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VIA EMAIL: realproperty.dsl@dsl.oregon.gov

Oregon Department of State Lands
Real Property Program
951 SW Simpson Avenue, Suite 104
Bend, OR 97702

Re: Transaction # 63509-LS/ Cline Buttes Tract

Dear Sir/Madam:

I represent Kameron DeLashmutt and Central Land and Cattle Company, LLC (“CLCC”), the developers of the Thornburgh Resort and the Applicant in the above-referenced transaction. Among other comments, this letter discusses the public testimony received at the March 10, 2022 public hearing on the Cline Buttes matter. In particular, CLCC is concerned that the transaction as discussed at the public hearing did not accurately reflect the existing lease and agreement between CLCC and DSL. It is important to consider this transaction in its full factual and historical context.

First, the state parcels being considered for sale are either completely or partially surrounded by CLCC’s private lands, which were purchased by Mr. DeLashmutt’s grandparents, the Thornburghs, in 1953 for use as summer rangeland for their cattle ranch. That same year, the family also began leasing grazing rights on approximately 30,000 acres of adjacent Bureau of Land Management (“BLM”) land, including the 240 acres eventually acquired by the state.¹ As the area’s population grew, trespassing increased on the private land. Members of the public cut fences and left gates open so cattle got loose and wandered into the Eagle Crest development. Ultimately, using the land for its intended purpose of summer range became unworkable. In 2003, Mr. DeLashmutt

¹ These 240 acres consist of Tax Lot 5101/Parcel 2943, 5102/2947, 5103/2949, 5104/2950, and 5200/2951.

entered into an agreement to acquire the Thornburgh property and in 2004 he began planning and permitting the land for the Thornburgh Resort (“Resort”).

The state lands have been leased to Mr. DeLashmutt since 2005 under Special Use Lease 33991-SU (the “Lease”). The current lease term extends through at least 2031 and contains further extension provisions. Initially, the Lease covered 160 acres of state land (Tax Lot 5300/Parcels 262 and 263), as the other 240 acres were owned by BLM at that time. Mr. DeLashmutt owned mining claims on the BLM lands that he had purchased for approximately \$150,000. In 2006, Mr. DeLashmutt agreed to assist DSL to receive the 240 acres from BLM as part of the “in-lieu lands” owed to the State of Oregon from the federal government.² To facilitate DSL receipt of these parcels, Mr. DeLashmutt agreed to extinguish the mining claims (forfeiting his investment in the claims) so that clear title could be transferred to the State of Oregon. The lease was then amended to include the additional 240 acres.

From the beginning, the Lease anticipated that the leased parcels would be included in the planning and ultimate development of the surrounding Thornburgh Resort and DSL fully supported these efforts, as demonstrated by the following provisions:

“WHEREAS, by entering into this Lease, in addition to authorizing such open space, Tenant and Landlord seek to explore opportunities for re-zoning and possible future development of the Land, as part of the Destination Resort; and

WHEREAS, to facilitate such efforts, Tenant will develop for Landlord’s consideration a ‘**Master Development Plan**’ (as defined below) describing how the Land could be incorporated into development of the Destination Resort, subject to required zoning changes and local land use approval; and

WHEREAS, Landlord and Tenant intend that if Landlord approves the Master Development Plan Tenant will have an option to extend the Lease and Landlord and Tenant will modify the Lease to allow Tenant to proceed with efforts to obtain required zoning changes and

² See OREGON DEPARTMENT OF STATE LANDS, REAL ESTATE ASSET MANAGEMENT PLAN 22, 25 (2012) (“Asset Mgmt Plan”) (in-lieu lands are state Common School Fund trust lands received from the federal government when the 16th and 36th sections were no longer available for the grant); *see also* the material documenting this in-lieu selection in the Due Diligence Materials for this sale application: [3.InLieuLands2008.pdf](#) | [Powered by Box](#).



land use approvals, and thereafter to develop the Land in accordance with the approved Master Development Plan;

WHEREAS, the parties intend to cooperate, in good faith, to reach agreement on a Master Development Plan, and to take steps necessary to obtain local land use approval for implementation of the Master Development Plan for the Land.” (Lease 33991-SU at 1-2.) (Emphasis in original.)

