

Kuhn v DesCo Assessor MD-150093D

Ex Plaintiff's Document List numbers 1 - 20

#pgs

	Kuhn v DesCo Assessor MD-150093D Ex 1-10 ~105 pgs.pdf	105
	BoPTA Documents	
1	20150223 Document List Submitted to BoPTA.pdf	4
2	real-property-petition_310-063 2014-15 TL200 20141231 plus addendum 4pg_.pdf	4
3	20140710 Spitz Kuhn Final Report Small.pdf	16
4	20140825 Settlement Kuhn v Assessor Langton re Tax Appeal TL300 Binder.pdf	9
4 n/a	20140219 BoPTA DesCo calls Kuhns negligent.pdf	1
5a	Final Partition Plat Map highlight max build Line 85x14 .pdf	2
5b	05b Location Maps LL8721 BLM ODFW RoadClose MD-150093D Ex#005b .pdf	6
6a	20110208 email ODR Thummel ORS 308.205.2.d.pdf	4
6c	USPAP 2010-2011 Standards Rule 1-3.pdf	1
6d	2014-15 eUSPAP with Bookmarks (Final) BASIC 22pgs .pdf	22
7	ORS 308.205(2)(d) Gov Restrictions adjust Real Market Value p1 3-5.pdf	4
8	08 To Bankers re loan Homeowners Agreement History 19pgs.pdf	19
	includes: 19800403 CU-80-22 Findings & Decision	3
	includes: 19870604 cover letter re LL adjustment	1
	includes: LL adjustment application	1
	includes: 19870619 Shipman letter re deed restrictions	1
	includes: 19970115 Kuhn complaint re lack of homeowners agreement	1
	includes: 20040930 First Am Title	2
	includes: 20041004 First Am Title to Mark Pilliod	1
	includes: 20100224 A-09-4 A-09-5, A-07-9 BoCC Decision	8
	includes: 20110119 Kanner - no permits until agreement is recorded	1
9	09 20110207 email DEMO fee \$176.40.pdf	2
10	10 2000-2014 6 letters re Property 8pgs .pdf	8
	Kuhn v DesCo Assessor MD-150093D Ex 11-20 ~29 pgs.pdf	29
	Supplimentary ORS	
11a	11a ORS 40.190 Rule 408. Compromise and offers to compromise	1
11b	11b ORS 92.025	2
12	12 ORS 105.820	1
7	07 ORS 308.205(2)(d)	4
	legal opinions re County's actions	
13	13 20000809_011212_J Martin To Liz Fancher Re Dennis Luke 2pgs.pdf	2
14	20011205_Fancher To Craghead re 14th Amendment 2pgs.pdf	2
15	20060323 Magistrate Decision with yellow highlights.pdf Magistrate Daniel Robinson	13
16	20140808 email exchange Fancher & Mathers Outrageous Misinterpretation.pdf	1
	financial help denied	
17	20060213 Letter from ODF&W re WHCMP Kuhn 2-06	1
18	20150914 ODF&W re WHCMP - problem with ownership	1
19	20150922 NRCS Tom Bennett re ownership funding	1
20	2015 Letter from DS&WCD to Kuhn re assistance	1

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 1 Pgs# 4

2 - 3 November 2015

1

20150223 Document List Submitted to BoPTA

Forms submitted in December 2014

real-property-petition_310-063 2014-15 TL200 20141231.pdf 2 pages form filled in
real-property-petition_310-063 2014-15 TL300 20141231.pdf 2 pages form filled in
Our Addendum to Real Property Petitions 20141230.pdf 2 pages summary of our position
20140710 Spitz Kuhn Final Report Small.pdf see page 5 16 pages

5 third paragraph – Land value is \$225/acre
5 fifth paragraph – Total market value of \$3,000 (\$1,500 per each owner)
20140825 Settlement Kuhn v Assessor Langton re Tax Appeal TL300 Binder .pdf 9 pages
5 CU-80-22 Prior to sale agreement shall be recorded...
9 County has admitted it was wrong between Nov 1988 to Feb 2010
12 County was wrong about the final partition plat map
15 County admits the other party is in violation of court order
18 County admits the use of the word “negligence” was in error

20140219 BoPTA DesCo calls Kuhns negligent .pdf 1 page
Map final partition plat map
Map Kuhn Lot #200 with lot line adjustment
Google First American of Lot #300

20110208 email ODR Thummel ORS 308.205.2.d.pdf four pages
2014-15 eUSPAP with Bookmarks (Final) 394 pages
USPAP 2010-2011 Standards Rule 1-3.pdf 1 page
2014-15 eUSPAP with Bookmarks (Final) BASIC p01-22.pdf pages 1,10,17-36 Rule 1-3

ORS 308.205(2)(d) Gov Restrictions adjust Real Market Value.pdf

To Bankers re loan Homeowners Agreement History.pdf 19 page summary includes:
1980 CU-80-22 - Agreement must be recorded prior to sale of any lot
19870604 Kuhn Lot Line Adjustment Cover Letter Please Deny If the lot isn't buildable.
19870604 Kuhn Lot Line Adjustment Application
19870619 CDD Letter to Kuhn Deed Restrictions must be recorded
19970115 Code Violation Complaint re NO Homeowners Agreement
20100224 BoCC Decision A-09-4, A-09-5, A-07-9
20110119 Kanner letter to Kuhns re building permits denied until recording of HOAA
20110207 email DEMO fee \$176.40.pdf CDD's Judy Hackett re Building Demolition permit

2000-2014 6 letters re Property .pdf

8 pages includes:

20120810 Gainsforth letter to BoCC
20000403 Tumalo Real Estate Barbara Nicholson re Loss of Value
20110202 Skyline Financial Corp Trena O'Bill Can not finance home
20110205 US Bank Rockland Dunn Unwilling to extend credit
20110214 Ponderosa Properties Rad Dyer Tremendous Negative Impact on Market Value
20140204 Gainsforth letter You Can not assure a purchaser of "Quiet Enjoyment" and
unclouded title

DesCo and safety permits one granted one not.pdf

2014-15 eUSPAP with Bookmarks (Final) 394 pages from the Appraisal Standards Board
Contains:

5 Basic Rules that deal with:

Ethics

Record Keeping

Competency

Scope of Work

Jurisdictional Exception

45 Standards Rules

128 pages of Advisory Opinions

150 pages of Frequently asked Questions

An Index of 9 pages

The balance is fluff

Statement to the BoPTA on 23 February 2015

We can't legally sell our property and it's not our fault. It's been 18 years since we first brought the lack of a homeowners association agreement to the attention of Deschutes County and we still have no agreement.

Last year when we appealed our taxes for basically the same reason we were handed a document from the Assessor which stated that there would be no reduction in our taxes because we were negligent.

We entered into a stipulation agreement with the County where the 'negligent' statement was withdrawn.

We hired a Forestry expert to evaluate our property and he determined that the land was costing us money to own.

Beginning in 2011 we've been in contact with Gregg Thummel of the Oregon Department of Revenue.

Mr. Thummel directed us to Chuck Fisher, Compliance Analyst with the Oregon Appraiser Certification & Licensure Board in Salem, who was stunned to hear of our situation, and John Brenan, Director of Appraisal Issues from the ASB – the Appraisal Standards Board part of the Appraisal Foundation which is authorized by Congress. They produce the USPAP – Uniform Standards of Professional Appraisal Practice – the Standard Rule 1.3. regarding governmental restrictions.

Mr. Thummel also communicated that the Assessor must consider ORS 308.205 (2) (d) which also references governmental restrictions.

In the past we have not been treated fairly nor have we been treated impartially by Deschutes County in both our land development processes and in our appeals of our property taxes.

We know that BoPTA is supposed to be an independent body which is not supposed to simply rubber stamp the Assessor's values or be influenced by wrongly by statements made by the Appraiser or Legal Counsel.

So please consider that the Deschutes County Assessor has NO justification to NOT consider either the USPAP Standard Rule 1.3 or ORS 308.205 (2) (d).

We're asking you to reduce our assessed value based on the FACT that we can't legally sell our property, nor can we obtain permits from the County. These are governmental restrictions imposed on us. All because the other party is in violation of a court order that this county recognizes but ignores. It's not right and it's not fair.

LIST OF issues where the other party was given preferential treatment over us.

Ex-post-facto approvals

Side yard set backs

Lot Line Adjustment

Maximum building line was addressed in Kuhns' application process

Other party did not build where they were supposed to

Other party allowed to apply for land use applications then they put their application on hold - not acting on them which precludes the Kuhns from communicating with BoCC

Deschutes County refuses to allow a health and safety permit to remove the walls of the illegally constructed (1997) room in the garage. This can be done.

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 2 Pgs# 4

2 - 3 November 2015

2

Board of Property Tax Appeals

REAL PROPERTY PETITION

for Deschutes County

- Read all instructions carefully before completing this form.
- Please print or type the requested information on both sides of this petition.
- Complete one petition form for each account you are appealing.
- Return your completed petition(s) to the address shown on the back.
- Please attach a copy of your tax statement.

For Official Use Only

Petition Number and Date Received

Petitioner (Person in whose name petition is filed)

1 Check the box that applies: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Person or business, other than owner, obligated to pay taxes (attach proof of obligation)	
2 Name—Individual, corporation, or other business William John & Martha Leigh Kuhn	3 Telephone number Daytime 541 389 3676 Evening same
4 Mailing address (street or PO Box) PO Box 5996	5 City Bend
6 State OR	7 ZIP code 977085996
8 Email address (optional) William@RiskFactor.com	
FOR BUSINESS USE ONLY } 9 Name of person acting for corporation, LLC, or other business	10 Title (i.e., president, vice president, tax manager, etc.)

If a representative is named on line 11, all correspondence regarding this petition will be mailed or delivered to the representative.

Representative } To be completed when petition is signed by an authorized representative of petitioner. Only certain people qualify to act as an authorized representative. See the instructions for a list of who qualifies.

11 Name of representative		12 Telephone number Daytime Evening	
13 Mailing address (street or PO Box)	14 City	15 State	16 ZIP code
17 Email address (optional)			
18 Relationship to petitioner named on line 2			
19 Oregon state bar number	20 Oregon appraiser license number	21 Oregon broker license number	22 Oregon CPA or PA permit or S.E.A. number

Any refund resulting from this appeal will be made payable to the petitioner named on line 2 unless separate written authorization is made to the county tax collector.

Attendance at Hearing

23 Will you or your designated representative attend the hearing? ☒ Yes ☐ No
If you choose to not be present at the hearing, the board will make a decision based on the written evidence you submit.

Property Information

24 Assessor's account number (from your tax statement) 163467 TL200 home building site	25 Assessor's map and tax lot number (from your tax statement) 161119-00-00200 Kuhn building site
26 Street address and city where property is located 65575 Sisemore Road Bend 97701	27 Property type <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Farm <input type="checkbox"/> Mfd Structure <input type="checkbox"/> Multi-family <input checked="" type="checkbox"/> Forest <input type="checkbox"/> Industrial

		Real Market Value (RMV) from tax statement or assessor's records	RMV Requested
28 Land	→	\$ 147,550	\$ 2,472
29 Buildings, machinery, etc.	→	\$ 119,420	\$ 50,000
30 Manufactured structure	→	\$ 0	\$ 0
31 Total RMV	→	\$ 266,970	\$ 52,472

Most property is not specially assessed. Please read the instructions to see if this section applies to your property.

		SAV from assessor's records	SAV Requested
32 Total SAV of Specially Assessed Portion	→	\$ 0	\$ 0
		Assessed Value (AV) from tax statement or assessor's records	AV Requested (AV is limited to the calculation allowed by law)
33 Total Assessed Value (AV)	→	\$ 225,790	\$ 52,472

Evidence of Property Value Attach documentation such as copies of recently recorded deeds, listings, appraisals (attach complete report), construction bids, etc.

34 Why do you think the value of your property is incorrect? (Answer the question in the space provided or by attaching additional pages. Provide enough information to support the value(s) you are requesting. Be specific.)

We are not able to sell our property under current conditions.
Please see attached documents.

35 Did you purchase the property within the past three years? ☐ Yes ☒ No If yes, complete the following:

Date purchased: _____ Purchase Price: _____

Did you purchase the property through a real estate office? ☐ Yes ☐ No Name of real estate office: _____

36 Have you sold or attempted to sell your property within the past three years? ☐ Yes ☒ No If yes, complete the following:

Sales / Asking price: _____ Date sold or dates offered for sale: _____

Was the property listed with a real estate office? ☐ Yes ☐ No Name of real estate office: _____

37 Has your property been appraised within the past three years? ☐ Yes ☒ No If yes, complete the following:

Appraised value: _____ Date of appraisal: _____

Purpose of appraisal: _____ Name of appraiser: _____

38 Have you made any changes to your property within the past three years? ☐ Yes ☒ No If yes, complete the following:

Changes made: We've not been allowed to change it because we may not apply for permits.

Dates of construction: _____ Cost of new construction: _____

Declaration: I declare under the penalties for false swearing (ORS 305.990(4)) that I have examined this document, and to the best of my knowledge, it is true, correct, and complete.

39 Signature and name of petitioner or petitioner's representative (attach authorization if necessary)

X

Sign name

William John Kuhn & Martha Leigh Kuhn

Print or type name

40 Date

30 December 2014

Please return this petition to:

← When and where to file your petition

File your petition in the office of the county clerk. No other county office can accept petitions. Your petition must be postmarked or delivered by December 31 to the county clerk's office in the county where the property is located. If December 31 falls on a weekend or holiday, the filing deadline moves to the next business day. Mail or deliver your petition to the address shown in the box.

William John Kuhn

Martha Leigh Kuhn

PO Box 5996 Bend, Oregon 97708-5996

Phone: (541) 389-3676

Tuesday 30 December 2014

Addendum to Real Property Petition for both our home (4.3 acre buildable) lot and our ½ interest in 32 acre common property which is a set aside for wildlife.

Account # 163467	Map 161119-00-00200	4.3 acre home site
Account # 264943	Map 161119-00-00300U1	33.21 acre wildlife set aside

We are appealing our taxes on both of our properties because we cannot legally sell either lot since the restrictions put on our parcels by Deschutes County, THROUGH NO FAULT OF OUR OWN.

When we appealed our taxes last year the Assessor responded calling us negligent. We are not and were not negligent. We also have attached the stipulated agreement from last year which describes the general situation that confronts us.

Ever since we asked Deschutes County to help us obtain the required homeowners agreement which would establish a homeowners association which would oversee the maintenance of the jointly owned parcel in January 1997, Deschutes County has systematically denied us of our homeowner's rights and our right of enforcement of County Codes. This situation continues today.

The other party in our cluster development has, since their original purchase contract, refused to honor our deed restrictions and since January 1997 refused to sign any agreement which would adequately accomplish the purpose of the parcel's restrictions within our cluster development and that would give us the necessary protections from those owners.

Our conditional use permit (CU-80-22) required that prior to sale a signed recorded agreement be on file with the Deschutes County Clerk. No such agreement has been established.

After an appeal of a building permit that eventually was ruled on by both the County Commission and LUBA, Deschutes County Administrator wrote us a letter stipulating we would not be allowed to apply for permits until the an agreement was recorded with the Clerk's Office, and then be considered "acceptable" by Deschutes County Board of Commissioners.

We can neither improve nor demolish our home. We cannot move our home. We can't sell it or sell it as building scrap. We can apparently live in it, but we have no property value other than what we might be able to rent it for on a month to month basis. Assuming such a rental was possible, given the risk of not being able to repair any structural damage that would require

permits; we might be able to rent it for around \$500 per month. If we use an old real estate rule of thumb value for the livability of our rented house we might put the value at 100 times the \$500/month rental value which would equal ~\$50,000 Real Market Value. But we still can't legally sell our property, or obtain permits.

Also, we are asking that the Assessed value of our land property be adjusted to reflect that it cannot be legally sold, so we are suggesting that value be assessed at what the taxes would be for land that is under special tax assessment based on it being considered Open Space or in the WHCMP or Wildlife Habitat Conservation Management Plan. Other properties within the Tumalo Winter Deer Range have their land property taxes cut by as much as 98+%. So, we have adjusted the land property taxes based on a comparable parcel across the road or 1.82142% of the listed Real Market Value for the land.

The wildlife set aside land is not irrigated. It cannot be farmed. It cannot be sold. The 33.21 acre wildlife parcel costs us money to maintain especially since we have to do ALL of the maintenance alone with out any help from the party who has been ordered by a civil court judge to enter into an agreement with us, but still refused to do so.

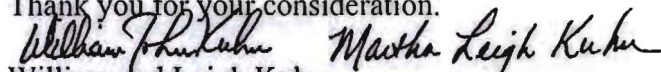
It's time for Deschutes County to own up to the fact that since January 1997, it has been punishing us for a situation we did not create, but that we actively, at great financial and personal cost, attempted to gain compliance for all the requirements for this cluster. We are not responsible for any failure to do this, and we have no ability to fix it under current circumstances. Deschutes County repeatedly failed to do their job, enabling, and being at least partly responsible for an ongoing nightmare for us. Deschutes County needs to take responsibility for its role in the predicament it has put us in. Until ALL our property rights are restored, Deschutes County has no ethical or legal justification for not lowering our tax rates as requested.

