

After recording, return to:
William J. Kuhn
P.O. Box 5996
Bend, OR 97708

COVENANTS, CONDITIONS and RESTRICTIONS

PARTIES:

Party 1: Jeffrey T. Dowell & Patti J. Dowell

Party 2: William John Kuhn & Martha Leigh Kuhn

REAL PROPERTY:

The real property bound by this document is described on Exhibit 1. A copy of Exhibit 1 is attached hereto and incorporated by reference herein.

RECITALS:

WHEREAS, Deschutes County Conditional Use Case 80-22 (CU-80-22) allowed a “cluster development” on a 43-acre parcel in the Tumalo Winter Deer Range; and

WHEREAS, the approved “cluster development” required a substantial set aside for wildlife habitat; and

WHEREAS, the approved “cluster development” created two parcels for residential development and one wildlife habitat parcel (“Wildlife Parcel”); and

WHEREAS, the three authorized parcels are currently identified by the Deschutes County Tax Assessor as Tax Lot 100, Tax Lot 200 and Tax Lot 300, Assessor’s Map 16-11-19, and are the land described on Exhibit 1 (hereinafter collectively referred to as “PARCELS”) and are owned by Party 1 and Party 2; and

WHEREAS, CU-80-22 required the developer of the cluster development to execute and record a homeowners association or agreement that would assure maintenance of the Wildlife Parcel; and

WHEREAS, a 2002 Order of the Deschutes County Circuit Court (Case No. 01-CV-0233-MA), required Party 1 to enter into a homeowners agreement with Party 2 that, at a minimum, assured maintenance of the Wildlife Parcel; and

WHEREAS, to preserve and protect existing wildlife and wildlife habitat and to comply with CU-80-22, Party 1 and Party 2 intend for this CC&R and the 1987 deed restrictions recorded at Volume 148, page 1792 (Document 87-14178) to serve as the required homeowners agreement; and

WHEREAS, Party 1 has conveyed all of its right, title and interest in the Wildlife Parcel to Party 2 and Party 2 has agreed to maintain the Wildlife Parcel for the purposes intended by CU-80-22;

NOW THEREFORE, the parties, as owners of all land described on Exhibit 1 agree as follows:

COVENANTS, CONDITIONS AND RESTRICTIONS

Party 1 and Party 2 agree to impose the covenants, conditions and restrictions on the use of the Exhibit 1 Property for the mutual benefit of the parties and for the protection of wildlife and open space values:

1. Party 1 and Party 2 agree to abide by all applicable laws and regulations (including but not limited to general civil and criminal laws, building codes, Deschutes County Code, land use decisions, landscape management plans, ODF&W Wildlife Habitat Conservation Plan) addressing their actions and uses on the PARCELS.
2. No motorcycles or off-road vehicles shall be used on the PARCELS except on established roads or improved driveways. This restriction does not prohibit an owner from using off-road vehicles for off-road property maintenance purposes.
3. All new utility lines or extensions to existing utility lines must be located underground consistent with applicable standards recognized by the utility provider.
4. No person may develop or divide the Wildlife Parcel.
5. Each owner shall comply with Deschutes County Code regarding the control of noxious weeds on the parcels they own in the cluster development. Owners shall use only environmentally safe methods of weed control and not use pesticides or herbicides harmful to human, animals or wildlife. Each owner shall use biodegradable detergents, soaps and cleaners whenever possible.
6. Disputes between Party 1 and Party 2 shall be subject to resolution through binding arbitration before the Arbitration Service of Portland. Venue for any arbitration hearing is in Deschutes County. The prevailing party at arbitration shall be entitled to an award of attorney fees and costs as determined reasonable by the arbitrator(s).

7. The following maintenance standards/restrictions apply to the PARCELS:

- a. All fencing must be of wood or simulated wood made of recycled plastic or other natural material and not metal. The top rail may not be higher than 42" and the bottom rail may not be lower than 18". No barbed wire or straight wire may be used for fencing. No fencing is allowed on Tax Lot 300.
- b. No discharge of firearms is allowed.
- c. No hunting or trapping is allowed.
- d. Livestock (including but not limited to horses, cattle, llamas, sheep, emus, ostriches, pigs, chickens, game birds) grazing is not allowed.
- e. The parties shall comply with 1987 deed restrictions recorded at Volume 148, page 1792 (Document 87-14178). No dogs are allowed on the Wildlife Parcel.
- f. Party 1 and Party 2 may not keep dogs on any parcel other than the dog(s) they own at the time they purchased their parcel. This restriction also applies to any person who is a resident in the cluster development and the the date the current owner of the parcel of residence controls.
- g. Guests who reside on the property no more than 14 days in any calendar year may be accompanied by a dog(s) but must comply with all pet restrictions provided herein.
- h. All pets shall be kept on a leash, under voice control or within a fenced enclosure adjoining the primary residence or within a building at all times. Dogs that bark more than 15 minutes at a time shall be placed inside a building and not left outside.
- i. All persons shall respect the solitude of all other persons and the underlying wildlife interests of the Tumalo Winter Deer Range by keeping music, voices, power equipment and other noise sources to a low level. To the extent practical, power equipment and generators shall be placed and used inside buildings to mitigate noise.
- j. Exterior lighting, including security lighting, shall be low-intensity, adequately shielded to eliminate spillage, and directed downward. All exterior lights shall be left on no longer than absolutely necessary. A motion detection light may be used only if it does not blink off and on regularly at night.
- k. No dumping or storing of waste material is permitted.
- l. Trash shall be securely stored and timely removed.
- m. Any new construction shall to the extent practical use fire resistant building materials.
- n. No open burning is allowed.
- o. These covenants, conditions and restrictions apply to any renters, caretakers, invitees and any resident of their property. Owners shall be responsible for any failure of these persons to abide by the terms of this document.