Section 5.2.1 of the original Lease provided further detail—requiring the Tenant to prepare a Conceptual Master Development Plan for DSL’s approval. This section also authorized Tenant to apply for a change in zoning to accommodate the plan, and required Landlord to cooperate with Tenant in submitting that application. Tenant prepared the Conceptual Master Development Plan which showed development of single-family housing located on the DSL land. During a field visit to the site in 2010 DSL approved that plan.³ Upon approval of the development plan and with DSL’s written agreement, CLCC prepared, funded, and obtained a zoning change adding the Destination Resort Overlay to the contiguous 360 acres of the leased lands.⁴ The discussions between DSL and my clients which spanned nearly 17 years, from the earliest negotiations to approval of the development plan in 2010, and through 2021, all assumed that my clients would obtain the permits for development, develop the lands, cover the costs, and sell the single-family lots, and that DSL would share in the revenues from the sales. The remaining lands not sold would continue to be leased as open space for the Resort for the long term.

Several of the commenters at the public hearing characterized the dealings between DSL and CLCC—including the BLM in-lieu lands transaction, the Lease, and the proposed purchase—as some sort of improper “collusion.” As DSL is well aware, there is nothing nefarious about this transaction. As to the acquisition of the BLM lands, the agreement benefitted each of the willing participants. BLM disposed of property it had classified as “Z-3” lands (meaning they were designated as suitable for disposal) and fulfilled another increment of its school-lands debt to the State; CLCC was able to include the lands in the Lease, consolidating the lease of several parcels adjacent to its private land under a single public lessor; and DSL received several parcels contiguous to land it already owned, thus providing

³ DSL’s approval of the Plan is referenced in the 2017 amendment to the Lease executed by both parties.

⁴ Tax Lot 5101/Parcel 2943 is the only parcel that did not receive the overlay.



enhanced value to the Common School Fund.⁵ As demonstrated in the Due Diligence materials cited in footnote 2 above, this process also involved public notice and opportunities for comment.

In fact, the Central Oregon Area Management Plan (“Central Oregon Plan”), adopted by the Land Board in 2011, explicitly states that **“DSL obtained these properties [the BLM Cline Buttes in-lieu lands] with destination resort use as the identified highest and best use.”** (Central Oregon Plan at 37; emphasis added.) A number of public meetings were held in developing the Central Oregon Plan, and public and agency comments were also solicited.⁶ (*Id.* at 1-2, 9-10.) DSL has thus been transparent about its plans for this tract for many years.

Nor is the Lease itself anything other than an open, public, fair market transaction. The State Land Board authorized DSL to enter into the Lease. The Central Oregon Plan noted that the CLCC Lease was the *only* leased site in the planning area achieving the Asset Mgmt Plan’s targeted minimum return on asset value (“ROAV”) of 5%.⁷ The rent for the Lease was \$71.80 per acre, compared to an average of \$1.25 an acre for grazing leases in the vicinity, which would have been the only other likely type of lease for the property.⁸

Some commenters at the March hearing objected to the fact that CLCC fell behind on rent during a period of time, arguing that this proves that the Lease is a bad deal for the State. All payments in arrears were repaid, and the Lease is

⁵ The annual rent payable to the State was increased from \$11,488 to \$28,720 when the BLM parcels were added to the Lease.

⁶ The plan’s purpose was “to establish the highest and best use asset management recommendations” for the 34 state-owned sites in Crook, Deschutes, and Jefferson Counties, consistent with the directives of the statewide Asset Mgmt Plan for managing Common School Fund trust lands. *Id.* at 3.

⁷ The current Asset Mgmt Plan, which was adopted in 2012, established a performance target for ROAV at 5% or above for acquired or converted property, but with 8% as a longer-term goal. (Asset Mgmt Plan at 6, 16.) Net operating income in 2011 from *all* DSL grazing leases on more than 625,000 acres of land was \$112,862, while the CLCC Lease provided income of \$28,720 for lease of only 400 acres. (*Id.* at 15.)

⁸ Note that the Lease allows the leased lands to be used for open space, constructing a road, and resort planning purposes. The value to both the Common School Fund and CLCC will only increase as the Thornburgh Project proceeds, as the Lease explicitly provides for a rent adjustment when final land use approvals are obtained. Lease at Section 4.4.



currently in good standing. Two historically significant economic recessions have occurred during the term of the Lease, so the payment difficulty is understandable. Furthermore, DSL has discretion to behave as any prudent business landlord would in a similar situation, and temporary rent deferral is certainly an allowable business practice.

