

1 Ralph Bloemers, OSB# 98417
Christopher Winter, OSB# 98435
2 Cascade Resources Advocacy Group
1602 SE 32nd Place
3 Portland, OR 97214
(503) 238-5339
4 Fax (1) (240) 384-6024
ralph@crag.org
5 chris@crag.org

6 Attorneys for Plaintiffs

7
8 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
9 COUNTY OF HOOD RIVER

10 **HOOD RIVER VALLEY RESIDENTS**) Case No.: _____
COMMITTEE, an Oregon non-profit)
11 corporation, **MIKE MCCARTHY**, an) **PETITION FOR WRIT OF REVIEW**
individual resident of the State of Oregon and)
12 Hood River County,)
)
13)
Petitioners,)
14 vs.)
)
15 **HOOD RIVER COUNTY BOARD OF**)
COMMISSIONERS, an Oregon Municipal)
16 Corporation, and **MT. HOOD MEADOWS**)
OREGON, LTD, an Oregon limited)
17 partnership.)
)
18 Respondents.)
)

19
20 Petitioners Hood River Valley Residents Committee (“HRVRC”) and Mike McCarthy
21 (“McCarthy”) allege:

22 **Parties**

23 1.

24 Respondent Hood River County (the “County”), acting by and through its agents,
25 including the Board of County Commissioners, the County Forester, Kenneth Galloway, the
County Administrator, David Meriwether, and its County Counsels, Teunis Wyers and Will

1 Carey, is a municipal corporation organized under the laws of Oregon. The Board of County
2 Commissioners is the “county court” that is the governing body of the county able to make the
3 decisions or determinations required by ORS 275.335.

4 2.

5 Respondent Mt. Hood Meadows, Oregon, Ltd. (“Meadows”), also known as Mt. Hood
6 Meadows, Oreg., Ltd. is a limited partnership organized under the laws of the State of Oregon.
7 Meadows is the recipient and current owner of County property and County funds that were
8 traded and paid to it respectively pursuant to the land exchange that is the subject of this suit.
9 That land exchange was consummated under ORS 275.335. Meadows is a person who must be
10 joined as a party in this action, because without Meadow’s presence complete relief cannot be
11 accorded among the parties. ORCP 29(A).

12 3.

13 HRVRC is an Oregon non-profit corporation that is also a tax-exempt charitable
14 organization based in Hood River, Oregon. HRVRC has a defined membership that votes to
15 pursue specific policies by and through its formally elected board of directors. HRVRC works in
16 the public interest and is dedicated to the preservation of our unique quality of rural life through
17 public education, monitoring and enforcement of land use laws. HRVRC’s mission is to
18 conserve farm and forest lands, curb urban sprawl, scale development to fit the limits of
19 available natural resources and the costs of public services and to protect wildlife habitat, open
20 space and lands with scenic value. HRVRC and its members participated in hearings before the
21 County’s Board of County Commissioners and Land Use Planning Department, and the
22 proposed transaction injures the substantial interests of HRVRC and its members. HRVRC is
23 harmed because its purpose, mission and goals are thwarted by inadequate consideration of the
24 public interest at stake and by the transfer of forestland to a private interest who has made public
25 its plans to develop the land it receives into a destination resort. Respondent’s failure to adhere

1 to the applicable state law harms the organizational interests of HRVRC, as HRVRC has the
2 protection of Oregon’s farm and forestlands as one of its primary goals. A critical component of
3 this goal, and a goal that serves HRVRC’s greater mission, is ensuring compliance with state
4 laws that affect the use of farm and forestlands. Additionally, the County’s failure to follow
5 proper procedure and to adequately consider whether the exchange is in the public interest
6 negatively affects the ability of HRVRC to attract volunteers, members and funding necessary to
7 support its organization.

8 4.