8. The covenants, conditions and restrictions contained in this document run with the land and bind the heirs, successors and assigns of the parties hereto.

DATED: _____, 2014

PARTY 1:

PARTY 2:

Jeffrey T. Dowell

William John Kuhn

Patti J. Dowell

Martha Leigh Kuhn

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Jeffrey T. Dowell.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Patti J. Dowell.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by William John Kuhn.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Martha Leigh Kuhn.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT 1
(Legal Description)



Legal Counsel

1300 NW WALL STREET, SUITE 205 • BEND, OREGON 97701-1960
TELEPHONE 541-388-6623
541-388-6624
FACSIMILE 541-617-4748

David Doyle, Legal Counsel
Laurie E. Craghead, Assistant Legal Counsel
Christopher Bell, Assistant Legal Counsel
John E. Laherty, Assistant Legal Counsel

January 13, 2015

Sharon R. Smith, Esq.
BLJ
591 SW Mill View Way
Bend, OR 97702

Please Refer To
File No. 4/1

Re: Kuhn/Dowell

Dear Sharon:

Nick, myself and Deputy County Administrator Erik Kropp met last Friday with Bill Kuhn, Leigh Kuhn, and their attorney Andrew Mathers.

Despite repeated efforts to keep Bill focused on finding a path forward, he continued to bring up past wrongs and injustices that he feels the Dowells and/or Deschutes County have perpetrated. Many times during the meeting it seemed as if Bill and Leigh were not always on the same page with regard to what it will take to get them to sign a CCR and settlement agreement. Toward the end of the meeting I asked Bill to re-draft the CCRs in a version that included every final concession that he and Leigh are prepared to make. He refused, stating that there can be no agreement on the CCRs until the Kuhns and the Dowells have a face-to-face meeting during which the Kuhns will present their grievances and monetary demands. Thereafter, if the monetary demands are met, the appropriate CCRs and settlement agreement can be prepared. At that point I called Bill out and asked "is this all about money?" He didn't answer. Finally, as the meeting was ending Bill suggested that I advise you to re-activate the Hearings Officer / BOCC appeal (DR 13-16).

It appears that we have circled back to square one. In my opinion, no concession – short of conveying TL 300 to Kuhn for free and TL 100 to Kuhn for an amount below market value – will satisfy his needs and result in recorded CCRs and a fully executed settlement agreement.

Nick and I remain willing to continue working with Bill and Leigh should you see additional concepts or strategies that might bring about settlement and closure. If not, we are prepared to disengage.

Sharon R. Smith, Esq.
January 13, 2015
Page 2

Your cooperation and good faith efforts are acknowledged and appreciated. Please let me know how you and your clients wish to proceed. Thank you.

Respectfully,



David Doyle
Deschutes County Legal Counsel
david.doyle@deschutes.org

Cc: Nick Lelack, CDD

DD/s

Sharon Smith

From: Jeff@Outlook [jeffdowell@outlook.com]
Sent: Tuesday, April 14, 2015 9:57 AM
To: 'William Kuhn'; '_Leigh WRD@RF'
Cc: 'Dowell Pat at outlook'
Subject: RE: Dowell Kuhn Meeting?

