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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 REX CAPRI IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

I, REX CAPRI, hereby declare:

1. I am a plaintiff in this action. I make this Declaration based on my personal knowledge and in support of Plaintiffs' Motion for Summary Judgment.
2. I am registered to vote in Lincoln County. I voted against Lincoln County Measure 21-177 ("Ordinance").
3. I own woodlands in Lincoln County that are located outside of an acknowledged urban growth boundary and, because I am growing timber as a crop, the land and my activities are subject to the Oregon Forest Practices Act.
4. I have controlled competing vegetation including invasive plant species in my woodlands, including Himalayan blackberry and Scotch broom, by arranging for aerial spraying of pesticides by businesses that are defined as "corporations" by the Ordinance. I want to arrange for the businesses to control competing vegetation including invasive plant species by

1 spraying pesticides on my woodlands again. The competing vegetation including invasive plants
2 compete for vital resources like sunlight, water, and nutrients, and, if not controlled, will stunt
3 the growth of economically valuable native plants, such as Douglas fir trees. To be effective to
4 control competing vegetation including invasive species, the spraying of the pesticides must be
5 conducted before winter.

6 5. No one but “corporations” as defined by the Ordinance provides aerial spraying of
7 pesticides within Lincoln County. I cannot arrange for the aerial spraying of pesticides on my
8 woodlands because the Ordinance prohibits the aerial spraying of pesticides by the only
9 providers of the service.

10 6. Spraying or removal of competing vegetation including invasive species by hand
11 is not an economically viable, effective, or safe alternative to aerial spraying for protecting my
12 woodlands from competing vegetation including invasive species.

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


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

21 9. The inability to spray by air, in instances where other options are not available,
22 will cause the quality and volume of my trees to decline, which will, in turn, cause the value of
23 the trees and land to decline. The inability to spray by air also substantially increases the risk
24 that I will violate the Oregon Forest Practices Act, which requires that the young trees must be
25 “free to grow” within six years of harvest. To meet the “free to grow” standard, new trees must
26 be vigorous, well-distributed, and ready to grow successfully into a young forest. Because plant

1 growth in the Coast Range is so vigorous, woodland owners can only meet the “free to grow”
2 standard by controlling vegetation that competes with the young trees.

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

6 DATED this 8 day of August, 2017.

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9 Rex Capri

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CERTIFICATE OF SERVICE

I hereby certify that, on August 11, 2017, I served a copy of the foregoing
**DECLARATION OF REX CAPRI 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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