9 Mike McCarthy (“McCarthy”) is a resident of Hood River County and own property near
10 the land that is the subject of this dispute. As a resident of Hood River County, McCarthy has a
11 substantial interest in the disposition of public money that is being transferred to a private entity
12 as a result of the land exchange, and, as a neighboring landowner, McCarthy has a substantial
13 interest in the use and disposition of County owned property subject to the land exchange.
14 McCarthy protested to the County before it took the final action necessary to effectuate the Land
15 Exchange, and the proposed transaction will injure McCarthy’s substantial interests. McCarthy
16 is likely to suffer from increased conflicts with his farming operations, decreased water quality
17 and harm to the aesthetic values that a small community provides, including an ability to see the
18 night sky and limited traffic. The foreseeable result of the land exchange, the construction of a
19 large scale destination resort, is also likely to adversely effect McCarthy’s ability to provide
20 housing for his workers as well as his ability to continue to be able to conduct his farming
21 operations in a financially sustainable manner.

22 **Background**

23 5.

1 As originally noticed in the Hood River News, the transaction involves the exchange of
2 about 640 acres of land owned by the County (the “County Property”) for about 785 acres of
3 land owned by Meadows (the “MHM Property”) (collectively the “Land Exchange”).

4 6.

5 The County Property and the MHM Property are located in the upper Hood River valley
6 near the Inn at Cooper Spur and the Cooper Spur Ski Area (the “Cooper Spur Area”). Meadows
7 has recently consolidated its land holdings and interests in the area by, among other things,
8 purchasing the land and buildings comprising the Inn at Cooper Spur and obtaining the rights to
9 operate the Cooper Spur Ski Area on the Mt. Hood National Forest.

10 7.

11 On April 13, 2001, Steve Warila, Director of Mountain Operations and Planning at Mt.
12 Hood Meadows, emailed certain maps to Teunis Wyers, Hood River County Counsel, detailing,
13 on information and belief, the locations of the property subject to the Land Exchange.

14 8.

15 On April 16, 2001, at a regularly scheduled meeting of the Hood River County Board of
16 Commissioners, the Commissioners voted to approve a resolution supporting HB 3585, which
17 would change the buffer for allowing destination resorts under existing zoning for the specific
18 purpose of allowing a destination resort in the Cooper Spur Area.

19 9.

20 On May 1, 2001, Kenneth Galloway sent a letter to Meadows stating the County’s
21 interest in either exchanging or purchasing outright about 145.25 acres in Section 20, Township
22 1 South, Range 10 East.

23 10.

24 As of August 20, 2001, the property subject to the Land Exchange included County
25 Property located in Township 1 South, Range 10 East, in Sections 30 and 31, and in Township 1

1 South, Range 9 East, in Section 36 and MHM Property located in Township 1 South, Range 10
2 East, in Sections 19, 20, 21, and 29.

3 11.

4 On August 20, 2001, at a public hearing on the Land Exchange, four out of five members
5 of the Hood River County Board of County Commissioners (the “Commissioners”) tentatively
6 approved the Land Exchange subject to a number of conditions. The public hearing was held
7 and the motion was made by the Commissioners to tentatively approve the transaction subject to
8 a number of conditions without any appraisals as to the value of the MHM Property or the
9 County Property. Specifically, the Commissioners voted to approve the land exchange subject to
10 a clause allowing them to renegotiate or walk away from the transaction if the difference in
11 timber values as determined by a future timber cruise was above \$1.5 million.

12 12.

13 On August 25, 2001, representatives of Meadows, including Dave Riley, met with
14 members of the Mountain Shadows and Snowbird Residential Areas and publicly disclosed
15 Meadows’ plans to develop a destination resort, including 450 housing units, retail shops and
16 village, skating rink, amphitheatre, golf course, and associated developments, in the Cooper Spur
17 Area.

18 13.