During the past year we worked on an agreement which County Legal Counsel stipulated was acceptable to Deschutes County. This is the agreement which was submitted to the other party. The other party refuses to sign the agreement. Given that a Civil Court Judge has ordered the other party to enter into an agreement with us we will not accept any other substitution for this document unless we are compensated for giving up more of our property rights which Deschutes County has repeatedly denied us.

Further documentation may be submitted later.

We ask that you look at this situation reflectively and consider what you would do were you in our place. The BoPTA panel has the authority to consider and render a lower assessed value more equal to the true real market value based on the governmental restrictions imposed unfairly and unequally by Deschutes County.

Thank you for your consideration.


William and Leigh Kuhn

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 3 Pgs# 16

2 - 3 November 2015

3

JIM SPITZ, ACF
FORESTRY CONSULTANT
60045 River Bluff Trail
Bend, Oregon 97702
541/389-5978

July 10, 2014

William Kuhn
P.O. Box 5996
Bend, Oregon 97708-5996

Dear Mr. Kuhn:

This letter responds to your request that I evaluate potential economic uses and provide an opinion of value for Tax Lot 300, T16S, R11E, WM. I inspected this parcel with you on May 15, 2014. This letter summarizes the results of my inspection, property assessment, and opinion of value for this property on your requested date of value of January 1, 2013.

Ownership and Use Regulations

Tax Lot 300 is a separate, legal lot of record. It was created in 1980 along with Tax Lots 100 and 200, as part of a cluster development. Tax lots 100 (currently owned by Jeff and Patti Dowell) and 200 (currently owned by William and Leigh Kuhn) were created as buildable lots and now have existing structures. Tax Lot 300 was created to serve as undeveloped wildlife habitat with undivided interests by the owners of Tax Lots 100 and 200. Jeff and Patti Dowell and William and Leigh Kuhn currently own Tax Lot 300 with undivided and equal interests.

Tax Lot 300 was created with numerous land use restrictions, which remain in place. It was and is in a Forest Use zone (F-3 originally, F-2 now) and is included within both WA Wildlife Area Combining (deer winter range) and LM Landscape Management Combining overlays. The owners of Tax Lot 300 are required to develop and obtain Deschutes County approval for a homeowners association or other agreement to control management of Tax Lot 300.

Guidance on requirements for managing Tax Lot 300 is provided by findings and decisions from a 1980 Deschutes County land-use public hearing (file number CU-80-22). This guidance is derived from the Deschutes County Comprehensive Plan and other land use regulations, which were in place when Tax Lot 300 was created. Goals cited from the wildlife overlay were:

1. To preserve and protect existing fish and wildlife area.
2. To maintain all species at optimum levels to prevent serious depletion of indigenous species.
3. To develop and manage the lands and waters of this country in a manner that will enhance, where possible, the production and public enjoyment of wildlife.

More specific guidance for management of this property is provided by a staff report in 2013 (file number DR-13-16). In this report the staff's opinion is that Tax Lot 300:

1. Should be left in a natural state.
2. Farm use would be inconsistent with the intent of the 1980 code.
3. Structures, regardless of their use are prohibited.

4. Irrigation is prohibited.
5. No new dogs is an important part of the agreement, and
6. All fencing must be wood with the top rail no higher than 42 inches and the bottom rail no lower than 18 inches.

Deschutes County has blocked issuance of building permits and sale of Tax Lots 100, 200, and 300, until an approved management agreement is in place. To date a management agreement proposed by the Dowell's and efforts to create a conservation easement or a Wildlife Habitat Conservation and Management Program Plan by the Kuhn's have not achieved agreement between the property owners nor declaratory acceptance by Deschutes County. Thus, an approved management agreement for Tax Lot 300 still does not exist.

Physical Characteristics

Tax Lot 300 contains 33.21 acres, per the Deschutes County Assessor's records. This property is located within the Cascade Mountains precipitation shadow and receives only 10 to 12 inches of precipitation annually. Sixteen inches are usually considered to be minimum for commercial timber production. Soil conditions on the property are described in the USDA Natural Resources Conservation Service National Soil Survey and are summarized in the map and table on pages 6 and 7 of this report. These are very rocky, porous soils with low nutrition, water storage capacity, and productivity in their natural condition. My inspection found only natural levels of soil erosion on this property currently. There are no streams or water bodies on this property.

Physical and legal access to the soil complex 34C portion of Tax Lot 300 is excellent via Sisemore Road, an all-season, gravel, mainline road. Road access to soil type 28A and much of complex 34C would require obtaining easements over adjoining private or BLM lands or difficult and expensive road construction from the complex 34C area.

Vegetation and Productivity

This property supports a western juniper/sagebrush-bitterbrush/Idaho fescue plant community (Photos on pages 8 through 10). Pecks milkvetch is the most unique plant species present on this property. Pecks milkvetch is a prostrate perennial with red-colored stems and cream to pale yellow colored, butterfly-shaped flowers. Its Federal status is species of concern and its Oregon status is threatened.

Vegetation on this property is declining in health, primarily as a result of fire exclusion and lack of compensating management activities. Pre-white settlement plant communities, like this, experienced light to moderate intensity wildfires every 10 to 30 years. These fires limited juniper and brush competition and favored native bunchgrasses and other forage species. As a result of decades of fire exclusion, vegetation on this parcel is shifting toward juniper and decadent brush domination. Thermal and hiding cover for mule deer are increasing at the expense of forage. This shift has gone beyond the optimal balance between cover and food for deer and for most native wildlife species. Invasion by non-native plants, especially cheat grass, near roads and other areas of human activity, is increasing and further damaging the composition and productivity of this native plant community.

According to the USDA Natural Resources Conservation Service soil survey this property is capable of producing approximately 850 air-dried pounds per acre per year of biomass. Currently, juniper and unusable sagebrush account for approximately 650 pounds per acre per year of biomass growth. Browse accounts for approximately 150 pounds per acre per year. Ponderosa pine accounts for 50 pounds or less per acre per year.

Juniper is the most common and an increasing tree species on this property. It is not usually considered to be a commercial species, however, it does have low-value markets as firewood, fence posts, and craft woods. Realizable (net of foliage, limbs, and tops) and sustainable juniper harvest on this property is approximately one-fifth of a cord per acre per year.

Sagebrush, bitterbrush, and Idaho fescue are the main sources of forage on this property. Range and forage conditions are fair and declining, due mostly to increasing competition from juniper and aging sagebrush. At most half of the 150 pounds per acre per year of forage production can be utilized for grazing in order to carry healthy, perennial plants into subsequent growing seasons. Thus, the sustainable carrying capacity of this property is approximately 3 animal unit months (AUM's). This would feed one cow and calf or 5 sheep for 3 months. Alternatively, it is capable of feeding approximately four wintering deer (December through April).

Ponderosa pine is the only native, commercial tree species capable of growing on this property. There are approximately 30 to 40 ponderosa pine trees on this property and none of them are of sufficient size and quality to be economically harvestable. These trees range from approximately 50 to 180 years of age. They occur on deeper pockets of soil and especially in locations with north-facing slopes and topographic shade. These trees have survived near the minimum moisture limit for ponderosa pine. Mortality is high and undesirable growth characteristics, including multiple tops, sweep, and spiral grain are common defects. Few of these trees are capable of reaching merchantable size, even if competing vegetation is removed, because they outgrow their available water supply as they approach merchantable size. During my inspection of this property, I found no stumps, logs, tops or other indications that commercial logging has ever occurred here. The Oregon Department of Forestry considers 20 cubic feet per acre per year to be the minimum threshold for commercial timber production. Potential growth here is 2 to 3 cubic feet per acre per year, under normal condition. Properties, like this, are not considered to be commercial forestland under Oregon Forest Practices Regulations and reforestation and other commercial forest practices requirements do not apply to sub-marginal sites, like this.

Management Costs and Potential Income

Net income potential from this property is negative. Private land grazing rights sell for approximately \$10 per AUM. The 3 AUM's per year available here are not worth using, considering costs. Juniper firewood stumpage sells for approximately \$5/cord on properties with good access. Access to juniper here is difficult, except for areas close to Sisemore Road and the primitive road near the southern boundary of the parcel. A firewood cutter might be willing to remove juniper with an all-terrain vehicle (ATV) within 500 feet of these roads for no net cost. This could reduce the excessive number of juniper on 40% of the property for administrative costs only. Currently and for decades less than one log truck load of ponderosa pine logs will be available for harvest from this property. Such a harvest will not cover logging and haul costs to the nearest mill (now Interfor Pacific in Gilchrist).

Management costs for meeting wildlife habitat requirements on this property are speculative without an approved management plan. Improving and maintaining winter deer range would be the primary goal. This would entail maintaining a reasonable amount of hiding and thermal cover, increasing the quantity and quality of winter forage (brush and early grasses and forbs), and reducing fire hazard to protect the improved habitat and nearby properties. Most property owners would select a minimum cost management program. Thus, relatively low-cost, high-benefit activities, like juniper removal and spot mowing of decadent brush would be favored. Piling and burning, lopping and scattering, and in safe situations broadcast burning would also be used to modify vegetation and to reduce fuel hazards. Use of mechanized equipment on this property is limited to approximately half of the area, due to rocky surface conditions and steep, erodible slopes. ATV's and small farm tractors can be used for skidding, piling, mowing, and fireline construction on easy ground. However much of the area will need to be treated with gentler, but more expensive, hand labor (chainsaws, loppers, shovels, etcetera). Diversity is desirable, so treatment intensity should be varied and not all acres need to be treated. I estimate that approximately \$15,000 in treatments would be needed, during the first few years to bring this property into good and reasonably fire safe winter range conditions and then approximately \$1,000 per year would be required for monitoring and maintaining these habitat conditions. This treatment would increase deer winter range carrying capacity by 4 to 6 deer. The net present value of these costs is approximately \$30,000 at a 6% real discount rate.

On balance, I believe that Tax Lot 300 currently has no net income potential. Adoption of the required habitat management plan would result in acceptance of the equivalent of a one-time, \$30,000 negative income by the undivided owners. This cost would be largely offset by relief from permitting and sale restrictions on Tax Lots 100, 200, and 300.

Highest and Best Use

Tax Lot 300 is zoned for forestry, landscape, and wildlife uses and developed uses of this property are prohibited. Therefore, I conclude that maintenance of this property in a natural forested condition is its highest and best use, even though this use would result in no or a negative income for this parcel.

Opinion of Value and Certification

A full appraisal of Tax Lot 300 as a separate parcel would be complex and expensive, due to the property's legal and cost/benefit ties to Tax Lots 100 and 200; unique land-use requirements; undivided ownership; and the lack of comparable sales. The unfulfilled requirement for an approved habitat management plan for Tax Lot 300 increases appraisal difficulty. The cost to complete a full appraisal for Tax Lot 300 would be difficult to justify, given the parcel's low economic and market value. Therefore, I am only offering some market observations and opinions of value here, based upon assuming that forest management (open-space) is its highest and best use and upon my experience with appraising forested properties with little or no income potential.

In my experience Eastern Oregon "forestland" properties, which have little or no income potential and little or no higher and better use (HBU) potential, sell for approximately \$100 per acre. Isolated "scablands" are typical examples of these properties. Scablands contain very shallow, rocky soils. They are usually capable of growing a few, isolated trees and usually do

not produce enough forage to make livestock grazing worthwhile. These properties usually have very little HBU potential, when they are in isolated locations. Forested in-holdings located deep within Federal wilderness areas are another example of this type of property. Federal regulations and lack of access prevent most economic uses of these parcels. The motivation for owning properties with no significant economic return is often described as "pride of ownership."

In my experience minority interests in properties with undivided ownership usually sell at a discount of 40 to 60%. In this situation minority owners have no say in management of the property, unless they can combine into a majority vote. A 50/50 ownership situation, as exists on Tax Lot 300, is especially difficult. Either party can block action by disagreeing.

In my opinion the market value of Tax Lot 300 as a separate property without an approved management plan was \$3,000 on January 1, 2013. This is based upon a land value of \$225/acre (less isolated than typical no-income/HBU properties and good mountain views from a few locations) and a 60% discount for ownership and management plan difficulties (more difficult than typical).

The current situation could change in the future and this might affect the market value of Tax Lots 100, 200, and 300. Agreement on a management plan for Tax Lot 300 is possible. Some or all ownership interests in Tax Lot 300 might be sold or donated to a third party. Regulations affecting these properties might be changed. The fact that 34 years have passed without development of an approved management plan for Tax Lot 300 or finding alternate solutions shows difficulties with all of these possibilities and impasse does delay significant costs and work for the landowners.

Based upon this analysis, I conclude that Tax Lot 300 had a market value of \$3,000 (\$1,500 attributable to each family) on January 1, 2013. I hereby certify that:

1. I have no undisclosed interest in this property, present or contemplated.
2. My employment and payment are not contingent upon the value found.
3. I personally and thoroughly inspected this property.
4. According to my knowledge, everything contained in this report is true, and no important facts have been withheld or overlooked.
5. No one provided significant professional assistance to me in developing this opinion of value or report.
6. In my opinion the market value of Tax Lot 300 was \$3,000 on January 1, 2013.

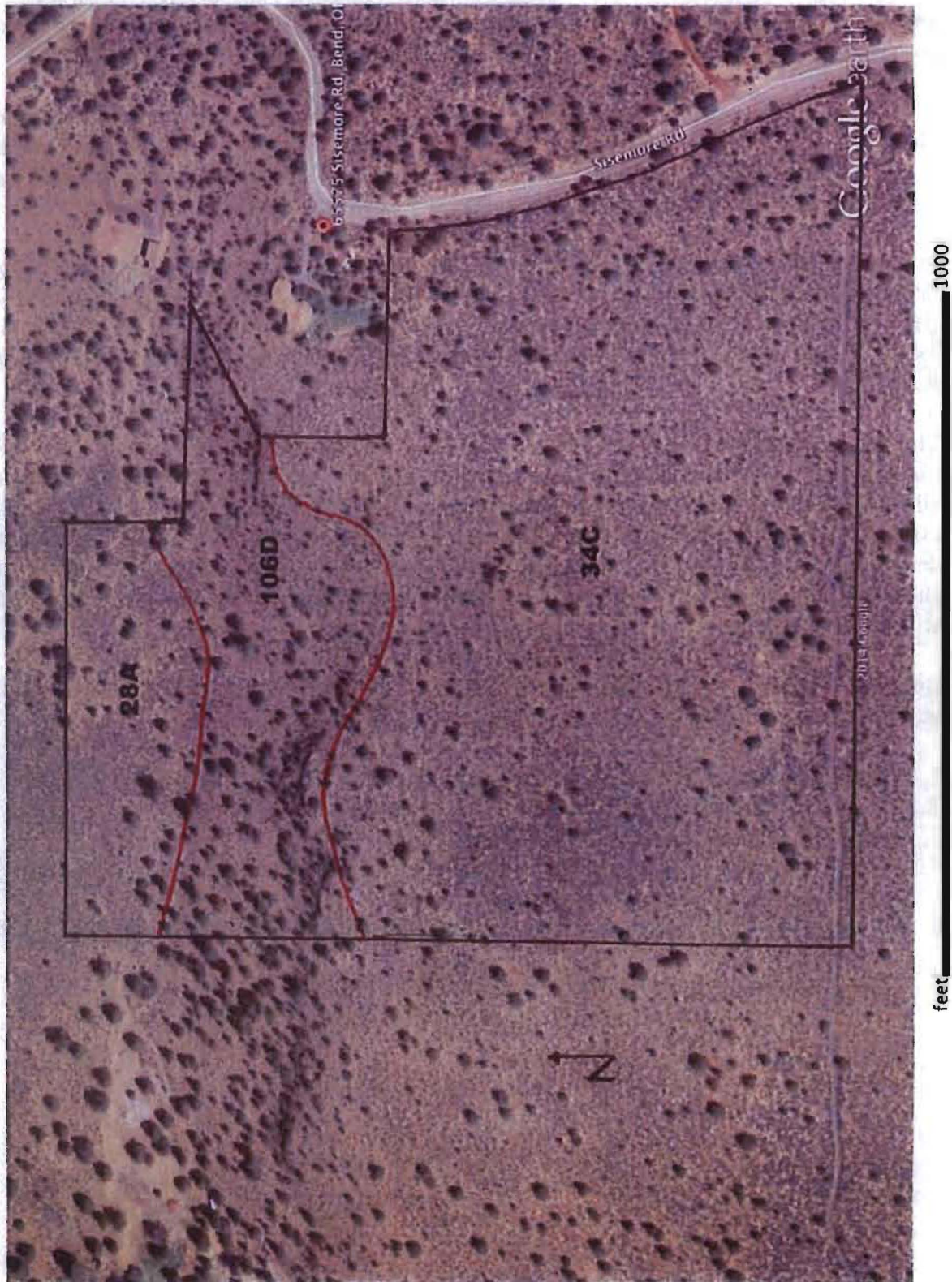


Jim Spitz, ACF

July 12, 2014

Date

Tax Lot 300 Soil Complexes and Vegetation



Tax Lot 300 Soils

Map unit symbol	28A	106D	34C
Map unit name	Clovkamp loamy sand, bedrock substratum, 0 to 3% slopes	Redslide-Licksillet complex, 10 to 30% north slopes	Deschutes-Stukel complex, 0 to 15% slopes
Acreage	3.07 acres	5.30 acres	24.84 acres
Setting	Bottom-land lava plain	North facing slope	Slope-top lava plain
Parent material	Volcanic ash over gravelly alluvium - deep but sun exposed	Volcanic ash over volcanic rock colluvium – shallow but shaded	Volcanic ash over basalt – shallow and sun exposed
Depth to bedrock	40-50"	7-34"	17-31"
Water storage	About 4.4"	About 2.4"	2.2-3.7"
Natural drainage class	Somewhat excessively drained	Well drained	Well drained
Erosion hazard, natural	Slight	Moderate	Slight
Fire damage potential	High – wind erosion of sandy soil	Moderate	Moderate
Mechanized equipment operability	Well Suited	Moderate	Moderate
Land capability class, non-irrigated	6s – Very low productivity without irrigation & cultivation	6e – Very low productivity, unsuitable for cultivation	6e – Very low productivity, unsuitable for cultivation
Ecological Site	Juniper shrubby pumice flat	Juniper shallow north	Juniper shrubby pumice flat
Forest Site Class	Non-forest	Non-forest	Non-forest
Total vegetation production, normal yr ¹	900 pounds/acre/year	1,035 pounds/acre/year	818 pounds/acre/year
Total palatable forage production, normal yr ²	150 pounds/acre/year	200 pounds/acre/year	150 pounds/acre/year