The vast majority of the comments at the March 2022 public hearing consisted of objections to the Thornburgh Resort project rather than relating to DSL's land management requirements or the pertinent components of the purchase application at issue. As DSL is well aware, it has absolutely no regulatory authority over the Thornburgh project. The Resort can and will proceed regardless of the ownership status of the DSL parcels. The Applicant does not plan to increase the scope or intensity of the development by acquiring the state lands; only the placement of certain development components would change.

Even the commenters who acknowledged that Thornburgh was not the subject of the March hearing said that selling the land would "enable" the project. But that is simply not the case. The County has been processing land use applications for this project for more than 15 years, with extensive public participation, intense scrutiny, and numerous appellate reviews by the Land Use Board of Appeals ("LUBA"), the Court of Appeals, and the Supreme Court. The Conceptual Master Plan was approved in 2010 and the Final Master Plan was approved in 2018. Both of those plans are complete, final, and not subject to any further appeals. The County has recently issued a number of specific approvals allowing construction and phased development to begin. The resort is fully permitted for 950 single family home sites, up to 475 overnight lodging units, and a host of recreational amenities, regardless of the status of the DSL land. CLCC does not need to purchase the DSL land for the Resort.

Opposition to the sale will not change the County approvals already received. Selling the DSL land will not increase the amount of permitted development (which would require additional land use approvals from Deschutes County) or change the already-assessed impacts to water, traffic, or wildlife.⁹ A sale will not compromise the Cline Buttes Recreation Area, which consists of tens of thousands of federal public land to the south and west of Eagle Crest and CLCC's property.¹⁰ What the sale would "enable" is allowing the Common School Fund to capture some of the

⁹ If the CLCC property were used for irrigated farming, which is a land use that is presently allowed outright, the impact of its water use would be greater than the Resort's quasi-municipal use.

¹⁰ In fact, Thornburgh will invest \$350,000 in expanding and improving the Cline Buttes trail network, including building 35-50 miles of new trails and developing a new trailhead to improve public access at the top of the Buttes.



benefit and enhanced value of the surrounding development. A sale would also eliminate use conflicts between the private development and members of the public who want unrestricted access to the state-owned parcels for their own recreation.

The bulk of public comments at the public hearing that were not directed at the Resort itself were complaints that the sale would interfere with public recreation on the state lands. Commenters testified that they hike, bike, and ride horses on the state lands and want unrestricted access going forward. Residents of the nearby Eagle Crest development particularly objected to losing public access to Tax Lot 5300. Since the state land has been leased to CLCC for the past 17 years, any public use of the area has either been by CLCC's permission or by trespassing through the private leasehold—and often through CLCC's adjacent privately-owned lands as well.¹¹

Significantly, the parcels subject to this transaction are Common School Fund *trust* lands, which are different than other public lands. As clearly stated in the Central Oregon Plan, “Trust lands are specifically intended and required to be managed to generate the maximum possible sustainable income for the CSF. Public use and wildlife management considerations are secondary considerations for the management of Trust lands.” (Plan at 7.) Although trust lands *may* be open for public access and recreation, public use may also be restricted, particularly when those lands have been leased. *See, e.g.*, OAR 141-125-0170(5), (8), and (11).

Prior to the hearing, Central Oregon Land Watch (“COLW”) circulated a letter opposing the sale, including the following statements:

“This direct sale would limit public access and compromise the land’s essential natural values for countless Central Oregonians and visitors who love and enjoy this special landscape. The Cline Buttes landscape provides essential scenic and recreational opportunities for the hiking, running, biking, bird-watching, equestrian, and hunting communities of Central Oregon. Broad access to a network of quality, multipurpose trails make the Cline Buttes Recreation Area a popular recreational destination.”

¹¹ The Lease specifically reserved the right for the “Landlord” [DSL] to use all access roads and easements on the Premises, and to use the Premises as necessary to access that portion of Landlord’s property that is not subject to this Lease.” Lease Section 2.1. However, the Lease does not explicitly reserve *public* access to or use of the leased premises.