Bill,

The summary you have provided below leaves out key discussion points from our meeting:

- 1) You stated that we still had 'house-siting issues' that needed to be addressed and resolved before any Agreement with you could be reached. The current citing of our house, has been finally approved by the County, LUBA and the State Appellate Court. That is no longer an issue.
- 2) We asked what better deal you could possibly hope for us to put forth beyond our most recent offer, in order to get this issue resolved and move on. You then stated that no offer from the Dowell's, short of our relinquishing ownership of our property, was acceptable to the Kuhn's. You further stated that as part of this sale to you or another party, you would approach the would-be buyer to 'remove the existing structure and build any new structure(s) 100 ft closer to Sisemore Rd.'
- 3) As a last ditch effort to find resolution, we did offer to put our place up for sale, but only at a price point equal to what the property was worth to us – not an amount that any appraiser, or group of appraisers might come up with.
- 4) Unfortunately, none of our offers were acceptable to you, so we find ourselves in exactly the same situation as we were when entered into this negotiation: The need for some other party (Commissioners, judges, lawyers) to determine our mutual fate.
- 5) To be clear, we do not need to sell our property to anyone, unless we get our asking price, based on recent sales of similarly configured cluster developments in our area. We are happy to hold the property for the long term, and sell it at some point in the future, or perhaps just pass it on to another family member.

Thank you.

JD

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Friday, April 10, 2015 4:05 PM
To: 'Dowell Pat at outlook'; Jeff@Outlook
Cc: '_Leigh WRD@RF'
Subject: Re: Dowell Kuhn Meeting?

Pat and Jeff,

Is this a fair summary of the meeting on Thursday at the Bend Library?

There was no meaningful consensus as to how to move beyond our current impasse except that the Kuhns asked the Dowells to move forward with their appeal, which the Dowells indicated

they would. The Kuhns remain willing to meet in order to satisfy the requirements of CU-80-22 as soon as the current appeal of DR-13-16 is exhausted.

In general the Dowells believe they made some very significant concessions (by agreeing to 'no dogs' on any of the 3 parcels, and giving the Kuhns outright the joint property TL#300), in exchange for the Dowells to be able to move forward with their development, eliminating all past disagreements, all issues of lack of cooperation, and financial issues past and future.

The Kuhns indicated they wanted any agreement to include the Dowells relinquishing their ownership within our cluster development, although no specifics were discussed.

In summary the two stumbling blocks seem to be: the Dowells want \$750,000 to willingly give up ownership, and the Kuhns want the Dowells gone but have no interest in paying the Dowells \$750,000.

Please share your interpretation of events if you feel this is not a fair representation of our discussion.

Thank you,
Bill
William Kuhn
INVEST/O - Registered Investment Advisors
PO Box 5996
Bend, OR 97708-5996
541 389 3676
William@RiskFactor.com

"Illegitimi non carborundum" - refers to the continuing acts of Deschutes County
"First, they ignore you, Then they laugh at you. Then they fight you. Then you win." Mahatma Gandhi

----- Original Message -----

From: Jeff@Outlook
To: 'William Kuhn'; 'Dowell Pat at outlook'
Cc: 'Leigh WRD@RF'
Sent: Friday, March 27, 2015 2:50 PM
Subject: RE: Dowell Kuhn Meeting?

Bill and Leigh,

Apologies for the delays, but I've spent far more time on the road for work over the last few weeks than I'd anticipated, and it will continue through April 6th, and then let up.

So we'd like to propose getting together in one of the private meeting rooms at Tetherow Lodge for an hour, sometime between 3pm and 5pm the week of the 7th of April, if that can work for you.

Let us know what fits your schedule and we'll take care of getting the room reserved.

Thanks JD

From: William Kuhn [<mailto:william@riskfactor.com>]

Sent: Tuesday, March 24, 2015 8:29 AM

To: Dowell Pat at outlook; Dowell Jeff at outlook

Cc: _Leigh WRD@RF

Subject: Fw: Dowell Kuhn Meeting?

Pat and Jeff,

This is a resend of our response to your acceptance of our invitation to meet.

Please let us know you have received this email.

Thank you,

Bill

----- Original Message -----

From: William Kuhn

To: Jeff@Outlook ; windriverdesign@riskfactor.com

Cc: 'Pat Dowell'

Sent: Wednesday, March 04, 2015 10:45 AM

Subject: Re: Dowell Kuhn Meeting?

Pat and Jeff,

Good.

When you are ready give us a couple of possible meeting dates and times. Early afternoon is usually best for us.

We will find a neutral location to meet.

We are approaching this as a private and confidential meeting between the four of us.

Thank you,

Bill and Leigh

----- Original Message -----

From: Jeff@Outlook

To: william@riskfactor.com ; windriverdesign@riskfactor.com

Cc: 'Pat Dowell'

Sent: Friday, February 27, 2015 1:55 PM

Subject: Dowell Kuhn Meeting?

Bill and Leigh,

Pat and I were sorry to see the County's mediation efforts break down. We believe we made some very significant concessions (giving you the joint property, agreeing to 'no dogs' on any of the 3 parcels, etc), in exchange for simplifying the paperwork to all but eliminate the chances for continued disagreements going forward, but apparently it wasn't enough. That is unfortunate. It's our belief that it's going to take both parties conceding more than either would like to get this settled once and for all, and move on.

To that end, you have said repeatedly that one of your 'requirements' was to meet with Pat and I directly, without attorneys present. Though we have been resistant to meeting until the basic framework of an agreement is already in place, we have given it a lot of thought and would like to see if such a meeting would be productive in reaching resolution.