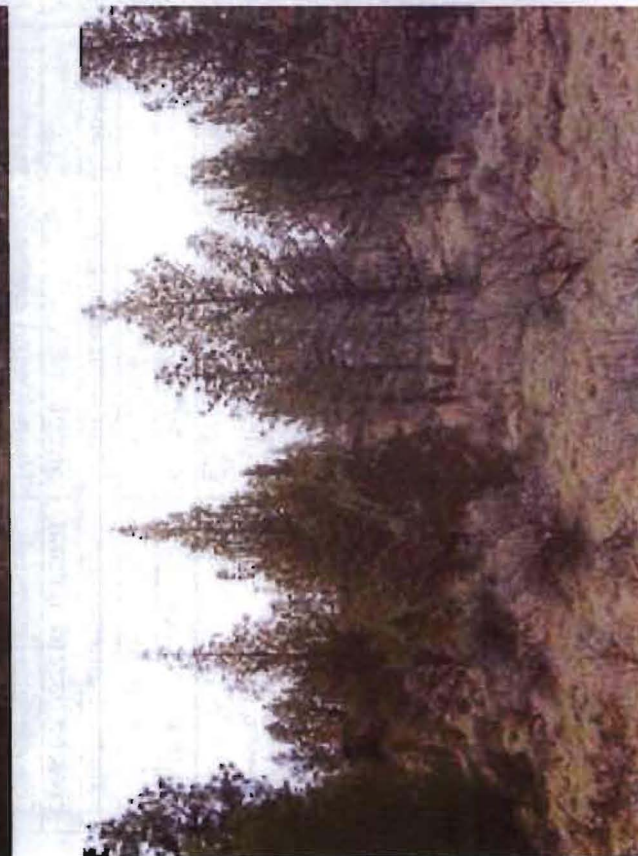
Notes:

From USDA Natural Resources Conservation Service National Cooperative Soil Survey, unless otherwise noted.

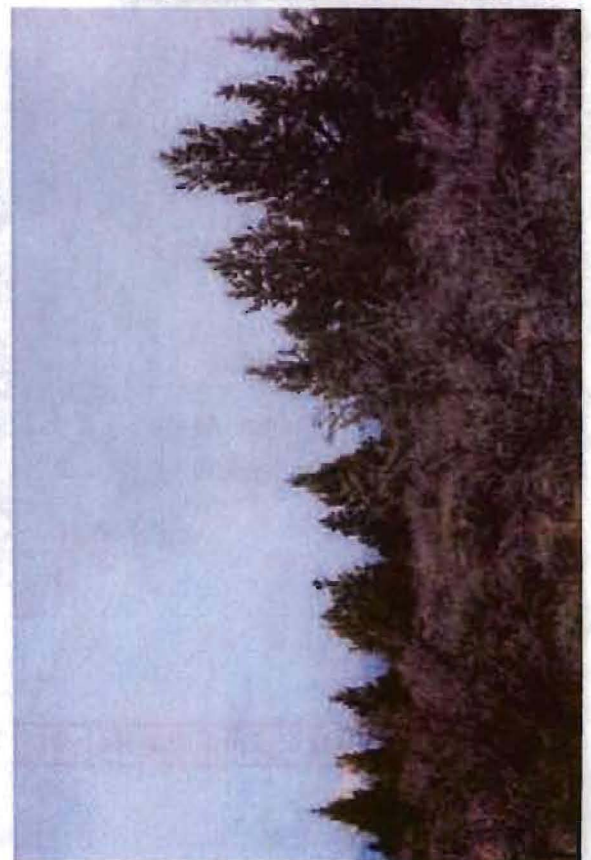
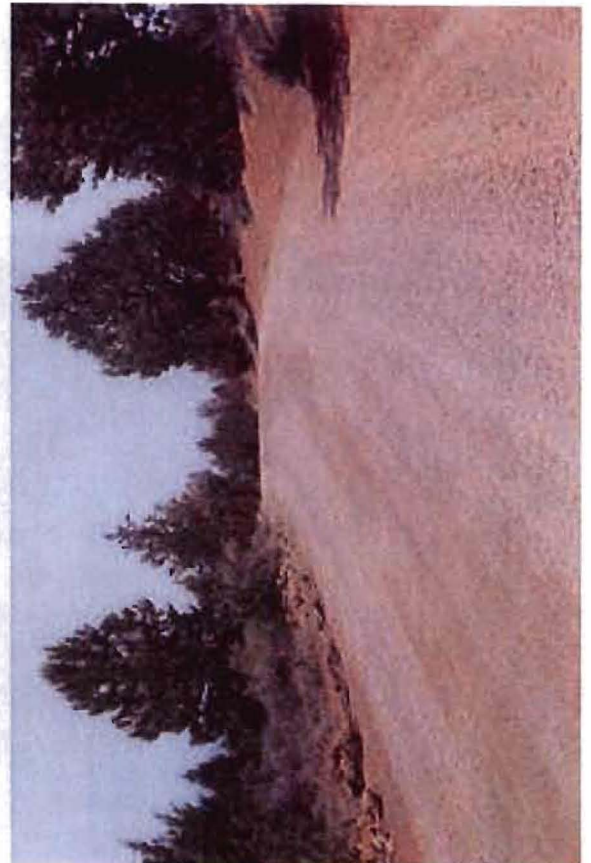
¹ Includes woody and other non-palatable material.

² "Plant Associations of the Central Oregon Pumice Zone," by Dr. Leonard Volland, USDAFS, 1982, adjusted for fair condition.

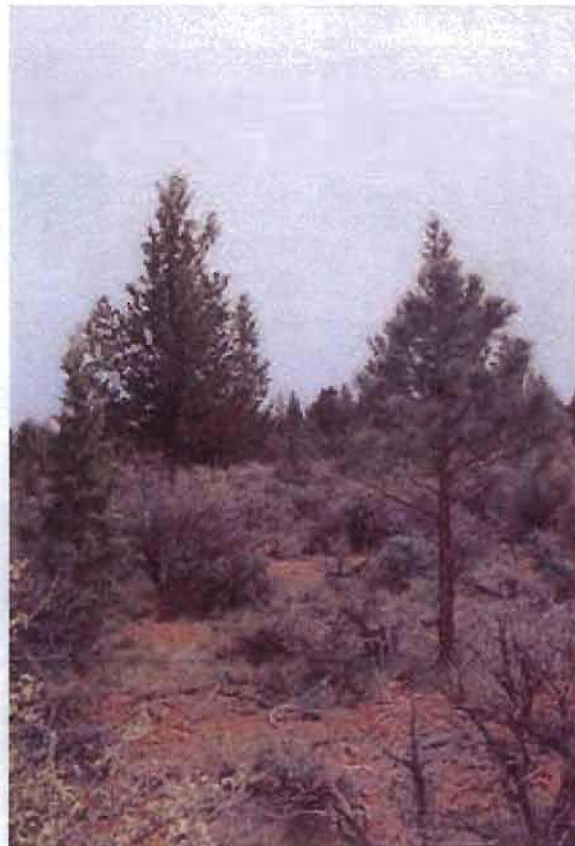
Photos of Soil Complexes 28A and 106D Vegetation



Photos of Soil Complex 34C Vegetation and Sisemore Road Access



Photos of Ponderosa Pine on Soil Complexes 106D and 34C, Respectively



Professional Qualifications of Jim Spitz, ACF

60045 River Bluff Trail, Bend, OR 97702

541/389-5978 – jspitz@bendcable.com

Education

Graduate, Tropical Dendrology Course, Centro Cientifico Tropical, Costa Rica, 1995.

Graduate, Forest Engineering Institute, Oregon State University, 1974.

Master of Business Administration, Forest Industries Program, U of Oregon, 1972.

Bachelor of Science, Forest Management, Oregon State University, 1967.

Work Experience

Forest Industries Consultant, 1979 to Present

Now assisting clients with the acquisition of and management planning for 180,000 acres of timberland in Eastern Oregon.

Now helping with revising the valuation chapter in the classic textbook, Forest Management.

Served as an expert witness on forestry and wood product matters in Federal Court of Claims cases, which resulted in settlement payments of over \$300 million to my clients.

Appraised over 1,000,000 acres of timber and timberland in Oregon, Washington, and California for purchases, sales, exchanges, divorce settlements, estate settlements, insurance settlements, lawsuits, foreclosures, and criminal cases, including:

- Appraised stumpage on the 125,000-acre Crown Pacific/US Forest Service Land Exchange in Central Oregon, 1996-98.
- Appraised stumpage on 3,000 acres of Bureau of Land Management Lands in the Cashe Creek Exchange in Northern California, 1997 & 98.
- Appraised stumpage on approximately 23,000 acres of Bureau of Land Management Lands in the Orwick Exchange in Northern California, 1996 & 97.
- Appraised stumpage on the 35,000-acre Cedar River Watershed Land Exchange (City of Seattle & U.S. Forest Service), including prescribing management for late successional ecosystems on selected areas, as required in the enabling legislation, 1995.
- Appraised stumpage on the 10,500-acre Oregon holdings of Plum Creek Timber Company as a basis for their sale, 1989.
- Appraised stumpage on the 15,000-acre Gilchrist Timber Company/U.S. Forest Service Land Exchange, 1987.
- Appraised stumpage on the 4,500-acre Galesville Reservoir site for purchase and condemnation, 1983.
- Provided domestic and export sort timber cruises and stumpage appraisals for over 100 smaller projects.

Completed numerous appraisal reviews for compliance with USPAP and Federal requirements.

Served on a stumpage appraisal committee, which determined stumpage transfer prices for over 200 million board feet of timber in Northeastern Washington.

Helped two logging companies and one timber purchaser monitor their costs, bid for logging and stumpage contracts, and complete thinning for forest health and fuels abatement in Central Oregon during the late 1980's and early 1990's.

Advised numerous investors and financial institutions on potential investments in timberland, forest product manufacturing facilities, and forest products wholesaling and retailing companies.

Served as the primary, independent advisor to the CEO and Tribal Council of the Confederated Tribes of Warm Springs from 1988 to 2010 on management of their 400,000-acre forest and 45 to 100 million board feet per year sawmilling, plywood manufacturing, cutstock manufacturing, chipping, and log merchandizing operations, including:

- Monitored day-to-day forest management operations and provided ongoing recommendations for procedural improvements.
- Helped analyze and plan for tribal assumption of control and redirection of their forest management program.
- Participated in the design and implementation of a turn-around of the wood products operations, which greatly improved profitability in less than 1 year.
- Participated in the development of a 10-year, integrated, forest management plan and the associated environmental assessment and timber harvest schedule.
- Recommended and helped implement new timber harvest priorities, utilization standards, marketing methods, and appraisal systems, which greatly increased stumpage revenue.
- Coordinated analysis of the plywood manufacturing and large-log sawmilling operations and then the design of a new 50 mmbf per year, medium-log sawmill, which replaced them.
- Developed analyses of millwork, wood chip, and sort yard opportunities.
- Helped identify opportunities and assisted with timberland acquisitions.

Developed a marketing guide for value-added wood products in the Southwestern U.S., which identified local market opportunities, entry points, channels of distribution, and key contacts for potential suppliers.

Helped design and coordinated work on a \$3/4 million national and regional study of forest product markets and business opportunities.

Inventoried forest resources and assessed the environmental and economic potential of 38,000 acres of tropical rainforest in Belize.

Helped review management of a 60 million board feet per year log merchandizing operation to evaluate past financial performance and to identify ways to improve economic return.

Conducted Forest Stewardship Council and Sustainable Forestry Initiative certification assessments and peer reviews of certification assessments in the Western U.S. and Lake States. Completed numerous FSC chain-of-custody certifications of forest product manufacturers, wholesalers, and retailers in the Western U.S. and British Columbia. Served as a technical advisor in developing FSC Rocky Mountain regional certification standards.

Assessed damages, developed rehabilitation plans, and provided expert witness testimony in numerous fire-damage cases.

Served as forestry and valuation advisor in a lawsuit, which resulted in an award of \$20 million in damages from improper timber sale layout, marketing, administration, and other mis-management.

Coordinated work on the 1993, Congressionally-mandated, national assessment of the condition of Indian forest lands and their management programs (IFMAT 1). This project included:

- On-site reviews of 33 Indian forests and management programs and representative samples of the national and regional offices of the Bureau of Indian Affairs.
- On-site reviews of 7 tribal sawmills and numerous cutstock, post and pole, shake and shingle, pallet, particleboard, log chipping, log sort yard, and other wood product manufacturing operations.
- Use of questionnaires, focus groups, and personal interviews to survey tribal communities and resource managers.
- Comparison of forest management practices and costs on Indian lands with those found on similar Federal, state, and private lands.
- Preparation of a report, two summaries, and an oral presentation to the U.S. Congress.
- Education of tribal resource managers, officials, and interested members on findings and recommendations from the study.

Served as an expert witness on general forestry, logging systems, and forest economics in U.S. District Court in USA vs. Link and USA vs. Elder, timber theft cases.

Served as an expert witness on helicopter logging, logging safety, and rights-of-way in U.S. District Court in USA vs. Hemstreet et. al., a logging protest case.

Provided technical guidance for the development of integrated resource management plans and environmental assessments for over 1 million acres of forestland.

Developed a transportation plan for a 600,000-acre forest.

Developed an intensive fish and wildlife management plan for a 70,000-acre forest.

Testified to the U.S. Senate Select Committee on Indian Affairs on the status and quality of management of Indian forests.

Participated in a study to determine the most efficient ways to log small timber and to produce in-woods chips.

Completed a raw materials supply study and a preliminary feasibility study for a proposed biomass power plant.

Developed environmental assessments for microwave relay stations.

Identified and analyzed potential socio-economic affects on local communities and industries of proposed forest and grassland management programs.

Developed draft policy guidelines for a geothermal exploration and development program.

Oversaw logging on a 22,000-acre ranch on behalf of the owner and lender.

Helped a city acquire 1,000 acres of land for construction of a sewerage treatment facility.

Taught classes to forest industries and appraisal professionals on forest industries evolution, investment opportunities, certification programs, and appraisal of timber and timberland.

Conducted tree farm inspections as a volunteer for the Oregon Tree Farm System.

U.S. Army, 1967-1970

Taught surveillance, interview, interrogation, and investigative techniques.

Served as a counterintelligence special agent and managed counterintelligence operations in South Korea for the Eighth Army.

U.S. Forest Service, 1962 to 1979

Worked in the following permanent and seasonal positions: systems analyst, program of work analyst, forest management planner, other resources manager timber sale administrator, presale forester, reforestation forester, and forest pathology research technician. Presale forestry included substantial experience in timber cruising, design, and layout of logging units and roads, mostly on sensitive sites using advanced cable and aerial logging systems.

Partial List of Consulting Clients

Plum Creek Timber Company
Rough & Ready Timber Company
Gilchrist Timber Company

Broughton Lumber Company
Thomas Lumber Company
Niedermeyer-Martin

Capital Veneer Sales
 Kinzua Timber Company
 Crown Pacific, LLP
 Giustina Resources
 Fishhole Creek Ranch
 Box T Ranch
 Jeld-Wen Timber and Ranches
 Oregonians in Action
 Smith-Greene Logging
 The Timber Exchange
 Interforest, LLC
 Jay Gruenfeld & Associates
 Travelers Insurance
 Farmers Insurance
 Union Oil of California
 Seattle Water Department
 U.S. National Bank
 Wall Street Financial Corp
 Soros Funds
 Goldman Sachs
 Greywolf Capital
 Oaktree Financial
 Polygon Investments
 Gerson Lehrman Group
 Basso Capital
 Avenue Capital
 MFS Investments
 QVT Financial
 Empyrean Capital Partners
 Fidelity Investments
 Perry Capital
 TPG Axion Capital
 Och-Ziff Capital
 GLG Inc. US
 JP Morgan
 Canyon Capitol Advisors
 Glenview Capital
 Watershed Asset Management
 KS Capital Partners
 Atlantic Investments
 Barrington Capital
 Centerbridge Partners
 Davidson Kemper
 Generation Investment
 GSO Capital
 Highbridge Capital
 Kolberg Kravis Roberts
 Morgan Stanley
 Obrem Capital Management
 Redwood Capital
 SAC Capital Advisors
 Sankaty Advisors
 Thales Fund Management
 Wellington Management
 Ridgetop Research
 Trellus
 Ameson, Wales & Bernier
 Karnopp, Peterson, Noteboom, ...

