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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

REX CAPRI, WAKEFIELD FARMS, LLC,
Plaintiffs,
v.
DANA W. JENKINS, LINCOLN COUNTY,
Defendants,
and
LINCOLN COUNTY COMMUNITY
RIGHTS,
Intervenor-Defendant.

Case No. 17CV23360

**DECLARATION OF NANCY HIATT IN
SUPPORT OF PLAINTIFFS’ MOTION
FOR SUMMARY JUDGMENT**

I, NANCY HIATT, hereby declare:

1. I am a member of Plaintiff Wakefield Farms, LLC (“Wakefield Farms”). I make this Declaration based on my personal knowledge and in support of Plaintiffs’ Motion for Summary Judgment.

2. Wakefield Farms is a family-owned business registered as a limited liability company in Oregon.

3. Wakefield Farms owns woodlands in Lincoln County that are located outside of an acknowledged urban growth boundary and, because Wakefield Farms is growing timber on the property as a crop, the land is and Wakefield Farms’ activities are subject to the Oregon Forest Practices Act.

4. Wakefield Farms has controlled competing vegetation including invasive plant species in its woodlands, including Himalayan blackberry and Scotch broom, by arranging for

1 aerial spraying of pesticides by businesses that are defined as “corporations” by the Ordinance.
2 Wakefield Farms wants to arrange for the businesses to control competing vegetation including
3 invasive plant species by spraying pesticides on the woodlands again. The competing vegetation
4 including invasive plants compete for vital resources like sunlight, water, and nutrients, and, if
5 not controlled, will stunt the growth of economically valuable native plants, such as Douglas fir
6 trees. To be effective to control competing vegetation including invasive species, the spraying of
7 the pesticides must be conducted before winter.

8 5. No one but “corporations” as defined by the Ordinance provides aerial spraying of
9 pesticides within Lincoln County. Wakefield Farms cannot arrange for the aerial spraying of
10 pesticides on its woodlands because the Ordinance prohibits the aerial spraying of pesticides by
11 the only providers of the service.

12 6. Spraying or removal of competing vegetation including invasive species by hand
13 is not an economically viable, effective, or safe alternative to aerial spraying for protecting
14 Wakefield Farms’ woodlands from competing vegetation including invasive species.

15 7. Spraying pesticides or removing plants by hand costs private landowners like
16 Wakefield Farms between four and 10 times the cost of spraying pesticides by air—a cost
17 difference that may prevent Wakefield Farms from being able to control competing vegetation
18 including invasive species. Invasive species that Wakefield Farms does not control are likely to
19 spread to neighboring properties.

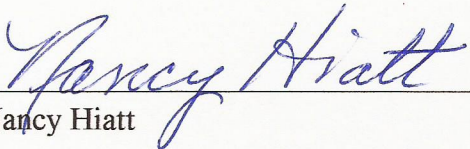
20 8. For woodlands with steep slopes, aerial spraying may be the only way to apply
21 pesticides to competing vegetation including invasive species. In some instances, slopes may be
22 too steep and too dangerous for individuals to safely reach the competing vegetation including
23 invasive species for hand application or removal.

24 9. The inability to spray by air, in instances where other options are not available,
25 will cause the quality and volume of Wakefield Farms’ trees to decline, which will, in turn, cause
26 the value of the trees and land to decline. The inability to spray by air also substantially

1 increases the risk that Wakefield Farms will violate the Oregon Forest Practices Act, which
2 requires that the young trees must be “free to grow” within six years of harvest. To meet the
3 “free to grow” standard, new trees must be vigorous, well-distributed, and ready to grow
4 successfully into a young forest. Because plant growth in the Coast Range is so vigorous,
5 woodland owners can only meet the “free to grow” standard by controlling vegetation that
6 competes with the young trees.

7 *I hereby declare that the above statements are true to the best of my knowledge and belief*
8 *and that I understand that this declaration is made for use as evidence in court and is subject to*
9 *penalty for perjury.*

10 DATED this 9th day of August, 2017.

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13 Nancy Hiatt

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CERTIFICATE OF SERVICE

I hereby certify that, on August 11, 2017, I served a copy of the foregoing
**DECLARATION OF NANCY HIATT IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT** on:

<p>Wayne Belmont, OSB #841662 Email: wbelmont@co.lincoln.or.us Lincoln County Counsel 110 Lincoln County Courthouse 225 W. Olive Street Newport, OR 97365 Tel: 541.265.4108</p> <p>Rob Bovett, OSB #910267 Email: rbovett@oregoncounties.org Association of Oregon Counties 1201 Court Street, NE, Suite 300 Salem, OR 97301 Tel: 503.585.8351</p> <p style="text-align: center;">Of Attorneys for Defendants</p>	<p>Ann B. Kneeland, OSB #992977 Community Environmental Legal Defense Fund PO Box 10294 Eugene, OR 97440 Telephone: 541-514-9720 Email: ann@kneelandlaw.net</p> <p style="text-align: center;">Attorney for Intervenor-Defendant Lincoln County Community Rights</p>
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by emailing a copy thereof to the email address as shown above.

DAVIS WRIGHT TREMAINE LLP

By s/ GREGORY A. CHAIMOV

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Attorneys for Plaintiff