We are willing to meet with you at a neutral location. Perhaps we could meet at your attorney's office in a private conference room? The best timing for us would be any time after mid-March.

Please let us know if this would be acceptable, and if so, what times and dates would work best for you.

Thank you.

Jeff Dowell

After recording, return to:

William J. Kuhn
P.O. Box 5996
Bend, OR 97708

COVENANTS, CONDITIONS and RESTRICTIONS

PARTIES:

Party 1: Jeffrey T. Dowell & Patti J. Dowell

Party 2: William John Kuhn & Martha Leigh Kuhn

REAL PROPERTY:

The real property bound by this document is described on Exhibit 1. A copy of Exhibit 1 is attached hereto and incorporated by reference herein.

RECITALS:

WHEREAS, Deschutes County Conditional Use Case 80-22 (CU-80-22) allowed a “cluster development” on a 43-acre parcel in the Tumalo Winter Deer Range; and

WHEREAS, the approved “cluster development” required a substantial set aside for open space; and

WHEREAS, the approved “cluster development” created two parcels for residential development and one common area parcel (“Open Space Parcel”); and

WHEREAS, the three authorized parcels are currently identified by the Deschutes County Tax Assessor as Tax Lot 100, Tax Lot 200 and Tax Lot 300, Assessor’s Map 16-11-19, and are the land described on Exhibit 1 (hereinafter collectively referred to as “PARCELS”) and are owned by Party 1 and Party 2; and

WHEREAS, CU-80-22 required the developer of the cluster development to execute and record a homeowners association or agreement that would assure maintenance of the Open Space Parcel; and

WHEREAS, a 2002 Order of the Deschutes County Circuit Court (Case No. 01-CV-0233-MA), required Party 1 to enter into a homeowners agreement with Party 2 that, at a minimum, assured maintenance of the Open Space Parcel; and

WHEREAS, Party 1 and Party 2 acknowledge the 1987 deed restrictions recorded at Volume 148, Page 1792 (Document 87-14178) and agree that those restrictions, as deemed applicable by Party 1 and Party 2 have been expressly incorporated into this CC&R and upon recording of this CC&R the recorded deed restrictions identified as Document 87-14178 become null and void and no longer burden or encumber the PARCELS; and

WHEREAS, Party 1 has conveyed all of its right, title and interest in the Open Space Parcel to Party 2 and Party 2 has agreed to maintain the Open Space Parcel for the purposes intended by CU-80-22;

NOW THEREFORE, the parties, as owners of all land described on Exhibit 1 agree as follows:

COVENANTS, CONDITIONS AND RESTRICTIONS

A. Tax Lot 300:

Party 1 and Party 2 agree to impose the below-listed covenants, conditions and restrictions on the use of TL 300 for the mutual benefit of the parties and for the protection of wildlife and open space values:

1. Party 2 agrees to abide by the ODF&W Wildlife Habitat Conservation Plan.
2. No person may develop or divide the Open Space Parcel.
3. No livestock grazing is allowed (including but not limited to horses, cattle, llamas, sheep, emus, ostriches, pigs, chickens, game birds).
4. No fencing is allowed.
5. No motorcycles or off-road vehicles shall be used except on established roads or improved driveways. This restriction does not prohibit an owner from using off-road vehicles for off-road property maintenance purposes.

B. All Parcels (Tax Lot 100, Tax Lot 200, Tax Lot 300):

1. Party 1 and Party 2 agree to abide by all applicable laws and regulations (including but not limited to general civil and criminal laws, building codes, Deschutes County Code, land use decisions, landscape management plans) addressing their actions and uses on the PARCELS.
2. In addition, the following maintenance standards/restrictions apply to ALL PARCELS:
 - a. No dogs are allowed.
 - b. No hunting or trapping is allowed.
 - c. No discharge of firearms is allowed.
 - d. No livestock grazing is allowed (including but not limited to horses, cattle, llamas, sheep, emus, ostriches, pigs, chickens, game birds).
 - e. No dumping or storing of waste material is allowed.
 - f. No unsecured trash is allowed, and all trash will be timely removed.
 - g. No open burning is allowed.
 - h. No new utility lines or extensions to existing utility lines may be located above ground.
 - i. No fencing is allowed with a top rail higher than 42" and a bottom rail lower than 18". No metal, barbed wire, straight wire fences or metal fence posts are permitted. No fencing is allowed on Tax Lot 300.
 - j. No noxious weeds shall be allowed to propagate and owners shall use only environmentally safe methods of weed control and not use pesticides or herbicides harmful to human, animals or wildlife. Each owner shall use biodegradable detergents, soaps and cleaners whenever possible.
 - k. To the extent practical, power equipment and generators shall be placed and used inside buildings to mitigate noise
 - l. Exterior lighting, including security lighting, shall be low-intensity, adequately shielded to eliminate spillage, and directed downward.
 - m. Any new construction shall to the extent practical use fire resistant building materials.