Modoc Lumber Company
 Day River Partnership
 Northwest Agri-Tech
 G Bar W Ranch
 Forked Meadow Ranch
 Salt Creek Plantation
 Lassen Gold Mining
 Wilson Logging
 Wissie Inc.
 Dixie Chemical Company
 Centro Cientifico Tropical
 Moana Corporation
 North Pacific Insurance
 GAB Robbins
 MCI Telecommunications
 Sunriver Utilities
 Oregon Bank
 Viking Community Bank
 Deutsche Bank
 Brencourt Advisors
 Seneca Capital
 Amaranth Advisors
 Taconic Capital
 Triarc Companies
 Luxor Capital
 Rockybay Capital
 Silver Point Capital
 Stark Investments
 TIAA-CREFF
 Endowment Management, LLC
 Eaton Park
 Ziff Brothers Investments
 Di Maio Ahad Capital
 Greenlight Capital
 MFS Investments
 Alliance Bernstein
 Quadrangle Group
 Old Lane
 DE Shaw Company
 Bain and Company
 Blackport Capital
 Chisuk Yom
 Fortress Investment
 Golden Tree Associates
 KBK Investments
 King Street Capital
 Lehman Brothers
 MSD Capital
 OSS Capital
 Rockcrest Capital
 Sage Asset Management
 Satellite Assets
 Tisbury Capital
 Wesley Capital Management
 The Equity Group
 Community First Bank
 James, Denecke & Harris
 Brandsness, Brandsness, and Rudd

Forcum & Speck
 Trust for Public Land
 Western Land Group
 North Coast Conservancy
 Forest Stewardship Council, U.S.
 Girl Scouts of America
 Confederated Tribes of Warm Springs
 Confederated Tribes of Colville
 Yakima Indian Nation
 First Nations
 Intertribal Timber Council
 Applegate Forestry
 City of Detroit, Oregon
 City of Sisters, Oregon
 City of Idanah, Oregon
 Douglas County, Oregon
 Oregon Department of Transportation
 Oregon Department of Revenue
 Bonneville Power Administration
 Federal Public Defender
 U.S. Army Corps of Engineers
 U.S. Bureau of Land Mgmt, National
 U.S. Bureau of Land Mgmt, California
 Region 5, U.S. Forest Service
 Deschutes National Forest
 Winema National Forest
 Siuslaw National Forest
 U.S. Senate
 Occasional Small Woodland Owners

Lands of America
 Pacific States Marine Fisheries Commission
 Wetlands Conservancy
 Oregon Water Enhancement Board
 Scientific Certification Systems
 RREDCo
 Klamath Tribes
 Confederated Tribes of Grand Ronde
 Redding Rancheria
 Coeur 'd Alene Tribes
 Quinault Indian Nation
 City of Depoe Bay, Oregon
 City of Madras, Oregon
 Bend Metro Parks & Recreation District
 Marion County, Oregon
 Oregon General Services Administration
 Oregon Department of Forestry
 Washington Department of Natural Resources
 U.S. Department of Energy
 Columbia River Gorge National Scenic Area
 U.S. Fish and Wildlife Service
 U.S. Bureau of Land Mgmt, Oregon
 Region 6, U.S. Forest Service
 Willamette National Forest
 Mt. Hood National Forest
 Fremont National Forest
 Siskiyou National Forest
 Canadian Consulate

Professional Memberships

Association of Consulting Foresters
 Society of American Foresters
 International Society of Tropical Foresters
 International Wood Collectors Society
 Central Oregon Rock Collectors

6/2014

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 4 Pgs# 9

2 - 3 November 2015

4

Andrew S. Mathers, P.C.

ATTORNEY AT LAW

MD-150093D Ex# 4 Pg# 1

August 20, 2014

Magistrate Allison R. Boomer
Oregon Tax Court
1163 State Street
Salem, Oregon 97301-2563

VIA UNITED STATES FIRST CLASS MAIL; and
FACSIMILE (503) 986-4507

Re: William and Martha Kuhn v. Deschutes County Assessor
Case No. 140068N
Settlement and Order

Dear Judge Boomer:

Please find enclosed the Stipulations; Settlement of Appeal; and Order (the "Order"), which provides an agreement to lower the Real Market Value and Assessed Value of Tax Lot 300. The Order includes Factual Stipulations as part of the agreement and Order. Also enclosed are two conformed copies with self-addressed stamped envelopes for each party.

We request the Court sign the enclosed Order and conform the copies. Please mail the conformed copies using the self-addressed stamped envelopes.

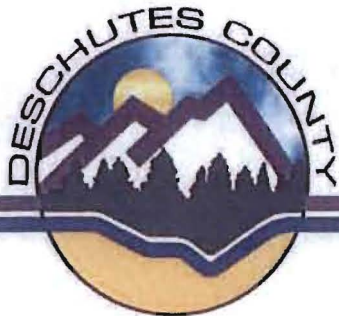
Please call me if you have any questions.

Sincerely,



Andrew S. Mathers

Cc: David Doyle



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

August 19, 2014

Andrew S. Mathers, Esq.
Attorney at Law
250 NW Franklin Ave #401
Bend, OR 97701

Please Refer To
File No. 2/4-187

Re: Kuhn v. Assessor
Case No. 140068N

Dear Mr. Mathers:

Enclosed please find the Stipulation pleading which is signed and dated by the Assessor.
This document remains a "settlement negotiation document" until fully executed by Bill and Leigh.

Once it is fully executed by Bill and Leigh you are authorized to submit same to the Tax Court. The document has no legal status and remains inadmissible in all matters and proceedings unless and until it is fully executed by Bill and Leigh.

Please scan/email me a copy as soon as it is fully executed by Bill and Leigh.

Thank you.

Respectfully,

David Doyle
Deschutes County Legal Counsel

Enclosure

DD/s

1
2
3
4 IN THE OREGON TAX COURT
5 Magistrate Division
6 Property Tax

7 WILLIAM JOHN KUHN and MARTHA
8 LEIGH KUHN,

9 Plaintiffs,

10 v.

11 DESCHUTES COUNTY ASSESSOR,

12 Defendant.

TC-MD 140068N

STIPULATIONS; SETTLEMENT OF
APPEAL; ORDER
(TCR-MD Rule 2F)

13 The parties enter into and agree to the below Stipulations:

14 A. Factual Stipulations

- 15 1. Deschutes County Conditional Use 80-22 allowed a "cluster development" on a 43
16 acre parcel in the Tumalo Winter Deer Range.
- 17 2. In 1980, the requirements for development were addressed in PL-15 and included:
18 (a) allowance for a "cluster development" in order to create parcels smaller than the
19 40 acre minimum required in the WA overlay zone; (b) compliance with subdivision
20 requirements contained in PL-14; and (c) a written agreement establishing a
21 homeowners agreement / association.
- 22 3. The approved "cluster development" required a substantial set aside for wildlife
23 habitat.
- 24 4. As implemented, the approved "cluster development" authorized two 4.3 acre parcels
25 and one 34.4 acre parcel.
26

- 1 5. CU 80-22 required that "prior to the sale of any lot a written agreement shall be
2 recorded which establishes an acceptable homeowners association or agreement
3 assuring the maintenance of common property in the partition," which is a Goal 5
4 issue.
- 5 6. In 1987, without the recording of a homeowners association or agreement, Kuhn
6 purchased one of the 4.3 acre parcels, Tax Lot 200, and one-half interest in the 34.4
7 acre parcel, Tax Lot 300.
- 8 7. In 1987, prior to the Kuhn's purchase of Tax Lot 200 and one-half interest in Tax Lot
9 300, Deschutes County informed Kuhn that before a building permit could be issued
10 the deed restrictions identified in the CU 80-22 application had to be recorded.
- 11 8. In November 1988, Deschutes County approved the Kuhn's Landscape Management
12 Plan; one of the approval conditions required Kuhn to provide Deschutes County with
13 a copy of the Homeowners Maintenance agreement for Tax Lot 300.
- 14 9. At all times from November 1988 until February 2010, Deschutes County staff
15 maintained that the recorded deed restrictions encumbering the three "cluster
16 development" parcels satisfied the requirement in CU 80-22 and in the Landscape
17 Management Plan that Kuhn record a Homeowners Maintenance agreement for Tax
18 Lot 300.
- 19 10. Deschutes County granted Kuhn lot line adjustment approval, accepted Kuhn's
20 Landscape Management Plan, and issued building permits for Kuhn's home without a
21 "recorded . . . acceptable homeowners association or agreement . ." Kuhn has
22 complied with applicable laws, codes and requirements from CU 80-22.
- 23
24
25
26

- 1 11. Kuhn brought the lack of and need for a homeowners association agreement to the
2 attention of Deschutes County in January 1997 through the code enforcement
3 complaint system.
4
- 5 12. Beginning in August 2000, Kuhn requested that Deschutes County record the final
6 partition plat map for the subject "cluster development." Deschutes County recorded
7 it in October 2004.
- 8 13. In February 2010, the Deschutes County Board of Commissioners held that the
9 dwellings within the "cluster development," Tax Lot 100 (Dowell) and Tax Lot 200
10 (Kuhn) "are not lawfully established until a written agreement is recorded that
11 establishes an acceptable homeowners association or agreement assuring the
12 maintenance of common property in the partition." This decision requires a written,
13 signed and recorded agreement that is agreed to by Kuhn and Dowell and also
14 deemed "acceptable" by Deschutes County.
- 15 14. At all times relevant to this appeal, despite Judge Adler's 2002 ruling requiring a
16 homeowners association agreement, and despite multiple attempts by both Kuhn and
17 Dowell, no homeowners maintenance agreement covering Tax Lot 300, has been
18 agreed to or recorded.
- 19 15. Judge Adler's 2002 court order required the Dowells to enter into a Homeowners
20 Agreement with Kuhn; the court order remains unfulfilled.
21
- 22 16. For tax year 2013-2014 (at issue in this proceeding) the Assessor imposed the
23 following values for Kuhn's one-half interest in Tax Lot 300: (a) RMV: \$82,420; (b)
24 MAV: \$44,330; (c) TAV: \$44,330. These values were sustained by BOPTA in
25 Petition No. 13-153.
26

1 17. At the time of the BOPTA proceeding in Petition No. 13-153, the Assessor provided a
2 written summary (dated February 19, 2014) that included the following:

3 "PROPERTY RESTRICTIONS: The restrictions stated by the petitioner can be
4 remedied at any time by recording a Homeowners Association Agreement. The
5 restrictions are not an effect of real estate market factors or conditions. The
6 restrictions are an effect of the parties involved negligence to record a Homeowners
7 Association Agreement. Any disagreements between the parties involved are their
8 responsibility to resolve."

9
10 18. The Assessor's use of the word "negligence" was in error.

11 19. Since the BOPTA proceeding, and following an extensive inspection of Tax Lot 300,
12 the Assessor has agreed to reduce the 2013-2014 values for Kuhn's one-half interest
13 in Tax Lot 300 to: (a) RMV: \$35,000; (b) MAV: \$44,330; (c) TAV: \$35,000. This
14 reduction does account for the requirement in CU 80-22 and Judge Adler's court
15 order requiring that a joint homeowners agreement be recorded.

16 20. At no time since creation of Tax Lot 300 have any of the involved parties
17 (Barton(alone), Barton/Burchett, Burchett/Kuhn, or Kuhn/Dowell) recorded a signed
18 Homeowners Agreement.

19 B. Settlement Stipulation

20
21 1. The present tax appeal (TC-MD 140068N) is fully resolved, compromised and settled
22 as provided herein.


23 2. The parties request that the Court dismiss the appeal.

24 3. Each party to bear its own costs and fees (including attorney fees).
25
26

C. Agreement

THE STIPULATIONS contained herein are understood and agreed to.

Date: 20140820.3


William John Kuhn

Date: 8/20/14


Martha Leigh Kuhn

Date: 8/19/14


Scot Langton, Assessor

D. Order

1. ITS IS ORDERED that the appeal is dismissed upon settlement of the parties and pursuant to the terms of the stipulations contained herein.
2. Each party is to bear its own costs and fees (including attorney fees).

DATED this ____ day of August, 2014.

ALLISON R. BOOMER
MAGISTRATE



**MAGISTRATE DIVISION
OREGON TAX COURT**

Presiding Magistrate: Jill A. Tanner Magistrates: Daniel K. Robinson
Allison R. Boomer

August 25, 2014

Andrew Mathers
Andrew S Mathers PC
250 NW Franklin Ave Ste 401
Bend OR 97701

Deschutes County Legal Counsel
David Doyle
1300 NW Wall St #205
Bend OR 97701

RE: William John Kuhn and Martha Leigh Kuhn v. Deschutes County Assessor
TC-MD 140068N

Dear Parties:

Enclosed is a copy of the Judgment of Dismissal signed by Magistrate Allison R. Boomer on August 25, 2014. The case has now been closed and all scheduled proceedings canceled. If you submitted exhibits to the court and would like them returned to you, you must contact the court in writing within 30 days from the date of this letter, or they will be destroyed.

If you have any questions, please call the court at (503) 986-5650. Thank you for your attention to this matter.

Enclosure

MD-150093D Ex# 4 Pg# 15

20140825 Settlement Kuhn v Assessor Langton re Tax Appeal TL300 Binder.pdf

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# n/a Pgs# 1

4b

2 - 3 November 2015

BOARD OF PROPERTY TAX APPEALS
FEBRUARY 19TH, 2014

46

PETITON: 13-152

PETITIONER: KUHN, WILLIAM & MARTHA

PROPERTY RESTRICTIONS: The restrictions stated by the petitioner can be remedied at any time by recording a Homeowners Association Agreement. The restrictions are not an effect of real estate market factors or conditions. The restrictions are an effect of the parties involved negligence to record a Homeowners Association Agreement. Any disagreements between the parties involved are their responsibility to resolve.

PROPERTY REAL MARKET VALUE: The petitioner's structure real market value request is not supported by any market data.

The petitioner's land real market value request is not supported by any market data. Properties enrolled Open Space special assessment or Wildlife Habitat Conservation Management Plan special assessment are approved through an application process. The petitioner's property has never applied or been approved for these type of special assessment programs.

PETITON: 13-153

PETITIONER: KUHN, WILLIAM & MARTHA

PROPERTY RESTRICTIONS: The restrictions stated by the petitioner can be remedied at any time by recording a Homeowners Association Agreement. The restrictions are not an effect of real estate market factors or conditions. The restrictions are an effect of the parties involved negligence to record a Homeowners Association Agreement. Any disagreements between the parties involved are their responsibility to resolve.

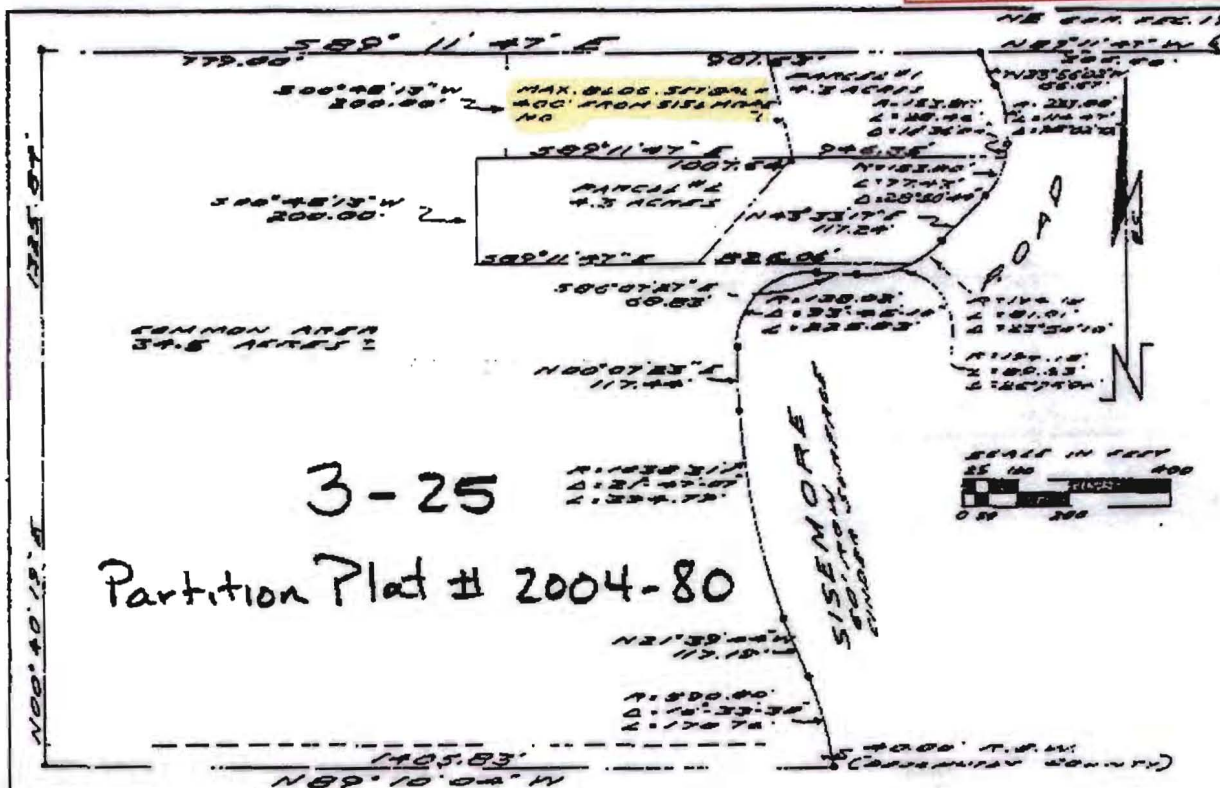
PROPERTY REAL MARKET VALUE: The petitioner's land real market value request is not supported by any market data. Properties enrolled Open Space special assessment or Wildlife Habitat Conservation Management Plan special assessment are approved through an application process. The petitioner's property has never applied or been approved for these type of special assessment programs.

