackson County Deed Records Document No. 78-01790), a copy of which is included with the claim. The Measure 37 title records report included with the claim shows that the title company found that title to the subject property is currently vested in Cross & Kaufman Logging Co. Cross & Kaufman Logging Co. is an assumed business name, registered in 1964, with B. L. Kaufman and Arnold Cross as the registrants. Under these facts, the department finds that Cross & Kaufman Logging Co. is a partnership of the claimants and that the subject property is owned by the partnership. ORS 67.055. See also, *In re Marriage of Leathers and Leathers*, 98 Ore. App. 152 (1989). On August 6, 1999, the claimants conveyed the subject property to the partnership, which continues to own the property. As a result, while the claimants own a personal property interest in the partnership, they do not own the real property subject to this claim. ORS 67.065.<sup>1</sup>

On October 27, 2006, DAS confirmed with the Jackson County Assessor’s Office that Cross & Kauffman Logging Co. is the present owner of the subject property.

## **Conclusions**

The claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, have not established that they are “owners” of the subject real property as that term is defined in ORS 197.352(11)(C).

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<sup>1</sup> The title information submitted with the claim also indicates a break in the chain of title on September 15, 1998. The department does not reach the question of whether these two conveyances, which the claimants assert are correction deeds, have an effect on the present ownership and acquisition date.

## **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.

As explained in Section V.(1), the claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, are not "owners" 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 the claimants' rights to use the private real property in a manner that reduces the fair market value of the property.

## **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

As explained in Section V.(1) of this report, the claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property in a manner that reduces the fair market value 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.

As explained in Section V.(1) of this report, the claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, are not "owners" 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.

## **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 record, the department finds that the claim is not valid because the claimants are not owners of the subject private real property.

### **Conclusions**

Based on the record before the department, the claimants, Arnold and Maralou Cross and B. L. and Marionann Kaufman, 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 December 29, 2006. 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.