19 On August 29, 2001, Meadows and the County entered into a Real Estate Exchange
20 Agreement (the “REEA”). The REEA provides for the exchange of the County Property and the
21 MHM Property subject to further review and approval of an independent appraisal by a timber
22 cruiser, an appraisal by the County assessor and the satisfaction of the conditions in the REEA.
23 The REEA specifically provides that the land appraisal shall exclude the potential development
24 value (the “PDV”) of the property and shall be based solely on the current zoning status of the
25 property.

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14.

At some point on or between August 21, 2001 and November 5, 2001, Bill Alexander Forestry, Inc. completed the timber cruise and determined that the County would receive timber worth approximately \$1.44 million more than the timber received by Meadows (calculated on a direct stumpage value) and \$0.96 million more (calculated on a conversion return value basis).

15.

On September 6, 2001, the County's Chief Appraiser, Duane A. Ely, estimated the real market values of the County Property and the MHM Property at \$325.00 per acre. The value of the 640 acres of bare land owned by the County was reported to be \$207,999.00 and the 785 acres owned by Meadows was reported to be \$255,125.00.

16.

On October 16, 2001, as the result of the assessor's estimation and the timber cruise, the County determined that it would have to pay Meadows approximately \$1,010,855.36 to consummate the Land Exchange.

17.

On November 5, 2001, at a regularly scheduled meeting of the Commissioners, Chair Arens indicated that the County had not yet finalized the land exchange.

18.

On December 4, 2001, the Hood River County Planning Department tentatively approved a property line adjustment requested by Kenneth Galloway of the Hood River County Forestry Department that readjusted and reconfigured the properties subject to the Land Exchange.

19.

On December 20, 2001, Kenneth Galloway sent a letter to David Meriwether, proposing to alter the amount of land subject to the Land Exchange and to adjust the values of the properties subject to the Land Exchange accordingly.

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20.

On January 12, 2002, at a regularly scheduled meeting of the Board of County Commissioners, County Administrator David Meriwether and County Counsel Teunis Wyers confirmed that the Land Exchange would not be complete until the partition was finalized and the closing documents were signed.

21.

On January 22, 2002, on information and belief, at a regularly scheduled meeting of the Board of County Commissioners, a member of the Board of County Commissioners confirmed that the Land Exchange had not been completed

22.

On February 6, 2002, in a letter to Roger Kauble, Hood River County Public Works Director, Kenneth Galloway, indicated that the Commissioners had agreed with all of the final details on the above forest and land exchange.

23.

On February 7, 2002, Eric Walker of the Hood River County Planning Department informed HRVRC and Mr. McCarthy that Hood River County had formally withdrawn their application for a minor partition.

24.

On February 8, 2002, the Hood River County Planning Department tentatively approved the final property line adjustment for the property subject the Land Exchange with the stated purpose of helping the County to replace forest land that was recently lost in a trade with the United States Forest Service.

25.

1 On February 13, 2002, at a regularly scheduled meeting of the Planning Commission,
2 Will Carey, County Counsel, stated that funds for the exchange had not yet been authorized and
3 that the closing had not yet been completed.

4 26.

5 On February 14, 2002, Petitioners submitted a letter to the County urging them to correct
6 deficiencies with the Land Exchange prior to finalizing the exchange and formally completing,
7 authorizing and approving the transfer of land and money and also requested them to stay further
8 action on the Land Exchange.

9 27.

10 On February 22, 2002, Petitioners submitted another letter to the County enclosing a
11 Declaration by Bob Bancroft, a qualified appraiser, in support of Petitioners' request to stay
12 further action on the Land Exchange.

13 28.

14 The County did not formally respond to the Petitioners' February 14, 2002 demand.
15 However, the County, by and through its County Administrator, David Meriwether, indicated in
16 an article published in the Hood River News on March 2, 2002, that the Land Exchange was not
17 final.

18 29.