C. Additional Terms:

1. These covenants, conditions and restrictions apply to any renters, caretakers, invitees and any resident of their property. Owners shall be responsible for any failure of these persons to abide by the terms of this document.
2. Disputes between Party 1 and Party 2 shall be subject to resolution through binding arbitration before the Arbitration Service of Portland. Venue for any arbitration hearing is in Deschutes County. The prevailing party at arbitration shall be entitled to an award of attorney fees and costs as determined reasonable by the arbitrator(s).

3. The covenants, conditions and restrictions contained in this document run with the land and bind the heirs, successors and assigns of the parties hereto.

DATED: _____, 2014

PARTY 1:

PARTY 2:

Jeffrey T. Dowell

William John Kuhn

Patti J. Dowell

Martha Leigh Kuhn

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by William John Kuhn.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Martha Leigh Kuhn.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Jeffrey T. Dowell.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Patti J. Dowell.

Notary Public for Oregon

EXHIBIT 1
(Legal Description)

After recording, return to:

William J. Kuhn
P.O. Box 5996
Bend, OR 97708

COVENANTS, CONDITIONS and RESTRICTIONS

PARTIES:

Party 1: Jeffrey T. Dowell & Patti J. Dowell

Party 2: William John Kuhn & Martha Leigh Kuhn

REAL PROPERTY:

The real property bound by this document is described on Exhibit 1. A copy of Exhibit 1 is attached hereto and incorporated by reference herein.

RECITALS:

WHEREAS, Deschutes County Conditional Use Case 80-22 (CU-80-22) allowed a “cluster development” on a 43-acre parcel in the Tumalo Winter Deer Range; and

WHEREAS, the approved “cluster development” required a substantial set aside for open space; and

WHEREAS, the approved “cluster development” created two parcels for residential development and one common area parcel (“Open Space Parcel”); and

WHEREAS, the three authorized parcels are currently identified by the Deschutes County Tax Assessor as Tax Lot 100, Tax Lot 200 and Tax Lot 300, Assessor’s Map 16-11-19, and are the land described on Exhibit 1 (hereinafter collectively referred to as “PARCELS”) and are owned by Party 1 and Party 2; and

WHEREAS, CU-80-22 required the developer of the cluster development to execute and record a homeowners association or agreement that would assure maintenance of the Open Space Parcel; and

WHEREAS, the Parties have agreed to maintain the Open Space Parcel for the purposes intended by CU-80-22;

NOW THEREFORE, the Parties, as owners of all land described on Exhibit 1 agree as follows:

COVENANTS, CONDITIONS AND RESTRICTIONS

A. Tax Lot 300:

Party 1 and Party 2 agree to impose the below-listed covenants, conditions and restrictions on the use of TL 300 for the mutual benefit of the parties and for the protection of open space values:

1. No person may develop or divide the Open Space Parcel.
2. Livestock (including but not limited to horses, cattle, llamas, sheep, emus, ostriches, pigs, chickens, game birds) grazing is not allowed.
3. No fencing is allowed.
4. No motorcycles or off-road vehicles shall be used except on established roads or improved driveways. This restriction does not prohibit an owner from using off-road vehicles for off-road property maintenance purposes.
5. The Parties shall agree annually on the maintenance to be done and who will perform the maintenance. If the parties are unable to agree, they will follow the provisions of paragraph A.6. below. Tax Lot 300 shall be maintained to the following standards.
 - a. Noxious weeds. Noxious weeds shall be removed in accordance with Deschutes County Code. Each Party shall make a reasonable effort to use environmentally safe methods of weed control and avoid using pesticides harmful to humans, animals, and wildlife.
 - b. Trees. All trees must be separated by a distance equal to the diameter of the crowns of adjacent trees, or 15 feet from the bases of such adjacent trees, whichever is greater. All trees remaining on the property after thinning will be pruned and limbed to maintain a minimum of 80% crown length (live green foliage) on the live tree. The 80% crown shall be measured vertically from the top down the trunk toward the ground a distance that is equal to the height of the tree multiplied by 80%. Any branches or limbs below that 80% height shall be removed. All dead trees will be removed.
 - c. Grass and Brush. All grass and brush shall be maintained to a height of no more than four (4) inches within 130 feet of any structure.
 - d. Trash. Trash shall be removed.

6. The Parties shall treat one another with respect. The Parties shall identify early and work towards amicable resolutions any and all disputes. The Parties agree to participate in good faith in the Deschutes County Mediation program prior to taking any legal action. Failure to agree to and participate in mediation shall negate any right to seek attorney fees.

