

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 06-12)
for Compensation under Measure 37) Order No. 25-2006
submitted by Dayle Cox, Gonzales Cox,)
Doris M. Buchholz and Robert Buchholz)

WHEREAS, on September 29, 2005, Columbia County received claims under Measure 37 and Order No. 84-2004 from Dayle Cox, Gonzales Cox, Doris M. Buchholz and Robert Buchholz, for property having Tax Account Numbers 6420-000-00300 and 6429-000-00400; and

WHEREAS, according to the information presented with the Claim, Mr. and Mrs. Cox and Mr. and Mrs. Buchholz acquired the subject property from Doris Buchhotz's and Dayle Cox's parents, Ray M. Taylor and Phyllis Taylor, in 1979, and each couple has continuously owned an undivided half interests in the property since that time; and

WHEREAS, Ray M. Taylor and Phyllis Taylor acquired the subject property in 1960; and

WHEREAS, on the date of the Taylors' acquisition, Columbia County had not yet zoned the subject property; and

WHEREAS, on the date the Coxes and the Buchholzes acquired their interests in the subject property, Columbia County had not yet zoned the property, but had adopted regulations pertaining to partitions and subdivisions; and

WHEREAS, the subject parcel is zoned Primary Forest (PF-76) pursuant to the Columbia County Zoning Map; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO) Section 506.1, the minimum size for new parcels is 76 acres; and

WHEREAS, Dayle Cox, Gonzales Cox, Doris M. Buchholz and Robert Buchholz claim that the minimum lot size requirement for new land divisions has restricted the use of the property and has filed a claim for \$400,000; and

WHEREAS, Dayle Cox, Gonzales Cox, Doris M. Buchholz and Robert Buchholz desire to partition the property into two or three parcels; and

WHEREAS, pursuant to Measure 37, in lieu of compensation the Board may opt to not apply (hereinafter referred to as "waive" or "waiver") any land use regulation that restricts the use of the Claimants' property and reduces the fair market value of the property to allow a use which was allowed at the time the *Claimants* acquired the property;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Numbers CL 06-12, dated March 24, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO 506.1 to the extent necessary to allow the Claimants to partition the subject property into two or three parcels, based on the acquisition of the property by the claimants in 1979.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations promulgated by the State of Oregon. If the use allowed herein remains prohibited by a State of Oregon land use regulation, the County will not approve an application for land division, other required land use permits or building permits for development of the property until the State has modified, amended or agreed not to apply any prohibitive regulation, or the prohibitive regulations are otherwise deemed not to apply pursuant to the provisions of Measure 37.
 - B. In approving this waiver, the County is relying on the accuracy, veracity, and completeness of information provided by the Claimants. If it is later determined that Claimants are not entitled to relief under Measure 37 due to the presentation of inaccurate information, or the omission of relevant information, the County may revoke this waiver.
 - C. Except as expressly waived herein, Claimants are required to meet all local laws, rules and regulations, including but not limited to laws, rules and regulations related to subdivision and partitioning, dwellings in the forest zone, and the building code.
 - D. This waiver is personal to the Claimants, does not run with the land, and is not transferable except as may otherwise be required by law.
 - E. By developing the parcel in reliance on this waiver, Claimants do so at their own risk and expense. The County makes no representations about the legal effect of this waiver on the sale of lots resulting from any land division, on the rights of future land owners, or on any other person or property of any sort. By accepting this waiver, and developing the property in reliance thereof, Claimants agree to indemnify and hold the County harmless from and against any claims arising out of the division of property, the sale or development thereof, or any other claim arising from or related to this waiver.

4. This Order shall be recorded in the Columbia County Deed Records, referencing Tax Parcel Numbers 6420-000-00300 and 6429-000-00400, without cost.

Dated this 5th day of April, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: John L. Hyde
County Counsel

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita M. Bernhard
Rita Bernhard, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

After recording please return to:
Board of County Commissioners
230 Strand, Room 331
St. Helens, Oregon 97051

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: March 24, 2006

FILE NUMBERS: CL 06-12

CLAIMANTS/OWNERS:	Doris M. Buchholz	Dayle Cox
	Robert Buchholz	Gonzales Cox
	PO Box 219	
	Vernonia, OR 97064-0219	

CLAIMANTS' REPRESENTATIVES:	John Shadden, Esq.	Kevin V. Harker, Esq.
	PO Box 746	Vial Fotheringham, LLP
	Hillsboro, OR 97123	7000 SW Varns Street
		Portland, OR 97223-8006

SUBJECT PROPERTY

PROPERTY LOCATION: 68009 Nehalem Highway North
Vernonia OR 97064

TAX ACCOUNT NUMBERS: 6420-000-00300/6429-000-00400

ZONING: Primary Forest-76 (PF-76)

SIZE: Approximately 32.76 acres
(Tax Lot 300: 27.56 acres/Tax Lot 400: 5.20 acres)

REQUEST: To partition the property into two or three parcels

CLAIM RECEIVED: October 3, 2005

REVISED 180 DAY DEADLINE: April 1, 2006

NOTICE OF RECEIPT OF CLAIM: Mailed March 9, 2006.
As of March 23, 2006, no requests for hearing have been filed.

I. BACKGROUND:

The subject property includes approximately 32.76 acres, and is developed with three dwellings and other outbuildings. Each couple holds an undivided half-interest in the property, which was inherited by the parties from Dale Cox and Doris Buchholtz's parents, Ray M. and Phyllis Taylor, in 1979. The claimants request that the Measure 37 claim relate back to the date the parents acquired the property (1960, per Columbia County Deed Records Book 143, pages 612-13).