**Kuhn
vs
Deschutes County Assessor Scot Langton**

MD-150093D Ex# 5a Pgs# 2

2 - 3 November 2015

5



3-25

Partition Plat # 2004-80

BEARINGS ARE BASED ON PREVIOUS
BY G. COLVIN.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-59905



00367076200400599050010010

NO FEE

10/05/2004 01:46:33 PM

D-PP Cont'd 51m23 JEFF
This is a no fee document

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OPPCON
FEBRUARY 11, 2005
GEORGE W. COLVIN, JR.
1070

Partition Plat # 2004-80

MINOR LAND PARTITION

MP-79-232 DAT: 12-10-79

TWSP 15S RGE 11E SEC 19 T. 14N

DEED OWNER DESCHUTES COUNTY

PARTITIONER JONN BARTON

17071 SWAN ST. SE.

BEND, ORE

SURVEYOR COLVIN & NEARNE

ENGINEER 242 N.W. HILL, BEND

SEWAGE DISPOSAL SYSTEM

☒ SEPTIC TANK

☐ CITY SEWER

☐ COMMUNITY SEWER

ZONE C-3

WATER SOURCE

☒ WELL

☒ CISTERN

☐ COMMUNITY WATER

☐ P.U.W. SYSTEM

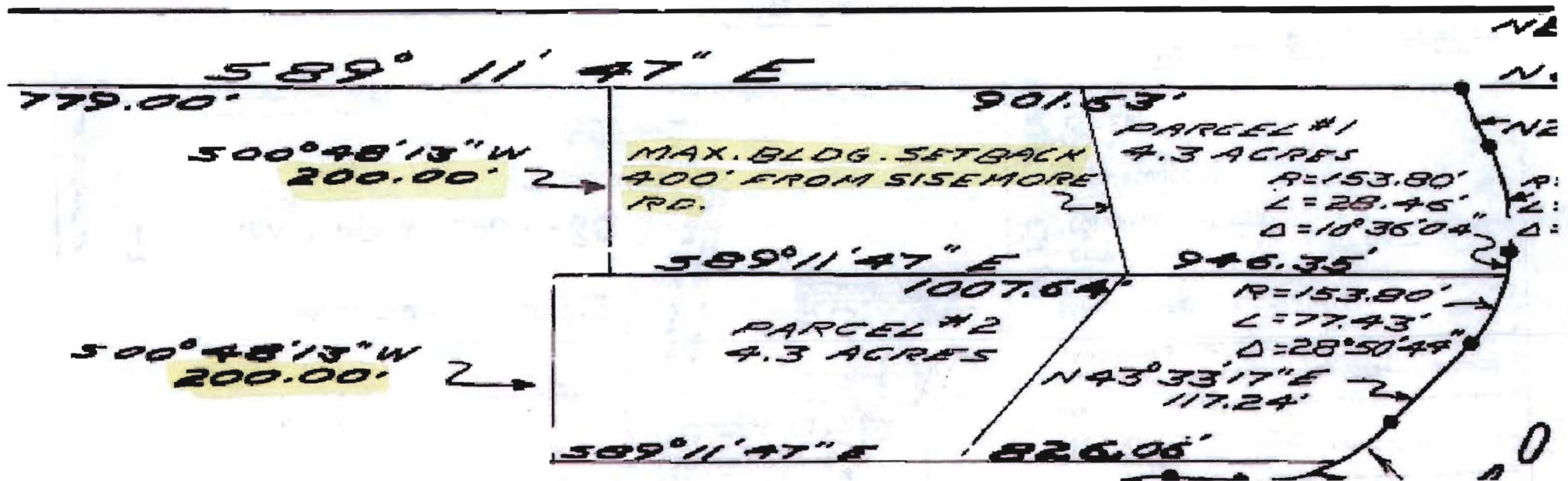
DESCHUTES COUNTY

PLANNING DEPARTMENT

APPROVALS:

Edgar W. Grove 11/2/80
County Commissioner
Allan A. Long 11-12-80
County Commissioner
John K. Blane 11-12-80
County Commissioner
John K. Blane 11-12-80
County Planning Director
John K. Blane 11-12-80
County Sanitarian

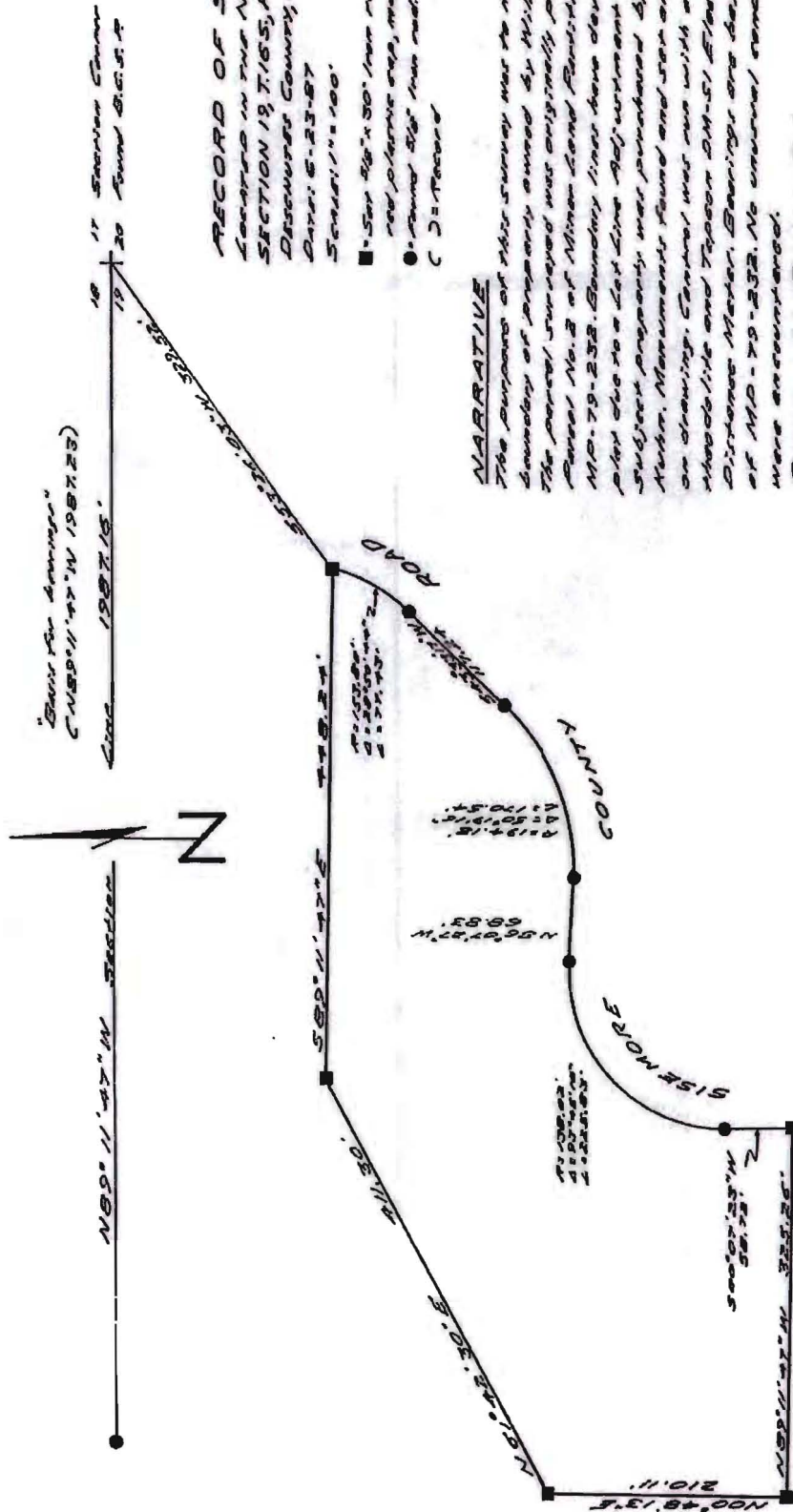
MD-150093D Ex# 5a Pg#



Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 5b Pgs# 6

2 - 3 November 2015



"Bear for corner"
C 1987 11' 47" N 1987 23'

Line 1987 15' 20' from G.C.S. 4

RECORD OF SURVEY
Location in the NE 1/4 of
SECTION 19, T16S, R11E, W1N,
Deschutes County, Oregon
Date: 6-23-87
Scale: 1" = 100'

- 1. Set 2 1/2" x 30" iron rod topped with
red plastic cap, marked LS 1080
- 2. Found 2 1/2" iron rod
- 3. D = Record

NARRATIVE

The purpose of this survey was to mark the
boundary of property owned by William Kuhn.
The parcel surveyed was originally platted as
Parcel No. 2 of Minor Land Reclamation No.
MD-79-232. Boundary lines have deviated from
plot due to a lot line adjustment when the
subject property was purchased by William
Kuhn. Monuments found and set are shown
on drawing. Corner was set with a 1 1/2" x 1/2" x 1/2"
stainless steel and topcon DM-51 Electronic
Distance Meter. Bearings are based on plot
of MD-79-232. No unusual conditions
were encountered.
Personnel: George Colvin
Surveyed for: William Kuhn

George Colvin
Surveyor

GEORGE COLVIN
LAND SURVEYOR
20002 COUNTRY CIRCLE
BEND, OREGON 9702
PHONE: 503-392-2039

Tax Lot Is Owned By

- 100 — Dowell
- 200 — Kuhn
- 300 — Jointly - vacant land
Dowell & Kuhn
- 400 — Lowther
- 500 — Barton - is buildable
currently vacant land