7. Taxes:

- a. Each Party shall be responsible for one-half (1/2) of the property taxes assessed against Property.
- b. The Deschutes County Assessor created a split assessment account for the Property that corresponds to Parcels 1 and 2 shown on Exhibit 2.
- c. Party 1 shall pay the assessment with the current account number 264944 (Parcel 1) and Party 2 shall pay the assessment with the current account number 264943 (Parcel 2).
- d. Neither party shall request a consolidation of the tax accounts into one account.
- e. In the event that the Deschutes County Assessor consolidates the two accounts into one account, each party shall continue to be responsible for one-half (1/2) of the property taxes assessed against Property.

B. All Parcels (Tax Lot 100, Tax Lot 200, Tax Lot 300):

1. Party 1 and Party 2 agree to abide by all applicable laws and regulations (including but not limited to general civil and criminal laws, building codes, Deschutes County Code, land use decisions, landscape management plans) addressing their actions and uses on the PARCELS.

2. In addition, the following maintenance standards/restrictions apply to ALL PARCELS:

- a. No fencing is allowed with a top rail higher than 42" and a bottom rail lower than 18". No metal, barbed wire, straight wire fences or metal fence posts are permitted. No fencing is allowed on Tax Lot 300.
- b. No hunting or trapping is allowed.
- c. No discharge of firearms is allowed.
- d. No dumping or storing of waste material is allowed.
- f. No unsecured trash is allowed, and all trash will be timely removed.
- g. No open burning is allowed.
- h. No new utility lines or extensions to existing utility lines may be located above ground.
- i. No fencing is allowed with a top rail higher than 42" and a bottom rail lower than 18". No metal, barbed wire, straight wire fences or metal fence posts are permitted.
- j. No noxious weeds shall be allowed to propagate and owners shall use only environmentally safe methods of weed control and not use pesticides or

herbicides harmful to human, animals or wildlife. Each owner shall use biodegradable detergents, soaps and cleaners whenever possible.

- k. Exterior lighting, including security lighting, shall be low-intensity, adequately shielded to eliminate spillage, and directed downward.
- m. Any new construction shall to the extent practical use fire resistant building materials.
- n. Owners or family members may not acquire additional dogs other than the dog(s) they may own when they purchase the property. All dogs must be kept in such a way that they do not run loose in the area. Dogs allowed to "run" will disrupt deer habitat.

C. Additional terms:

- 1. The covenants, conditions and restrictions contained in this document run with the land and bind the heirs, successors and assigns of the parties hereto.
- 2. In the event either Party engages an attorney to enforce this Agreement or any of its terms, if a suit or action is commenced, it is agreed that the prevailing party shall be entitled to recover all expenses reasonably incurred before, at and after trial and on appeal to be paid by the losing party to the prevailing party and to be fixed by the arbitrator, trial or appellate courts. The parties agree that venue and jurisdiction shall be Deschutes County, Oregon.

DATED: _____, 2014

PARTY 1:

PARTY 2:

Jeffrey T. Dowell

William John Kuhn

Patti J. Dowell

Martha Leigh Kuhn

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Jeffrey T. Dowell.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Patti J. Dowell.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by William John Kuhn.

Notary Public for Oregon

STATE OF OREGON, County of Deschutes: ss.

This instrument was acknowledged before me on _____, 2014, by Martha Leigh Kuhn.

Notary Public for Oregon

EXHIBIT 1
(Legal Description)

**BEFORE THE DESCHUTES COUNTY COMMUNITY
DEVELOPMENT DEPARTMENT**

DR-13-16

As modified by

MA-14-1

)
)
)
)
)

NOTICE OF APPEAL

APPLICANT/OWNER:

Jeff and Patti Dowell
c/o Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

ATTORNEY:

Sharon R. Smith
Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

LOCATION:

65595 Sisemore Road, Bend, OR 97701
Tax Map: 16-11-19, Tax Lots 100, 300,
Deschutes County, Oregon.

REQUEST:

Declaratory Ruling for an interpretation of the requirements (specific provisions, required signatures, and any other considerations) necessary to satisfy Condition of Approval #2 of CU-80-02, which mandates an 'acceptable written agreement' prior to the sale of any lot in the cluster development established by CU-80-02.

I. STANDING:

Appellants Jeff and Patti Dowell (the "Dowells") are the Applicants in the matter that is the subject of this appeal and appeared in proceedings below.