19 On March 8, 2002, John Arens, Chairman of the Hood River County Board of
20 Commissioners signed a Warranty Deed transferring the County Property to MHM. In the final
21 action necessary to effectuate the Land Exchange and to memorialize that decision in the public
22 record, the deeds were filed and recorded in the County Records office on March 11, 2002 and
23 the County transferred \$1,038,491.93 to MHM to complete the transaction (the "Final Action").

24 **Procedural and Substantive Errors**

25 **First Claim for Relief**

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30.

ORS 275.335(1) requires that the County Court make a judgment that the land subject to the Land Exchange be exchanged for equal value and be in the public interest.

31.

The County did not make a specific judgment that the Land Exchange was for equal value or in the public interest, and thereby violated ORS 275.335.

Second Claim for Relief

32.

Petitioners reallege paragraphs 1-31 above.

33.

ORS 275.335(3) requires the County to develop reports on the value of the properties being exchanged. ORS 275.335(1) requires that the County must provide a hearing in the county courtroom to hear objections to the proposed exchange after the public has had an opportunity to review the reports on the value of the properties.

34.

The County did not have and did not release to the public information regarding the value of the properties to be exchanged prior to the public hearing that was held on August 20, 2001.

35.

The County has violated ORS 275.335(2), because it has not provided a public hearing where the public had an opportunity to comment on the reports documenting the value of the properties to be exchanged. In doing so, the County has fundamentally deprived the public of the opportunity to participate in the determination of whether the Land Exchange is for “equal value” and in the “public interest” as required by ORS 275.335(1).

Third Claim for Relief

36.

1 Petitioners reallege paragraphs 1-35 above.

2 37.

3 ORS 275.100 provides that “[w]henver any county court deems it to be for the best
4 interests of such county to acquire lands by exchange with private persons, firms or corporations,
5 or with the United States of America or any of its agencies, or with the State of Oregon or any of
6 its agencies, such court shall make and enter in its records a resolution declaring its intention to
7 make such exchange and setting a time and place for hearing objections thereto, which time shall
8 be not less than six weeks after the date of the resolution.”

9 38.

10 The County failed to comply with ORS 275.100, because it never set a time and place for
11 hearing objections to its resolution which stated its intention to consummate the Land Exchange
12 or held a hearing on the matter not less than six weeks from making the resolution tentatively
13 approving the Land Exchange.

14 **Fourth Claim for Relief**

15 39.

16 Petitioners reallege paragraphs 1-38 above.

17 40.

18 ORS 275.335(1) requires that the land must be exchanged for **equal value and be in the**
19 **public interest.**

20 41.

21 The County misconstrued ORS 275.335(1) by entering into the REEA and by taking its
22 Final Action to effectuate the Land Exchange, because the County explicitly excluded any
23 consideration of the PDV of the properties in contravention of the requirements set forth in ORS
24 275.335(1).

25 42.

1 In the REAA, the County contractually agreed to ignore the PDV of the properties. ORS
2 275.335(1) requires that the land be exchanged for “equal value.” To make this determination,
3 the County must determine the highest and best use of the land. The determination of the highest
4 and best use of land may require a consideration of the PDV of the subject property. The County
5 and Meadows explicitly agreed to not determine the highest and best use of the land, because the
6 REEA explicitly agreed to not determine the PDV of the land.

7 43.

8 The County’s decision to pay MHM more than \$1 million to complete the Land
9 Exchange is not in the public interest, because the County has failed to properly and accurately
10 determine the fair market value of the properties subject to the Land Exchange and, as a result,
11 whether the Land Exchange is for equal value as required by law.

12 **Fifth Claim for Relief**

13 44.

14 Petitioners reallege paragraphs 1-43 above.

15 45.

16 ORS 275.335(1) requires that the land must be exchanged for **equal value and be in the**
17 **public interest.**

18 46.

19 The County’s decision to enter into the Land Exchange is not supported by substantial
20 evidence, because the County explicitly excluded the PDV of the properties in preparing the
21 reports required by ORS 275.335(3).