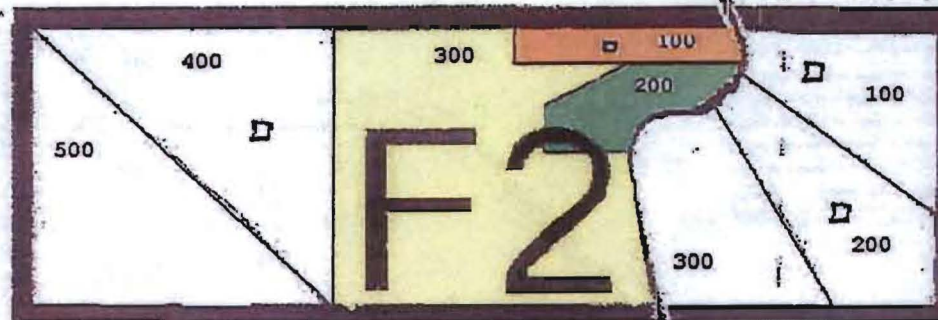
All are in 16-11-19

16-11-18

BLM

16-11-17

Structures



16-11-20

Now spot
zoned EFU

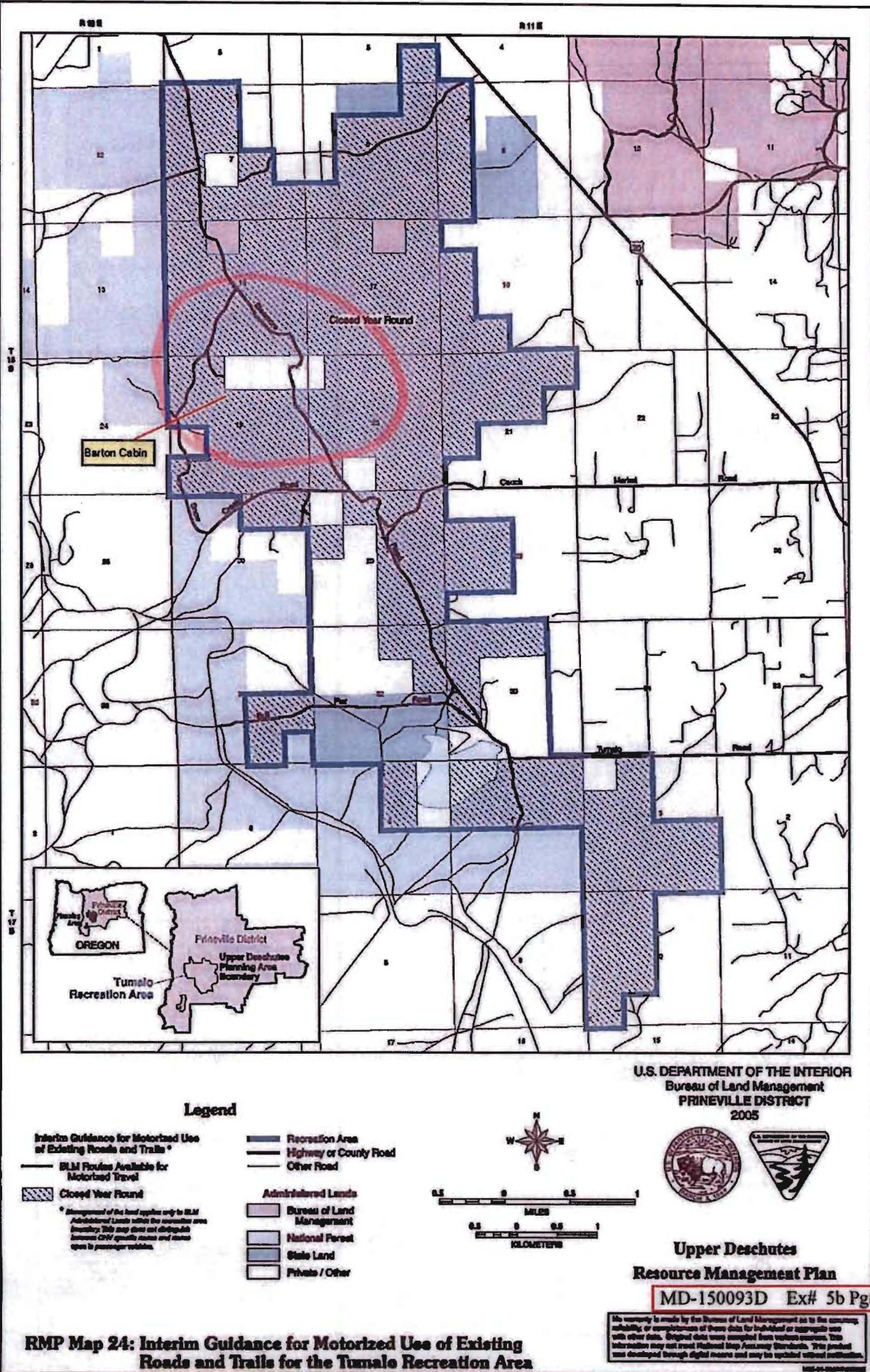
16-11-19

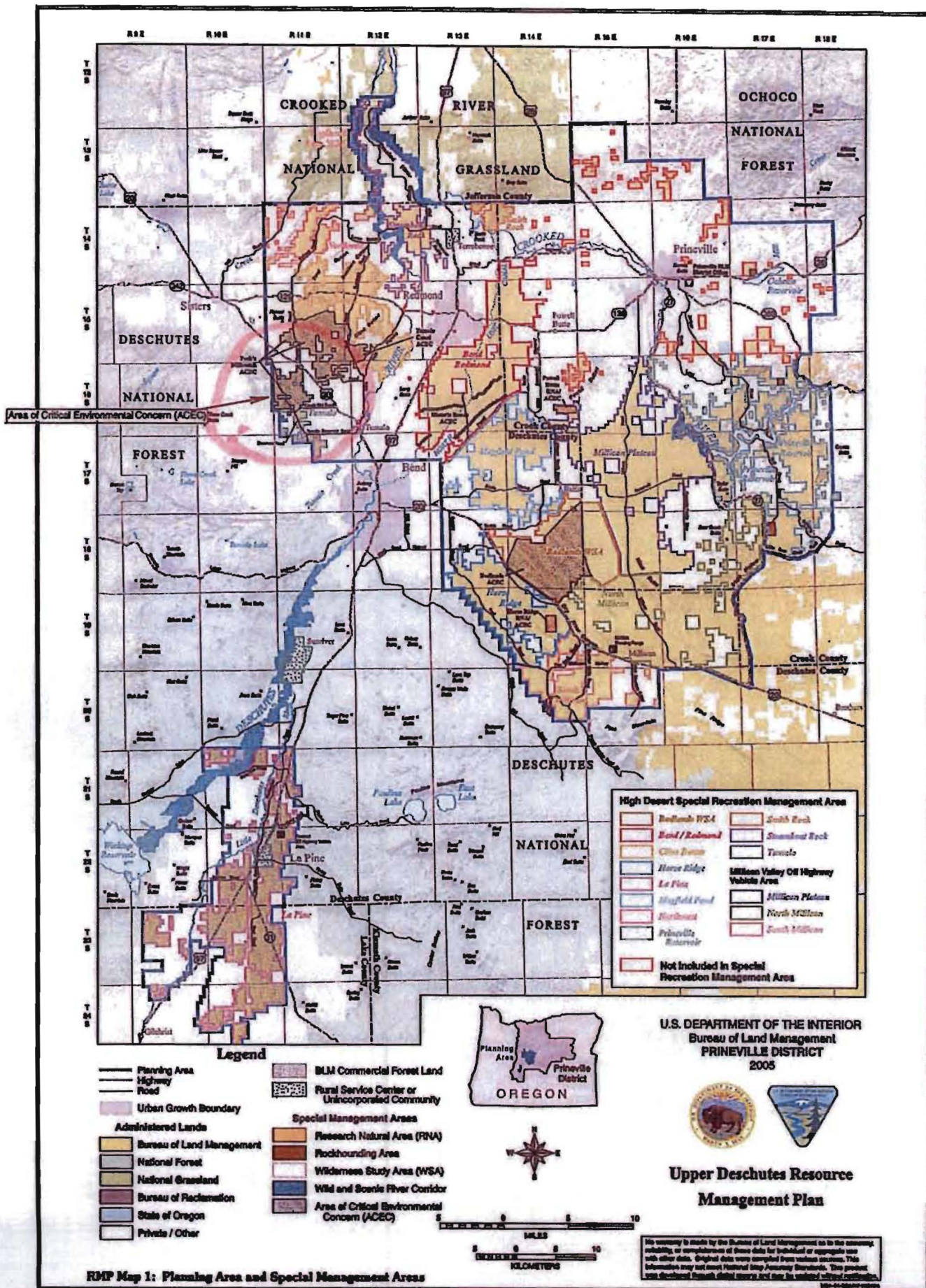
BLM

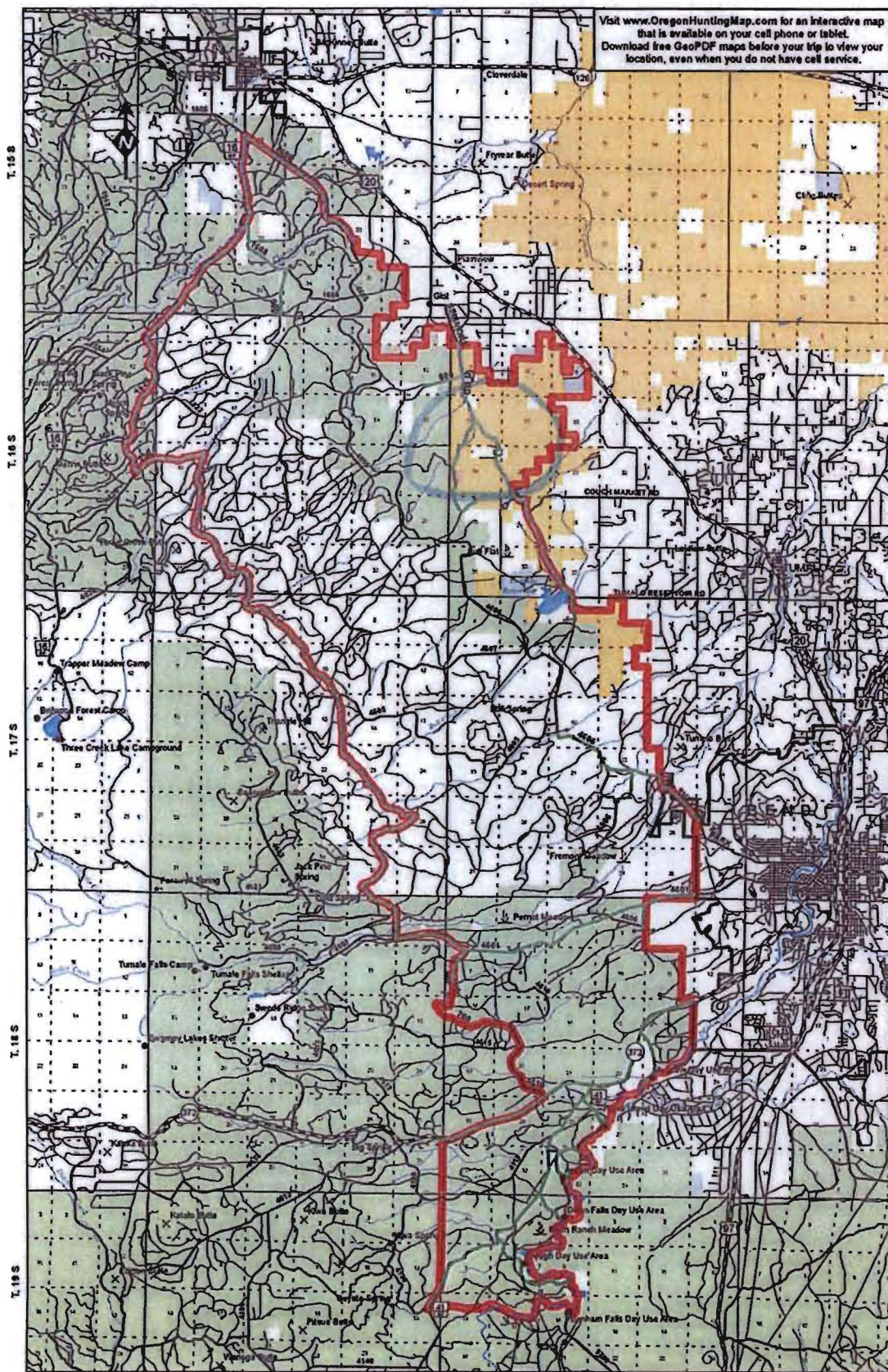
Tax Lot Is Owned By

- 100 — Peery
- 200 — Olivieri
- 300 — Spinrad

F2







Vehicle Report

If you wish to monitor, record information on this form and provide it to an official:

Date: _____

Vehicle make, model & color: _____

Vehicle license & state: _____

Location / road number: _____

City/County: _____

Number of vehicles involved: _____

Describe situation: _____

Officer Contact Information: _____

State of Oregon Date Printed: _____
 Date and Version: _____
 301 Cooper St., 2nd Floor
 Salem, OR 97301

- Travel Management Area**
- Open Roads
 - Gate
 - City Limits
 - USFS Land
 - BLM Land
 - USACE Land
 - State Land
 - Private Land



0 1 2 3 Miles

Tumalo



Winter Range Cooperative Closure
 Bureau of Land Management
 Deschutes National Forest
 Oregon Department of Fish and Wildlife
 Cooperating Private Landowners

This area is closed to all unauthorized motorized vehicle travel except on those roads marked by a green line from:

December 1 through March 31
 Open roads are symbolized as green roads

The Deschutes River in this section is open to motorized watercraft.

Special permits may be obtained for legitimate reasons. Private landowners and employees are permitted access to their lands. Federal, State and County employees are permitted entry in performance of official duties.

OBJECTIVES

Protect wintering deer and other wildlife from harassment by controlling vehicle use, thereby:

1. Increasing winter survival of deer
2. Providing more hunting recreational opportunities
3. Protecting and improving rangeland

If you have further questions concerning any phase of this closure, please contact the Deschutes National Forest, Oregon State Police or the Oregon Department of Fish and Wildlife.

This product is for informational purposes and may not have been prepared for, or for use in, legal, engineering, or surveying purposes. Users of this information should consult with a professional to determine the validity of the information.

Revised 8/2015

05b Location Maps LL8721 BLM ODFW RoadClose MD-150093D Ex#005b .pdf

MD-150093D Ex# 5b Pg# 6

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 6a Pgs# 4

2 - 3 November 2015

6

William Kuhn

From: "THUMMEL Gregg W" <gregg.w.thummel@dor.state.or.us>
To: "William Kuhn" <william@riskfactor.com>
Sent: Tuesday, February 08, 2011 1:32 PM
Subject: RE: how do we proceed?
Hi Bill,

I am glad that you also received some response from the ACLB. Your reference to USPAP rule 1-3(a) reminded me that ORS 308.205(2)(d) also applies to your situation. It states:

"If the property is subject to governmental restriction as to use on the assessment date under applicable law or regulation, real market value shall not be based upon sales that reflect for the property a value that the property would have if the use of the property were not subject to the restriction unless adjustments in value are made reflecting the effect of the restrictions."

You can access ORS 308.205 at <http://landru.leg.state.or.us/ors/308.html>.

Good luck!

Gregg Thummel, Team Lead
Special Programs
Property Tax Division
Oregon Department of Revenue

Phone: (503) 945-8371
Fax: (503) 945-8737

From: William Kuhn [mailto:william@riskfactor.com]
Sent: Tuesday, February 08, 2011 1:11 PM
To: THUMMEL Gregg W
Subject: Re: how do we proceed?

Thank you Gregg.

I read over Chapter 6 of the Appraisal Methods for Real Property and see stumbling blocks for each of the three methods to determine value. For example using the principle of substitution there is the phrase "assuming no unusual delay". Given the county's requirements can't be fulfilled... we have already been delayed for over 14 years. Using the replacement cost - this is not possible due to the limits put on us by the county. We have searched the county for sales of any parcels that have legal limitations such as ours, there have been no such sales. And based on the ORS laws governing jointly owned parcels without an agreement we would be required to give up as much as 1/2 of any rent to the other land owners. And again since there is no homeowners' agreement even the income approach is blown out of the water because the other party would object to our renting out our home based on the objections in the past.

I did have a call back early this morning from Chuck Fisher, Compliance Analyst with the Oregon Appraiser Certification & Licensure Board at 3000 Market Street NE - Suite 541 Salem, OR 97301, Telephone: (503) 485-2555 Mobile: (503) 939-0491 Fax: (503) 485-2559.

Chuck Fisher directed me to http://oregonaclb.org/aclb_prod/index.php and <https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF&WebCode=HomePage>

In particular the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-3(a).

This says that "an appraiser MUST: (a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and the market area trends; and (b) ..."

Thank you for your assistance,
Bill

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

From: THUMMEL Gregg W

To: William Kuhn

Sent: Tuesday, February 08, 2011 10:34 AM

Subject: RE: how do we proceed?

Mr. Kuhn,

Following our phone conversation and your follow-up e-mail below, I directed you to the following publications from the department:

Appraisal Methods (specifically chapter six) at http://www.oregon.gov/DOR/PTD/docs/303-415/06-three_appro.pdf

Cost Factors for Residential Buildings at <http://www.oregon.gov/DOR/PTD/docs/303-419-05.pdf>

I find that these are the only resources we have developed that may be useful for your situation. Note that the information in chapter six of the Appraisal Methods manual is basic in nature. I would advise you to seek further information from a professional real estate appraiser.

In addition I can refer you to ORS 308.205(2)(c) which states: "If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property."

For any further analysis or advice, I can only suggest that you seek legal counsel.

I hope this is helpful. Please let me know if you have further questions or concerns.

Gregg Thummel, Team Lead
Special Programs
Property Tax Division

Oregon Department of Revenue

Phone: (503) 945-8371

Fax: (503) 945-8737

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

Sent: Monday, February 07, 2011 2:55 PM

To: THUMMEL Gregg W

Subject: how do we proceed?

To Department of Revenue: Property Tax Division Phone: 503-945-8278
Gregg W. Thummel - Direct Phone: 503 945 8371

Because of actions taken by Deschutes County we find we are unable to obtain either building or land use permits. According to conditional number 2 of the conditional use permit issued in 1980, a homeowners' agreement was to have been recorded prior to the sale of any parcel within our cluster development. When we bought our parcel in 1987 we asked about the homeowners' association and Deschutes County responded with the requirement that we record the deed restrictions mentioned in the application for the cluster development.

In 1997, it had become apparent that the deed restrictions were not a homeowners' agreement. We filed a complaint with Deschutes County to force the issue PRIOR to the final inspection of another parcel in the development. Deschutes County ignored our complaint and gave final approval to the building permit.

In 2000 a civil court judge ruled that the deed restrictions were deed restrictions not the required homeowners' agreement.

In 2002 a civil court judge ruled that the other party in our cluster development was required to enter into an agreement with us. Deschutes County claimed it was not a party to the judgment and therefore they continued to take the position that the deed restrictions were the homeowners' agreement.

In 2007 after another code violation complaint was filed claiming there was no homeowners' agreement. It took three years to work its way through the system and now Deschutes County has ruled that there must be a homeowners' agreement before new permits will be issued, and the conditional use permit still says that we cannot sell without such an agreement.

Our current situation is that the other party does not live in Oregon, they are in contempt of court, and we who live here can't sell our home.

We are appealing our property taxes based on our inability to sell, however we cannot find an appraiser who is willing to appraise our home based on the legal

limitations.

Because of the statement in your literature, "Without specific value evidence of a lower real market value, such as comparable sales of similarly situation lots, there is nothing to mediate." we do not know how to proceed.

We do have letters from to money lenders (attached) saying they are unwilling to lend money based on the legal limitations. And we are unable to even apply for a declaratory ruling from Deschutes County because we are not allowed to apply for any building or land use permits.

We need directive guidance as to how to approach our BoPTA hearing and deal with the extreme difficulties imposed on us by a local government which didn't do their job correctly in 1980 or in 1997 and who are now punishing us for something we have no control over.

Attached are:

19800403 - The conditional use from 1980. See condition #2 on page three.

19870619 - The letter to us prior to our purchase regarding the deed restrictions.

19970115 - The complaint letter from 15 January 1997 three weeks before the final inspection.

20020731 - 2nd court decision Judge Orders Dowells to enter into agreement Page 3

20110119 - The letter from Deschutes County telling us no permits until agreement is filed.

20110202 - US Bank rejection letter.

20110205 - Skyline Financial rejection letter.

Thank you for your guidance as to how to proceed.

William Kuhn

INVEST/O - Registered Investment Advisors

PO Box 5996

Bend, OR 97708-5996

541 389 3676

William@RiskFactor.com

"First, they ignore you, Then they laugh at you. Then they fight you. Then you win."