II. STATEMENT DESCRIBING SPECIFIC REASONS FOR APPEAL:

Appellants concur with a majority of the Hearings Officer's decision dated June 3, 2014. However, Appellants object to certain aspects of the Conditions of Approval and seek to clarify other facets of the decision. Accordingly, Appellants assert that the decision is in error for the following reasons:

1. The Hearings Officer erroneously concluded that the required homeowner's association or maintenance agreement is the vehicle for preservation of open space values and therefore must include a provision describing how vegetation is to be maintained for wildlife habitat values (Condition of Approval #4(b)). As part of an application for a

cluster development, Section 8.05(16)(C)(b) of PL-15 requires a submittal of “adequate deed restrictions to maintain the land in the open space provided” (“open space maintenance requirements”). Section 8.05(16)(C)(c) establishes a separate requirement for a homeowner’s association for maintenance of common property (“common property maintenance requirements”). The recorded Land Use Restrictions satisfy 8.05(16)(C)(b) and thus prohibit the County from imposing additional open space maintenance requirements. By requiring that the homeowner’s association or maintenance agreement include a provision regarding vegetation maintenance for wildlife habitat, the Hearings Officer erroneously added an open space maintenance requirements as an obligation in the homeowner’s association or maintenance agreement. The homeowner’s association or maintenance agreements should only contain common property maintenance requirements.

2. The Hearings Officer erroneously concluded that the property must be maintained for wildlife habitat values (Condition of Approval #4(b)). In arriving at this conclusion, the Hearings Officer relied upon an improperly selective excerpt from the definition of “open space.” The definition of “open space” in PL-15 also indicates that agricultural uses, landscaping, golf courses, and recreational opportunities, among a menu of other activities, meet the definition of “open space.” The Land Use Restrictions already establishes restrictions on uses of Tax Lot (“TL”) 300 and requiring that the property be maintained for wildlife habitat values impermissibly elevates this use/value above other co-equal open space values and prohibits permitted open space uses.

Furthermore, the reference to “wildlife preserves” in the definition of “open space” states open spaces “enhance the value of abutting or neighboring ...parks, forests, and wildlife preserves.” There are no neighboring wildlife preserves, only federally owned range lands and some forest lands further to the west. The Wildlife Area Combing (WA) Zone and the Tumalo Deer Winter Range overlay zone do not render the subject property, or any neighboring properties, a “wildlife preserve.” Thus, the County cannot obligate that TL 300 be maintained as a wildlife preserve and cannot impose additional open space maintenance requirements beyond those included in the Land Use Restrictions.

3. The Hearings Officer erroneously concluded that William and Martha Kuhns as well as the Dowells (the “parties”) must execute the obligations of the original developer jointly, including jointly signing the homeowner’s association or maintenance agreement (Conditions of Approval #1, 2, 3, 5, 6, 7). Nothing in the text of Condition #2 requires both parties be signatories to the Agreement, even if both parties “step into the shoes of the Developer,” and nothing prevents the maintenance agreement to be between one of the parties and a third party such as the County, a property management company, or a conservation organization. There is also no reason that the parties could not independently fulfill the obligations of the original developer as the developer could have performed the tasks independently for the two residential parcels by signing separate agreements with third parties.
4. The Hearings Officer’s decision erroneously implies that the interests in TL 300 cannot be severed from the residential parcels. Specifically, the Hearings Officers concludes


that the homeowner's association or maintenance agreement must be binding on all future owners of the cluster development parcels by being recorded against the residential parcels. As the Hearings Officer found, Section 1.030(21) of PL-15 does not require joint ownership of TL 300. Moreover, Condition #1 to CU-80-2 only requires that TL 300 be in joint ownership *prior to the sale of any lots*. That condition has been satisfied because TL 300 was placed in joint ownership prior to the sale of a lot and a lot has been sold. TL 300 no longer needs to be held in joint ownership and the owners of TL 300 can sell their interests to each other or to a third party. Accordingly, the required association or agreement need not be jointly signed by the parties and the resulting document need only be recorded against TL 300.

III. REQUEST FOR REVIEW:

For the foregoing reasons, the Dowells request the Board of County Commissioners review the subject decision on the record. The Board should hear the appeal because it will assist in resolving a long standing land use dispute and will resolve matters of interpretation of the County Code.

SUBMITTED this 16th day of June, 2014

BRYANT, LOVLIE & JARVIS, P.C.

By: 
SHARON R. SMITH, OSB#862920
GARRETT CHROSTEK, OSB#122965
Of Attorneys for Applicants

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR DESCHUTES COUNTY

DR-13-16

As modified by

MA-14-1 (247-14-000165-A)

)
)
)
)
)

REQUEST FOR DE NOVO REVIEW

APPELLANTS:

Jeff and Patti Dowell
c/o Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

ATTORNEY:

Sharon R. Smith
Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, Oregon 97702

LOCATION:

65595 Sisemore Road, Bend, OR 97701
Tax Map: 16-11-19, Tax Lots 100, 300,
Deschutes County, Oregon.

REQUEST:

Appellants request the Board of County Commissioners hear this appeal *de novo* to provide a resolution to a long running dispute.