22 47.

23 By entering into the REAA, the County contractually agreed to ignore the PDV of the
24 properties. As a result, the county assessor’s estimation of the land value failed to consider the
25 land’s highest and best use and fails to provide any evidence of the land’s true fair market value.

1 The county assessor's valuations failed to comply with standard appraisal practices, and his
2 report does not provide any evidence that the true fair market value of the underlying land, aside
3 from the value of the timber, is \$325.00 per acre.

4 48.

5 The County's decision to pay MHM more than \$1 million to complete the Land
6 Exchange is not in the public interest, because the County has failed to properly and accurately
7 determine the fair market value of the properties subject to the Land Exchange and whether the
8 Land Exchange is for equal value as required by law.

9 49.

10 The County did not have authority to enter into the REEA that specifically prohibited the
11 parties from determining whether the exchange was for "equal value" in light of the County
12 Property's PDV.

13 **Grounds for Writ of Review**

14 50.

15 The County's Final Action was in error, and a writ of review should be permitted under
16 ORS 34.040 for the following reasons:

17 (a) The County failed to follow the proper procedure set forth in ORS
18 275.335 by not making a specific order that the land exchange was for equal value and in
19 the public interest.

20 (b) The County failed to follow the proper procedure set forth in ORS
21 275.335(1), because the County did not provide the public with the results of the reports
22 and the land valuations in advance of the public hearings.

23 (c) The County failed to follow the proper procedure required by ORS
24 275.100, because the County did not set a time and place for holding a hearing, not less
25

1 than six weeks from the date of its resolution tentatively approving the Land Exchange,
2 to take objections to the Land Exchange as required by ORS 275.100.

3 (d) The County misconstrued the requirements of ORS 275.335(1), because
4 the County specifically agreed to exclude consideration of the potential development
5 value of the property and thereby ignored the highest and best of the county property
6 subject to the Land Exchange.

7 (e) The County's decision to enter into the Land Exchange is not supported by
8 substantial evidence, because the County failed to determine whether the Land Exchange
9 is in the public interest and for equal value as required by ORS 275.335(1). By
10 contractually agreeing to exclude the PDV of the properties subject to the Land
11 Exchange, the County fundamentally limited its ability to value the properties consistent
12 with standard appraisal practices and its ability to develop an adequate evidentiary record
13 supporting its decision.

14 51.

15 Neither HRVRC nor McCarthy have a plain, speedy, or adequate remedy other than the
16 writ requested.

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1 THEREFORE, Petitioners respectfully request that the Court order its Clerk to issue a writ of
2 review to the County, commanding the County to return the writ with a certified copy of the
3 record and proceedings in this matter for review by the Court. Further, the Petitioners
4 respectfully request that based on any one of the five separate claims set forth above that the
5 Court:

6 (1) annul the motion passed by the Commissioners on August 20, 2001;

7
8 (2) cancel the REEA for violating state law;

9
10 (3) void and undo the Final Action by either:

11
12 (a) quieting title to the properties subject to the Land Exchange and ordering
13 that Meadows return the \$1,038,491.93 paid by the County to Meadows or;

14
15 (b) ordering that Meadows transfer the County Property back to the County
16 along with the \$1,038,491.93 that was paid to Meadows by the County and that the
17 County transfer the MHM Property back to Meadows.

18
19 In addition, in light of the irreparable consequences if further activity on the property subject the
20 Land Exchange is allowed, Petitioners respectfully request that the Court exercise its discretion
21 under ORS 34.070 to order the County and Meadows to cease and desist from taking any action
22 regarding the Land Exchange or take any action on the property subject to the Land Exchange of
23 any kind whatsoever during the pendency of these proceedings without further permission of the
24 court and consent of the petitioners. Finally, the Petitioners respectfully request that upon this
25 Court's finding that the Petitioners prevail on the merits of any one of the claims set forth above,