Mahatma Gandhi

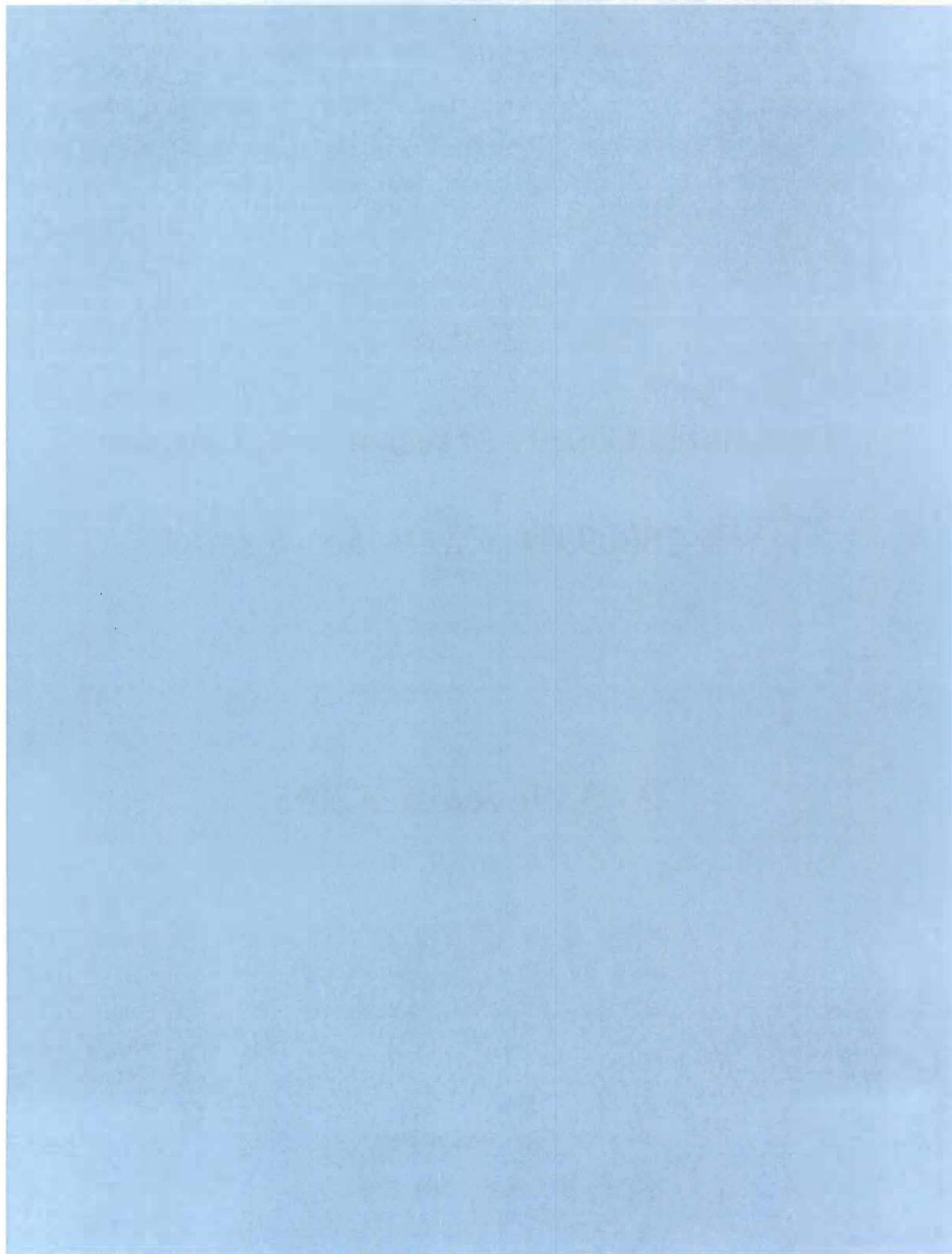
With held until Rebuttal

MD-150093D Ex# 66

Kuhn
vs
Deschutes County Assessor Scot Langton

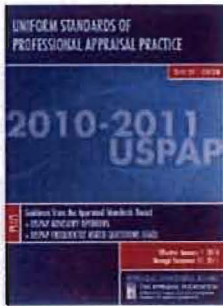
MD-150093D Ex# 6c Pgs# 1

2 - 3 November 2015



Uniform Standards of Professional Appraisal Practice (USPAP)

USPAP 2010-2011 Standards Rule 1-3



The *Uniform Standards of Professional Appraisal Practice* (USPAP) are the generally accepted standards for professional appraisal practice in North America. USPAP contains standards for all types of appraisal services. Standards are included for real estate, personal property, business and mass appraisal.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 recognizes USPAP as the generally accepted appraisal standards and requires USPAP compliance for appraisers in federally related transactions. State Appraiser Certification and Licensing Boards; federal, state, and local agencies, appraisal services; and appraisal trade associations require compliance with USPAP.

<https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF&WebCode=USPAP>
http://www.uspap.org/2010USPAP/USPAP/stds/sr1_3.htm

USPAP 2010 – 2011

Standards Rule 1-3

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

- (a) Identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and

Comment: An appraiser must avoid making an unsupported assumption or premise about market area trends, effective age, and remaining life.

- (b) develop an opinion of the highest and best use of the real estate.

Comment: An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraiser's highest and best use conclusion(s).



USPAP 2010-2011 Edition
©The Appraisal Foundation

Kuhn
vs
Deschutes County Assessor Scot Langton

MD-150093D Ex# 6d Pgs# 22

2 - 3 November 2015

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

2014-2015 USPAP

e
electronic edition

Effective January 1, 2014
through December 31, 2015

PLUS

Guidance from the Appraisal Standards Board
+ USPAP ADVISORY OPINIONS
+ USPAP FREQUENTLY ASKED QUESTIONS (FAQ)

APPRAISAL STANDARDS BOARD



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

APPRAISAL STANDARDS BOARD



THE APPRAISAL FOUNDATION
*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

FOREWORD

The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the *Uniform Standards of Professional Appraisal Practice* (USPAP) on behalf of appraisers and users of appraisal services. **The 2014-2015 Edition of USPAP (2014-2015 USPAP) is effective January 1, 2014 through December 31, 2015.**

USPAP has five sections: DEFINITIONS, PREAMBLE, Rules, Standards and Standards Rules, and Statements on Appraisal Standards. For convenience of reference, USPAP is published with this Foreword and a Table of Contents. The publication also includes the Advisory Opinions and Frequently Asked Questions (FAQs) as additional reference materials. These reference materials are forms of "Other Communications" provided by the ASB for guidance only and are not part of USPAP.

It is important that individuals understand and adhere to changes that are adopted in each edition of USPAP. State and federal regulatory authorities enforce the content of the current or applicable edition of USPAP.

History of USPAP

These Standards are based on the original *Uniform Standards of Professional Appraisal Practice* developed in 1986-87 by the Ad Hoc Committee on Uniform Standards and copyrighted in 1987 by The Appraisal Foundation. The effective date of the original Uniform Standards was April 27, 1987. Prior to the establishment of the ASB in 1989, USPAP had been adopted by major appraisal organizations in North America. USPAP represents the generally accepted and recognized standards of appraisal practice in the United States.

At its organizational meeting on January 30, 1989, the Appraisal Standards Board unanimously approved and adopted the original USPAP as the initial appraisal standards promulgated by the ASB. Portions of USPAP may be amended, interpreted, supplemented, or retired by the ASB after exposure to the appraisal profession, users of appraisal services, and the public in accordance with established rules of procedure.

Changes to USPAP

Over the years, USPAP has evolved in response to changes in appraisal practice. The ASB has developed a process for developing both Standards and guidance based, in part, on written comments submitted in response to exposure drafts and oral testimony presented at public meetings.

Guidance

The ASB issues guidance in the form of Advisory Opinions, *USPAP Frequently Asked Questions* (FAQ) and periodic questions and responses "USPAP Q&A." These communications do not establish new Standards or interpret existing Standards and are not part of USPAP. They illustrate the applicability of Standards in specific situations and offer advice from the ASB for the resolution of specific appraisal issues and problems.

The USPAP Q&A is published periodically and available on The Appraisal Foundation website. These questions and responses are compiled and published in the *USPAP Frequently Asked Questions*.

TABLE OF CONTENTS

TABLE OF CONTENTS

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

DEFINITIONS	U-1
PREAMBLE.....	U-5
ETHICS RULE.....	U-7
RECORD KEEPING RULE	U-10
COMPETENCY RULE.....	U-11
SCOPE OF WORK RULE	U-13
JURISDICTIONAL EXCEPTION RULE	U-15

Standards and Standards Rules

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT.....	U-16
STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING.....	U-21
STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT AND REPORTING	U-28
STANDARD 4: REAL PROPERTY APPRAISAL CONSULTING, DEVELOPMENT- Retired	U-35
STANDARD 5: REAL PROPERTY APPRAISAL CONSULTING, REPORTING - Retired	U-36
STANDARD 6: MASS APPRAISAL, DEVELOPMENT AND REPORTING.....	U-37
STANDARD 7: PERSONAL PROPERTY APPRAISAL, DEVELOPMENT	U-48
STANDARD 8: PERSONAL PROPERTY APPRAISAL, REPORTING	U-53
STANDARD 9: BUSINESS APPRAISAL, DEVELOPMENT	U-60
STANDARD 10: BUSINESS APPRAISAL, REPORTING.....	U-64

Statements on Appraisal Standards

Statements on Appraisal Standards (SMT) are authorized by the by-laws of The Appraisal Foundation and are specifically for the purposes of clarification, interpretation, explanation, or elaboration of the *Uniform Standards of Professional Appraisal Practice* (USPAP). Statements have the full weight of a Standards Rule and can be adopted by the Appraisal Standards Board only after exposure and comment.

Each Statement is labeled as to its applicability to the various appraisal disciplines. The abbreviations are:

- Real Property – RP
- Personal Property – PP
- Intangible Property – IP (includes business interests)
- All disciplines – ALL

SMT-1 Appraisal Review – Clarification of Comment on Standards Rule 3-1(g) - Retired	U-70
SMT-2 Discounted Cash Flow Analysis (RP).....	U-71
SMT-3 Retrospective Value Opinions (RP, PP).....	U-74
SMT-4 Prospective Value Opinions (RP, PP).....	U-76
SMT-5 Confidentiality Section of the ETHICS RULE - Retired	U-78
SMT-6 Reasonable Exposure Time in Real Property and Personal Property Opinions of Value (RP, PP)	U-79
SMT-7 Permitted Departure from Specific Requirements in Real Property and Personal Property Appraisal Assignments - Retired.....	U-81
SMT-8 Electronic Transmission of Reports - Retired	U-82
SMT-9 Identification of Intended Use and Intended Users (ALL).....	U-83
SMT-10 Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction - Retired.....	U-87

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

as promulgated by the
Appraisal Standards Board of
The Appraisal Foundation

DEFINITIONS

For the purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP), the following definitions apply:

APPRAISAL: (noun) the act or process of developing an opinion of value; an opinion of value.
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

APPRAISAL PRACTICE: valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.

Comment: *Appraisal practice* is provided only by appraisers, while *valuation services* are provided by a variety of professionals and others. The terms *appraisal* and *appraisal review* are intentionally generic and are not mutually exclusive. For example, an opinion of value may be required as part of an appraisal review assignment. The use of other nomenclature for an appraisal or appraisal review assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to the *Uniform Standards of Professional Appraisal Practice*.

APPRAISAL REVIEW: the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

APPRAISER: one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

Comment: Such expectation occurs when individuals, either by choice or by requirement placed upon them or upon the service they provide by law, regulation, or agreement with the client or intended users, represent that they comply.¹

APPRAISER'S PEERS: other appraisers who have expertise and competency in a similar type of assignment.

ASSIGNMENT: 1) An agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement.

ASSIGNMENT RESULTS: An appraiser's opinions or conclusions developed specific to an assignment.

Comment: Assignment results include an appraiser's:

¹ See PREAMBLE and Advisory Opinion 21, *USPAP Compliance*.

DEFINITIONS

- 37 • opinions or conclusions developed in an appraisal assignment, not limited to value;
- 38 • opinions or conclusions, developed in an appraisal review assignment, not limited to an opinion
- 39 about the quality of another appraiser's work; or
- 40 • opinions or conclusions developed when performing a valuation service other than an appraisal or
- 41 appraisal review assignment.

42 **ASSUMPTION:** that which is taken to be true.

43 **BIAS:** a preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an

44 assignment.

45 **BUSINESS ENTERPRISE:** an entity pursuing an economic activity.

46 **BUSINESS EQUITY:** the interests, benefits, and rights inherent in the ownership of a business enterprise or a

47 part thereof in any form (including, but not necessarily limited to, capital stock, partnership interests,

48 cooperatives, sole proprietorships, options, and warrants).

49 **CLIENT:** the party or parties who engage, by employment or contract, an appraiser in a specific assignment.

50 Comment: The client may be an individual, group, or entity, and may engage and communicate with

51 the appraiser directly or through an agent.

52 **CONFIDENTIAL INFORMATION:** information that is either:

- 53 • identified by the client as confidential when providing it to an appraiser and that is not available
- 54 from any other source; or
- 55 • classified as confidential or private by applicable law or regulation*.

56 *NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some

57 public agencies have adopted privacy regulations that affect appraisers. As a result, the Federal Trade

58 Commission issued a rule focused on the protection of "non-public personal information" provided by

59 consumers to those involved in financial activities "found to be closely related to banking or usual in connection

60 with the transaction of banking." These activities have been deemed to include "appraising real or personal

61 property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information;

62 Final Rule, 16 CFR Part 313.)

63 **COST:** the amount required to create, produce, or obtain a property.

64 Comment: *Cost* is either a fact or an estimate of fact.

65 **CREDIBLE:** worthy of belief.

66 Comment: Credible assignment results require support, by relevant evidence and logic, to the

67 degree necessary for the intended use.

68 **EXPOSURE TIME:** estimated length of time that the property interest being appraised would have been

69 offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of

70 the appraisal.

71 Comment: Exposure time is a retrospective opinion based on an analysis of past events assuming a

72 competitive and open market.

EXTRAORDINARY ASSUMPTION: an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

FEASIBILITY ANALYSIS: a study of the cost-benefit relationship of an economic endeavor.

HYPOTHETICAL CONDITION: a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

INTANGIBLE PROPERTY (INTANGIBLE ASSETS): nonphysical assets, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from physical assets such as facilities and equipment.

INTENDED USE: the use or uses of an appraiser's reported appraisal or appraisal review assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.

INTENDED USER: the client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser on the basis of communication with the client at the time of the assignment.

JURISDICTIONAL EXCEPTION: an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.

MARKET VALUE: a type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.

Comment: Forming an opinion of market value is the purpose of many real property appraisal assignments, particularly when the client's intended use includes more than one intended user. The conditions included in market value definitions establish market perspectives for development of the opinion. These conditions may vary from definition to definition but generally fall into three categories:

1. the relationship, knowledge, and motivation of the parties (i.e., seller and buyer);
2. the terms of sale (e.g., cash, cash equivalent, or other terms); and
3. the conditions of sale (e.g., exposure in a competitive market for a reasonable time prior to sale).

Appraisers are cautioned to identify the exact definition of market value, and its authority, applicable in each appraisal completed for the purpose of market value.

MASS APPRAISAL: the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

DEFINITIONS

114 **MASS APPRAISAL MODEL:** a mathematical expression of how supply and demand factors interact in a
115 market.

116 **PERSONAL PROPERTY:** identifiable tangible objects that are considered by the general public as being
117 “personal” - for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and
118 equipment; all tangible property that is not classified as real estate.

119 **PRICE:** the amount asked, offered, or paid for a property.

120 Comment: Once stated, *price* is a fact, whether it is publicly disclosed or retained in private.
121 Because of the financial capabilities, motivations, or special interests of a given buyer or
122 seller, the price paid for a property may or may not have any relation to the *value* that might
123 be ascribed to that property by others.

124 **REAL ESTATE:** an identified parcel or tract of land, including improvements, if any.

125 **REAL PROPERTY:** the interests, benefits, and rights inherent in the ownership of real estate.

126 Comment: In some jurisdictions, the terms *real estate* and *real property* have the same legal
127 meaning. The separate definitions recognize the traditional distinction between the two
128 concepts in appraisal theory.

129 **REPORT:** any communication, written or oral, of an appraisal or appraisal review that is transmitted to the
130 client upon completion of an assignment.

131 Comment: Most reports are written and most clients mandate written reports. Oral report
132 requirements (see the RECORD KEEPING RULE) are included to cover court testimony and
133 other oral communications of an appraisal or appraisal review.

134 **SCOPE OF WORK:** the type and extent of research and analyses in an appraisal or appraisal review
135 assignment.

136 **SIGNATURE:** personalized evidence indicating authentication of the work performed by the appraiser and the
137 acceptance of the responsibility for content, analyses, and the conclusions in the report.

138 **VALUATION SERVICES:** services pertaining to aspects of property value.

139 Comment: Valuation services pertain to all aspects of property value and include services
140 performed both by appraisers and by others.

141 **VALUE:** the monetary relationship between properties and those who buy, sell, or use those properties.

142 Comment: *Value* expresses an economic concept. As such, it is never a fact but always an
143 opinion of the worth of a property at a given time in accordance with a specific definition of
144 value. In appraisal practice, value must always be qualified - for example, market value,
145 liquidation value, or investment value.

146 **WORKFILE:** documentation necessary to support an appraiser’s analyses, opinions, and conclusions.

147 **PREAMBLE**

148 The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain
 149 a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that
 150 appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their
 151 services in a manner that is meaningful and not misleading.

152 The Appraisal Standards Board promulgates USPAP for both appraisers and users of appraisal services. The
 153 appraiser's responsibility is to protect the overall public trust and it is the importance of the role of the appraiser
 154 that places ethical obligations on those who serve in this capacity. USPAP reflects the current standards of the
 155 appraisal profession.