I. BACKGROUND:

On June 16, 2014, Appellants Jeff and Patti Dowell (the "Dowells") filed a "Notice of Appeal" of the Hearings Officer's decision in DR-13-16 as modified by MA-14-1 (the "Appeal"). The Appeal is part of a long standing dispute between the Dowells, opponents Bill and Martha Kuhn (the "Kuhns") and the County. Full details of the dispute are set out in the Hearing's Officer's decision. Pursuant to the County's request, Applicants stayed the Appeal in order to pursue settlement negotiations with the Kuhns. These negotiations did not result in a settlement. With the encouragement of the Kuhns, the Dowells reactivated the Appeal. While the Notice of Appeal requested an on the record review of the Appeal, the Dowells now request *de novo* review for the reasons set out in this "Supplemental Request for De Novo Review."

II. EXHIBITS:

- A-1. HO Agreement - September 2014
- A-2. Letter from David Doyle dated January 13, 2014
- A-3. E-Mail chain between the parties dated Feb. 27 – April 15, 2015
- A-4. Draft HO Agreement - Conveyance
- A-5. Draft HO Agreement - No Conveyance
- A-6. Appellants' Notice of Appeal

III. DE NOVO REVIEW:

De novo review is appropriate in order to fully flesh out the issues that will allow the Board to assist in resolving a long standing land use dispute and deciding matters of interpretation of County Code.

This Appeal was placed on hold at the request of County Staff who initiated an attempt to mediate this matter. There have been several prior mediation attempts over the decades' long dispute. The goal of the mediation was to resolve all outstanding matters among the parties and to determine what would be an acceptable homeowners' maintenance agreement (hereinafter referred to as "HO Agreement"). The County worked with the Kuhns to develop an "acceptable" HO Agreement. The County Staff provided the HO Agreement attached as **Exhibit A-1** to Dowells as an HO Agreement acceptable to the Kuhns. Dowells raised concerns regarding that HO Agreement because there were inconsistent remedies in the existing deed restrictions and the proposed HO Agreement, as well as, subjective standards that could be the source of future litigation. For example, that HO Agreement draft stated that:

"exterior lights shall be left on no longer than absolutely necessary."

The Dowells suggested edits to clarify the terms and address their concerns. A series of subsequent negotiations occurred, which are too numerous to detail. Our understanding is that the County found the Dowells' revised draft acceptable. The revised HO Agreement provided that the Dowells would convey the jointly owned property to the Kuhns. However, the Kuhns would not agree to resolution until they had a face to face meeting with the Dowells and were paid a substantial financial settlement. Dowells subsequently conceded to prohibit all livestock and dogs, believing this was of major importance to the Kuhns. This concession was not sufficient for the Kuhns.

The Kuhns rejected Dowells proposal and the County sent a letter January 13, 2015, attached as **Exhibit A-2** stating that the Kuhns were unwilling to continue negotiations absent a face to face meeting and financial settlement. As a last attempt to try and resolve the matter, the Dowells met with Mr. Kuhn. The results were unsuccessful. Attached as **Exhibit A-3** is an e-mail exchange between the parties following the meeting. It is clear that the parties have different perspectives. However, the Dowells' perspective is that the Kuhns will not be satisfied unless the Dowells give them the jointly owned property, as well as, the Dowells' property at a deep discount and the residence on the Dowells' property is moved from its current location, which has been approved by the County and affirmed upon appeal to LUBA.

It is apparent that the parties will not agree upon the terms of an HO Agreement. The Dowells ask that the County hear the Appeal *de novo* and take the following actions:

1. Declare what provisions would be acceptable in an HO Agreement. Attached as **Exhibit A-4** and **Exhibit A-5** are examples of proposed HO Agreements based on the original HO Agreement that the Kuhns found acceptable. **Exhibit A-4** contemplates the Dowells conveying the joint property to the Kuhns. Please note, this is only workable if the


Kuhns agree to accept the joint property. **Exhibit A-5** is an HO Agreement that assumes that the Dowells and Kuhns retain joint ownership of the open space property.

2. Declare that an HO Agreement can be between the parties or third parties as outlined in the Notice of Appeal (attached as **Exhibit A-6**).
3. Clear up the errors in the Hearings Officer's Decision as described in the Notice of Appeal (attached as **Exhibit A-6**).

Several of the attached exhibits were created following the public hearing before the Hearings Officer. Such exhibits would thus not be properly before the Board if the Board reviews the Appeal on the record. The exhibits are critical for resolving the matter because they reflect developments in the nature and scope of the dispute and set out potential options for the Board to consider in deciding this matter. To allow for more robust consideration of this Appeal, and to facilitate a more comprehensive resolution, the Dowells respectfully request that the Board hear this Appeal *de novo*.

SUBMITTED this 27th day of May, 2015

BRYANT, LOVLIE & JARVIS, P.C.

By: 
SHARON R. SMITH, OSB#862920
GARRETT CHROSTEK, OSB#122965
Of Attorneys for Applicants