This property is subject to litigation in Columbia County Circuit Court (Case No. 022051) which was filed by the parties to this claim prior to the approval of Measure 37. The parties have filed this claim in an attempt to resolve a dispute among the parties regarding the use and disposition of the realty. The file includes a claim submitted by Kevin Harker, the attorney for Dayle and Gonzalez (Gunny) Cox, which is dated September 29, 2005, and received by the county on October 3, 2005, and a copy of a claim submitted by Doris Buchholz on December 11, 2005, and received by the county on December 13, 2005. The Cox version of the claim requests that the property be divided into three parcels. The Buchholz version of the claim requests that the property be divided into two parcels.

II. APPLICABLE CRITERIA AND STAFF FINDINGS:

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. **Current Ownership:** According to a title report generated by First American Title, and dated April 3, 2004, ownership of the property is vested in: Dayle Rae Cox and Gonzalez Dave Cox, wife and husband, as to an undivided one-half interest, and Doris Mae Buchholz and Robert Ervin Buchholz, wife and husband, as to an undivided one-half interest in the fee simple estate.

Subject to:

- a. Reservation of mineral rights and easements for ingress and egress above and below the surface of the land as implied by the mineral rights in the deed;
- b. Easements for access to Crown Zellerbach Corporation (Deed Book 101, page 616)
- c. Oil and Gas leases
- d. Delinquent taxes for 2002-2004

2. **Date of Acquisition:** According to the claimants, the property was acquired by Dayle Rae Cox, Gonzalez Dave Cox, Doris Mae Buchholz and Robert Ervin Buchholz in 1979 as part of the estate of Ray M. and Phyllis F. Taylor. The property was acquired by Ray M. and Phyllis Taylor, the parents of Dayle Cox and Doris Buchholz in 1960.

B. LAND USE REGULATIONS IN EFFECT AT THE TIME OF ACQUISITION

The property was not zoned when the claimants' parents acquired the property in 1960, and was therefore not subject to any minimum parcel size requirements included in the county zoning ordinance or any partition regulations, which were adopted in 1975.

C. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE EDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

The claimants allege that the PF-76 zoning prevent the claimants from dividing their property. The PF-76 zoning designation was applied to the subject property in 1984, after claimants' parents acquired the subject property. It appears that the county standard that clearly prevents the claimants from developing their property as desired is:

CCZO 506.1 limiting substandard parcel divisions to uses that do not include non-forest dwellings.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Section 506.1 became effective and therefore the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide their property as proposed due to the county's 76-acre minimum parcel size standard. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of claimants' property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The claimants submitted a property appraisal dated March 17, 2005 that estimates the value of the property as \$399,910 based on a cost approach analysis. The appraisal states that approximately \$30-40,000 in timber could be harvested from the property without affecting its value as rural residential land.

2. Value of Property Not Subject To Cited Regulations.

Claimants allege that if their property is divided, the developed property would be worth more. That opinion is borne out by statements included in the appraisal that indicates that parcels that include three dwellings are harder to market than three parcels with one dwelling on each. However, the appraisal does not include an estimate of the value of the property if it is divided into two or three separate parcels.

3. Loss of value indicated in the submitted documents is:

The written documentation in support of the claim appears to allege a total reduction in value of \$400,000.

While staff does not agree that the information provided by the claimants is adequate to fully establish the current value of the property or the value of the property if it was not subject to the cited regulations, staff concedes that it is more likely than not that the property would have a higher value if divided into two or three parcels than as a single parcel with three dwellings and associated outbuildings developed on it.

G. COMPENSATION DEMANDED

\$400,000 per page 1 of claimants' Measure 37 Claim form.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

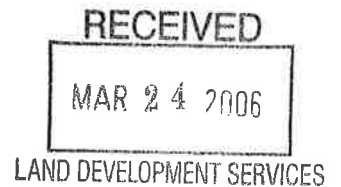
E) Enacted prior to the date of acquisition of the property by the owner or a family member of

The following table summarizes staff findings concerning the land use regulations cited by the Claimant as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulation below has been found to meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Limiting substandard parcel divisions to uses that do not include non-forest dwellings	Yes	Yes	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 506.1.

Department of Land Development Services
Columbia County Courthouse
230 Strand Street
St Helens, OR 97051



re: Property Located 68009 Nehalem Hwy N
Vernonia, OR 97064
Tax Lot No. 6420-000-00300/6429-000-00400

Measure 37 Claim

It is my hope that a denial will be issued regarding the request to develop this property. This is a rather large tract of land which has been zoned Primary Forest Zone.

The land is part of a 500 acre farm that existed until, I'm told, sometime in the 1960's, when it was allowed to be partitioned into smaller parcels. It had been farmed by the same family until the late 1990's.

It is my understanding that when Doris Buchholz and Dayle Cox father built the two homes on the property, he wanted to provide a place for the daughters to reside for the rest of their lives. I doubt he ever intended for the land to be broken up for any use other than farming. The property passed to the daughters upon their father's passing.

I do realize times have changed, and that jobs require relocating. I believe this is the case in this situation. However, there are currently two homes built on one tract of land now zoned PF-76. The best way to resolve this issued of splitting the land would be to divide the acreage into two 16 (+/-) acre parcels, each containing a home, and leave it in the current zone.

Sincerely,



Larry R Noakes
67872 Nehalem Hwy N
Vernonia, OR 97064