156 USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules,
 157 Standards, Standards Rules, and Statements.

- 158 • The DEFINITIONS establish the application of certain terminology in USPAP.
- 159 • The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity,
 160 independent judgment, and ethical conduct.
- 161 • The RECORD KEEPING RULE establishes the workfile requirements for appraisal and
 162 appraisal review assignments.
- 163 • The COMPETENCY RULE presents pre-assignment and assignment conditions for
 164 knowledge and experience.
- 165 • The SCOPE OF WORK RULE presents obligations related to problem identification,
 166 research and analyses.
- 167 • The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if a
 168 portion is contrary to law or public policy of a jurisdiction.
- 169 • The Standards establish the requirements for appraisal and appraisal review and the
 170 manner in which each is communicated.
 - 171 - STANDARDS 1 and 2 establish requirements for the development and
 172 communication of a real property appraisal.
 - 173 - STANDARD 3 establishes requirements for the development and communication of
 174 an appraisal review.
 - 175 - (Note: STANDARDS 4 and 5 have been retired).
 - 176 - STANDARD 6 establishes requirements for the development and communication of
 177 a mass appraisal.
 - 178 - STANDARDS 7 and 8 establish requirements for the development and
 179 communication of a personal property appraisal.
 - 180 - STANDARDS 9 and 10 establish requirements for the development and
 181 communication of a business or intangible asset appraisal.
- 182 • Statements on Appraisal Standards clarify, interpret, explain, or elaborate on a Rule or
 183 Standards Rule.
- 184 • Comments are an integral part of USPAP and have the same weight as the component
 185 they address. These extensions of the DEFINITIONS, Rules, and Standards Rules
 186 provide interpretation and establish the context and conditions for application.
 187

188 **When Do USPAP Rules and Standards Apply**

189 USPAP does not establish who or which assignments must comply. Neither The Appraisal Foundation nor its
 190 Appraisal Standards Board is a government entity with the power to make, judge, or enforce law. An appraiser
 191 must comply with USPAP when either the service or the appraiser is required by law, regulation, or agreement
 192 with the client or intended user. Individuals may also choose to comply with USPAP any time that individual is
 193 performing the service as an appraiser. In order to comply with USPAP, an appraiser must meet the following
 194 obligations:

PREAMBLE

- 195 • An appraiser must act competently and in a manner that is independent, impartial, and
196 objective.
- 197 • An appraiser must comply with the ETHICS RULE in all aspects of appraisal practice.
- 198 • An appraiser must maintain the data, information and analysis necessary to support his or
199 her opinions for appraisal and appraisal review assignments in accordance with the
200 RECORD KEEPING RULE.
- 201 • An appraiser must comply with the COMPETENCY RULE and the JURISDICTIONAL
202 EXCEPTION RULE for all assignments.
- 203 • When an appraiser provides an opinion of value in an assignment, the appraiser must also
204 comply with the SCOPE OF WORK RULE, the RECORD KEEPING RULE, the
205 applicable development and reporting Standards and applicable Statements.
- 206 • When an appraiser provides an opinion about the quality of another appraiser's work that
207 was performed as part of an appraisal or appraisal review assignment, the appraiser must
208 also comply with the SCOPE OF WORK RULE, the RECORD KEEPING RULE,
209 applicable portions of STANDARD 3 and applicable Statements.
- 210 • When preparing an appraisal or appraisal review that is a component of a larger
211 assignment with additional opinions, conclusions, or recommendations, the appraisal or
212 appraisal review component must comply with the applicable development and reporting
213 Standards and applicable Statements, and the remaining component of the assignment
214 must comply with the ETHICS RULE, the COMPETENCY RULE, and the
215 JURISDICTIONAL EXCEPTION RULE.

ETHICS RULE

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

Comment: This Rule specifies the personal obligations and responsibilities of the individual appraiser. An individual appraiser employed by a group or organization that conducts itself in a manner that does not conform to USPAP should take steps that are appropriate under the circumstances to ensure compliance with USPAP.

This ETHICS RULE is divided into three sections: Conduct, Management, and Confidentiality which apply to all appraisal practice.

Conduct:

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser:

- **must not perform an assignment with bias;**
- **must not advocate the cause or interest of any party or issue;**
- **must not accept an assignment that includes the reporting of predetermined opinions and conclusions;**
- **must not misrepresent his or her role when providing valuation services that are outside of appraisal practice;**
- **must not communicate assignment results with the intent to mislead or to defraud;**
- **must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;**
- **must not knowingly permit an employee or other person to communicate a misleading or fraudulent report;**
- **must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value;**
- **must not engage in criminal conduct;**
- **must not willfully or knowingly violate the requirements of the RECORD KEEPING RULE; and**
- **must not perform an assignment in a grossly negligent manner.**

Comment: Development standards (1-1, 3-1, 6-1, 7-1 and 9-1) address the requirement that “an appraiser must not render appraisal services in a careless or negligent manner.” The above requirement deals with an appraiser being grossly negligent in performing an assignment which would be a violation of the Conduct section of the ETHICS RULE.

ETHICS RULE

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in each subsequent report certification:

- any current or prospective interest in the subject property or parties involved; and
- any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.

Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted except in the case when an appraiser has agreed with the client to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period.

In assignments in which there is no appraisal or appraisal review report, only the initial disclosure to the client is required.

Management:

An appraiser must disclose that he or she paid a fee or commission, or gave a thing of value in connection with the procurement of an assignment.

Comment: The disclosure must appear in the certification and in any transmittal letter in which conclusions are stated; however, disclosure of the amount paid is not required. In groups or organizations engaged in appraisal practice, intra-company payments to employees for business development do not require disclosure.

An appraiser must not accept an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:

1. the reporting of a predetermined result (e.g., opinion of value);
2. a direction in assignment results that favors the cause of the client;
3. the amount of a value opinion;
4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or
5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

An appraiser must not advertise for or solicit assignments in a manner that is false, misleading, or exaggerated.

An appraiser must affix, or authorize the use of, his or her signature to certify recognition and acceptance of his or her USPAP responsibilities in an appraisal or appraisal review assignment (see Standards Rules 2-3, 3-6, 6-9, 8-3, and 10-3). An appraiser may authorize the use of his or her signature only on an assignment-by-assignment basis.

An appraiser must not affix the signature of another appraiser without his or her consent.

Comment: An appraiser must exercise due care to prevent unauthorized use of his or her signature. An appraiser exercising such care is not responsible for unauthorized use of his or her signature.

291 Confidentiality:

292 **An appraiser must protect the confidential nature of the appraiser-client relationship.**

293 **An appraiser must act in good faith with regard to the legitimate interests of the client in the use of**
294 **confidential information and in the communication of assignment results.**

295 **An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations**
296 **applicable in an assignment.²**

297 **An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone**
298 **other than:**

- 299 • **the client;**
- 300 • **persons specifically authorized by the client;**
- 301 • **state appraiser regulatory agencies;**
- 302 • **third parties as may be authorized by due process of law; or**
- 303 • **a duly authorized professional peer review committee except when such disclosure to a**
304 **committee would violate applicable law or regulation.**

305 **A member of a duly authorized professional peer review committee must not disclose confidential**
306 **information presented to the committee.**

307 **Comment: When all confidential elements of confidential information and assignment results are**
308 **removed through redaction or the process of aggregation, client authorization is not required for the**
309 **disclosure of the remaining information, as modified.**

² Pursuant to the passage of the Gramm-Leach-Bliley Act in 1999, numerous agencies have adopted privacy regulations. Such regulations are focused on the protection of information provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

RECORD KEEPING RULE

RECORD KEEPING RULE

An appraiser must prepare a workfile for each appraisal or appraisal review assignment. A workfile must be in existence prior to the issuance of any report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

The workfile must include:

- **the name of the client and the identity, by name or type, of any other intended users;**
- **true copies of any written reports, documented on any type of media. (A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies the requirement of a true copy.);**
- **summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification;**
- **all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation; and**
- **a workfile in support of a Restricted Appraisal Report must be sufficient for the appraiser to produce an Appraisal Report.**

An appraiser must retain the workfile for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of the workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile. This includes ensuring that a workfile is stored in a medium that is retrievable by the appraiser throughout the prescribed record retention period.

An appraiser having custody of a workfile must allow other appraisers with workfile obligations related to an assignment appropriate access and retrieval for the purpose of:

- **submission to state appraiser regulatory agencies;**
- **compliance with due process of law;**
- **submission to a duly authorized professional peer review committee; or**
- **compliance with retrieval arrangements.**

Comment: A workfile must be made available by the appraiser when required by a state appraiser regulatory agency or due process of law.

An appraiser who willfully or knowingly fails to comply with the obligations of this RECORD KEEPING RULE is in violation of the ETHICS RULE.

343 **COMPETENCY RULE**

344 **An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to**
 345 **perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must**
 346 **perform competently when completing the assignment.**

347 **Being Competent**

348 **The appraiser must determine, prior to accepting an assignment, that he or she can perform the**
 349 **assignment competently. Competency requires:**

- 350 **1. the ability to properly identify the problem to be addressed; and**
- 351 **2. the knowledge and experience to complete the assignment competently; and**
- 352 **3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the**
 353 **assignment.**

354 Comment: Competency may apply to factors such as, but not limited to, an appraiser's
 355 familiarity with a specific type of property or asset, a market, a geographic area, an intended
 356 use, specific laws and regulations, or an analytical method. If such a factor is necessary for an
 357 appraiser to develop credible assignment results, the appraiser is responsible for having the
 358 competency to address that factor or for following the steps outlined below to satisfy this
 359 COMPETENCY RULE.

360 For assignments with retrospective opinions and conclusions, the appraiser must meet the
 361 requirements of this COMPETENCY RULE at the time of the assignment, rather than the
 362 effective date.

363 **Acquiring Competency**

364 **If an appraiser determines he or she is not competent prior to accepting an assignment, the appraiser**
 365 **must:**

- 366 **1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;**
- 367 **2. take all steps necessary or appropriate to complete the assignment competently; and**
- 368 **3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete**
 369 **the assignment competently.**

370 Comment: Competency can be acquired in various ways, including, but not limited to,
 371 personal study by the appraiser, association with an appraiser reasonably believed to have the
 372 necessary knowledge and/or experience, or retention of others who possess the necessary
 373 knowledge and/or experience.

374 In an assignment where geographic competency is necessary, an appraiser who is not familiar
 375 with the relevant market characteristics must acquire an understanding necessary to produce
 376 credible assignment results for the specific property type and market involved.

377 **When facts or conditions are discovered during the course of an assignment that cause an appraiser to**
 378 **determine, at that time, that he or she lacks the required knowledge and experience to complete the**
 379 **assignment competently, the appraiser must:**

- 380 **1. notify the client, and**
- 381 **2. take all steps necessary or appropriate to complete the assignment competently, and**

387 SCOPE OF WORK RULE³

388 For each appraisal and appraisal review assignment, an appraiser must:

- 389 1. identify the problem to be solved;
- 390 2. determine and perform the scope of work necessary to develop credible assignment results; and
- 391 3. disclose the scope of work in the report.

392 An appraiser must properly identify the problem to be solved in order to determine the appropriate

393 scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to

394 produce credible assignment results.

395 Comment: Scope of work includes, but is not limited to:

- 396 • the extent to which the property is identified;
- 397 • the extent to which tangible property is inspected;
- 398 • the type and extent of data researched; and
- 399 • the type and extent of analyses applied to arrive at opinions or conclusions.

400 Appraisers have broad flexibility and significant responsibility in determining the appropriate

401 scope of work for an appraisal or appraisal review assignment.

402 Credible assignment results require support by relevant evidence and logic. The credibility of

403 assignment results is always measured in the context of the intended use.

404 **Problem Identification**

405 An appraiser must gather and analyze information about those assignment elements that are necessary to

406 properly identify the appraisal or appraisal review problem to be solved.

407 Comment: The assignment elements necessary for problem identification are addressed in the

408 applicable Standards Rules (i.e., SR 1-2, SR 3-2, SR 6-2, SR 7-2 and SR 9-2). In an appraisal

409 assignment, for example, identification of the problem to be solved requires the appraiser to

410 identify the following assignment elements:

- 411 • client and any other intended users;
- 412 • intended use of the appraiser's opinions and conclusions;
- 413 • type and definition of value;
- 414 • effective date of the appraiser's opinions and conclusions;
- 415 • subject of the assignment and its relevant characteristics; and
- 416 • assignment conditions.

417 This information provides the appraiser with the basis for determining the type and extent of

418 research and analyses to include in the development of an appraisal. Similar information is

419 necessary for problem identification in appraisal review assignments.

420 Communication with the client is required to establish most of the information necessary for

421 problem identification. However, the identification of relevant characteristics is a judgment

422 made by the appraiser that requires competency in that type of assignment.

³ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

COMPETENCY RULE

382 **3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete**
383 **the assignment competently.**

384 **Lack of Competency**

385 **If the assignment cannot be completed competently, the appraiser must decline or withdraw from the**
386 **assignment.**

SCOPE OF WORK RULE

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.

Scope of Work Acceptability⁴

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

Comment: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peers' actions would be in performing the same or a similar assignment.

Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.

An appraiser must be prepared to support the decision to exclude any investigation, information, method, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

Comment: If relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can:

- modify the assignment conditions to expand the scope of work to include gathering the information; or
- use an extraordinary assumption about such information, if credible assignment results can still be developed.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

Comment: Proper disclosure is required because clients and other intended users rely on the assignment results. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

⁴ See Advisory Opinion 29, *An Acceptable Scope of Work*.

JURISDICTIONAL EXCEPTION RULE

If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment.

Comment: When compliance with USPAP is required by federal law or regulation, no part of USPAP can be voided by a law or regulation of a state or local jurisdiction.

In an assignment involving a jurisdictional exception, an appraiser must:

- 1. identify the law or regulation that precludes compliance with USPAP;**
- 2. comply with that law or regulation;**
- 3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and**
- 4. cite in the report the law or regulation requiring this exception to USPAP compliance.**

Comment: The JURISDICTIONAL EXCEPTION RULE provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP.

Law includes constitutions, legislative and court-made law, and administrative rules and ordinances. Regulations include rules or orders having legal force, issued by an administrative agency. Instructions from a client or attorney do not establish a jurisdictional exception.

STANDARD 1

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Comment: STANDARD 1 is directed toward the substantive aspects of developing a credible appraisal of real property. The requirements set forth in STANDARD 1 follow the appraisal development process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;**

Comment: This Standards Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and**

Comment: An appraiser must use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results.

- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.**

Comment: Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

- 515 (a) **Identify the client and other intended users;**⁵
- 516 (b) **Identify the intended use of the appraiser's opinions and conclusions;**⁶
- 517 Comment: An appraiser must not allow the intended use of an assignment or a client's
 518 objectives to cause the assignment results to be biased.⁷
- 519 (c) **Identify the type and definition of value, and, if the value opinion to be developed is market**
 520 **value, ascertain whether the value is to be the most probable price:**
- 521 (i) **in terms of cash; or**
- 522 (ii) **in terms of financial arrangements equivalent to cash; or**
- 523 (iii) **in other precisely defined terms; and**
- 524 (iv) **if the opinion of value is to be based on non-market financing or financing with unusual**
 525 **conditions or incentives, the terms of such financing must be clearly identified and the**
 526 **appraiser's opinion of their contributions to or negative influence on value must be**
 527 **developed by analysis of relevant market data;**
- 528 Comment: When exposure time is a component of the definition for the value
 529 opinion being developed, the appraiser must also develop an opinion of reasonable
 530 exposure time linked to that value opinion.⁸
- 531 (d) **Identify the effective date of the appraiser's opinions and conclusions;**⁹
- 532 (e) **Identify the characteristics of the property that are relevant to the type and definition of value**
 533 **and intended use of the appraisal,**¹⁰ **including:**
- 534 (i) **its location and physical, legal, and economic attributes;**
- 535 (ii) **the real property interest to be valued;**
- 536 (iii) **any personal property, trade fixtures, or intangible items that are not real property but**
 537 **are included in the appraisal;**
- 538 (iv) **any known easements, restrictions, encumbrances, leases, reservations, covenants,**
 539 **contracts, declarations, special assessments, ordinances, or other items of a similar**
 540 **nature; and**

⁵ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁶ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁷ See Advisory Opinion 19, *Unacceptable Assignment Conditions in Real Property Appraisal Assignments*.

⁸ See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*.

⁹ See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

¹⁰ See Advisory Opinion 2, *Inspection of Subject Property*, and Advisory Opinion 23, *Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment*.

STANDARD 1

(v) whether the subject property is a fractional interest, physical segment, or partial holding;

Comment on (i)-(v): The information used by an appraiser to identify the property characteristics must be from sources the appraiser reasonably believes are reliable.

An appraiser may use any combination of a property inspection and documents, such as a physical legal description, address, map reference, copy of a survey or map, property sketch, or photographs, to identify the relevant characteristics of the subject property.

When appraising proposed improvements, an appraiser must examine and have available for future examination, plans, specifications, or other documentation sufficient to identify the extent and character of the proposed improvements.¹¹

Identification of the real property interest appraised can be based on a review of copies or summaries of title descriptions or other documents that set forth any known encumbrances.

An appraiser is not required to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding.

(f) identify any extraordinary assumptions necessary in the assignment;

Comment: An extraordinary assumption may be used in an assignment only if:

- it is required to properly develop credible opinions and conclusions;
- the appraiser has a reasonable basis for the extraordinary assumption;
- use of the extraordinary assumption results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions.

(g) identify any hypothetical conditions necessary in the assignment; and

Comment: A hypothetical condition may be used in an assignment only if:

- use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;
- use of the hypothetical condition results in a credible analysis; and
- the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.

(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.¹²

Standards Rule 1-3

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

¹¹ See Advisory Opinion 17, *Appraisals of Real Property with Proposed Improvements*.

¹² See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

- (a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and

Comment: An appraiser must avoid making an unsupported assumption or premise about market area trends, effective age, and remaining life.

- (b) develop an opinion of the highest and best use of the real estate.

Comment: An appraiser must analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraiser's highest and best use conclusion(s).

Standards Rule 1-4

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

- (b) When a cost approach is necessary for credible assignment results, an appraiser must:

- (i) develop an opinion of site value by an appropriate appraisal method or technique;
- (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and
- (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

- (c) When an income approach is necessary for credible assignment results, an appraiser must:

- (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;
- (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property;
- (iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and
- (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence.¹³

Comment: In developing income and expense statements and cash flow projections, an appraiser must weigh historical information and trends, current supply and demand factors affecting such trends, and anticipated events such as competition from developments under construction.

- (d) When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the lease(s).

¹³ See Statement on Appraisal Standards No. 2, *Discounted Cash Flow Analysis*.