Many COLW members and supporters repeated these comments at the hearing. The implication is that the proposed sale would limit access to and compromise the entire Cline Buttes Recreation Area (“CBRA”), but a look at a map shows that to be false. The CBRA consists of thousands of acres of public land owned by the federal Bureau of Land Management (“BLM”)—lying south and west of Eagle Crest, and surrounding CLCC’s property on all sides. The Buttes themselves are located east of the DSL parcels on BLM land and can be accessed from several directions without using the state parcels in the middle of the Thornburgh Resort. CLCC has told DSL that it is willing to allow public access from north to south across Tax Lot 5300 to provide a connection between the BLM land north and west of Eagle Crest and the BLM land south of Eagle Crest that contains the main features of the Buttes. CLCC also has an agreement with BLM as part of its approvals for the Resort to build some 35-40 miles of new trails on BLM land that will vastly expand the trail network around Cline Buttes at an expenditure by CLCC of approximately \$350,000. CLCC has also offered to pay for developing a new trailhead on Rock Pit Road to provide improved public access to the top of the Buttes. CLCC has also begun construction at its sole expense of a trail across DSL/Thornburgh lands on the ridge that would connect the northern side of the butte to the new Stinger trail located to the southwest edge of the DSL lands allowing access into the Cascade View trail system.

Selling these in-held rangeland parcels that are surrounded by developing private land to provide financial value to the Common School Fund is precisely aligned with the goals and directives of the Asset Mgmt Plan. For instance, the fact that the state land parcel is “an in-holding within another major ownership” is a factor listed in favor of disposal in the State’s plan. (Asset Mgmt Plan at 20.) That is why the Lease was executed in the first place, that is why the BLM in-lieu lands were acquired and added to the Lease, and that is why DSL has designated these parcels for lease or sale for more than a decade.

A few commenters at the March hearing asked what would happen if another party applied to lease or buy some or all of the Cline Buttes parcels. One person suggested that a group of Eagle Crest residents could come up with \$11,000 a year to lease Tax Lot 5300. One or two others asked if the state lands would be put up for auction if another party applied to purchase the tract. These suggestions are completely contrary to the terms of the Lease and to the Central Oregon Plan, both of which explicitly identified these lands for possible future incorporation into the Thornburgh Resort.

CLCC has relied on DSL’s commitment to this transaction in numerous ways over the past 15 years. CLCC has paid more than \$200,000 in rent to DSL. CLCC



and Mr. DeLashmutt invested significant resources to facilitate the transfer of 240 acres of federal land to the State, including forfeiting the \$150,000 investment in mining claims on those parcels. At one point during the lease term, CLCC proposed to DSL that it wanted to apply to the County to modify the Resort's Conceptual Master Plan to designate the DSL parcels as open space. However, DSL objected and required the Lessee to proceed as originally intended to develop a Master Development Plan for the DSL land and to obtain the necessary rezoning from the County to proceed with that plan. CLCC then invested additional time and monetary resources to rezone the property to include the state land within the destination resort overlay zone. All of these actions and investments enhanced the value (and potential revenue) of the state lands at no cost to the State, with the clear understanding that both CLCC and the State would reap future benefits from those actions.

After DSL approved CLCC's Master Development Plan, DSL and CLCC discussed additional potential lease modifications to accommodate development pursuant to that plan, as referenced in the recitals cited on the first page of this letter. The discussions addressed how CLCC would cover development costs, how it would be secured while doing so, how lots or homes would be sold, and how revenue would then be shared between the parties, with potential revenues in excess of \$5,000,000 for DSL. CLCC presented a proposal consistent with the numerous discussions over nearly 17 years along these lines for more formal consideration in 2021, but DSL decided it did not want to pursue any revenue-sharing proposal, instead asking CLCC to purchase the property, leading to this application.¹²

If DSL were to back away from this transaction as planned since 2005 and instead allow opponents of the Thornburgh Resort to try to out-bid CLCC and acquire inholdings within the Resort property, the State would be unjustly enriched. CLCC would be deprived of the benefit of its bargain and would be well within its rights to refuse to accept that bait and switch. If the Lease had provided for a future auction of the leased lands, the provisions concerning planning, rezoning, and incorporating the state parcels into the Thornburgh Resort would not have made any sense, and CLCC certainly would not have agreed to make investments in the property as it did.

¹² When Mr. DeLashmutt was so informed by Chris Parkins of DSL in 2021, that communication represented a complete and total change of position by DSL, and of the underlying intent and purpose of the entire agreement as discussed beginning in 2005, which was to take an undeveloped parcel of DSL land and create very substantial revenue for the Common School Fund.



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I trust that you will find these comments helpful. Thank you.

Sincerely,

s/ Janet E. Neuman

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Senior Counsel

JEN/jw

Encl.

cc: **VIA EMAIL**

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