

ADVISORY TO BUYER REGARDING VACANT LAND

Buyers of vacant land have a responsibility to perform their own due diligence in order to ensure their intended use is legally permissible and economically feasible. Land use laws, zoning, and other regulations can change, and Buyers should be sure to find out if any such changes might be enacted in the future that could negatively impact their intended use. This includes checking with the appropriate governmental agencies, departments, and planners and possibly hiring an independent expert. Buyer's Agent is not an expert in water law, zoning, environmental issues, easements, etc., and Buyer should secure independent expert(s) when purchasing vacant land.

This Advisory briefly addresses some of the practical and legal issues that can arise in the purchase of vacant land but is not intended to be a complete summary of all issues, does not constitute legal advice, and should not be relied upon in place of securing legal advice from one or more experts. As a part of your due diligence in deciding to purchase vacant land, you may wish to consider contacting neighbors and local officials to learn about the subject property as well as any neighborhood issues or concerns.

1. VACANT LAND DISCLOSURE ADDENDUM: OREF 019 – Vacant Land Disclosure Addendum (the “Addendum”) is available for sellers to complete and deliver to potential buyers of vacant land. Although Oregon law does not require this Addendum to be used, the OREF 008 – Vacant Land Real Estate Sale Agreement provides that sellers will complete the Addendum and deliver it to all buyers making a written offer of purchase. Unless expressly waived in writing, Buyer will have a right to revoke their offer by giving the seller written notice within five (5) Business Days following Buyer's acknowledgment of delivery of a completed Addendum, as more fully explained in that form. A Buyer's right to revoke their offer is similar to the statutory revocation process available in certain residential real estate transactions. Before making or accepting offers for the purchase of vacant land, buyers and sellers should familiarize themselves with the OREF 008 – Vacant Land Real Estate Sale Agreement and OREF 019 – Vacant Land Disclosure Addendum.

2. BOUNDARIES, ENCROACHMENTS, AND FENCES: Vacant land consisting of acreage may have been surveyed at some point in time. If so, Buyer should review the survey, and if there are any questions or concerns, they should be reviewed by an expert. Encroachments (that is, where other property or structures cross over a boundary line) are not uncommon with large parcels of land. Buyers cannot necessarily rely upon the location of a fence, especially an

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old fence, as representing the legally described boundary line contained in the deed. If in doubt, Buyer should consider having a new survey before finalizing the purchase. Continuous occupancy of land can give rise to certain legal rights to the occupant, so it is important this issue be discussed with the seller and anyone else familiar with the history of the property.

An owner's policy of title insurance does not insure Buyer against legal claims of ownership or use arising from third parties over the lapse of time.

3. ACCESS AND EASEMENTS: Is there legal access into and out of the property to a public road or highway? If the access is privately owned by a third party, is there legal access allowed by an easement or other legal means? Is it in writing, and has it been recorded? Has the easement been surveyed? Is the survey recorded? Sometimes private access roads allow others to use them as well. If so, Buyer should make sure they know the exact location of the easement, it is legally described in writing, and the obligations for sharing the cost of maintenance, repair, insurance, and other related expenses are covered. Buyer should make sure the purpose of the easement is clearly defined, and it is adequate to meet Buyer's intended purpose. Are there any limitations on use of the easement? Does it appear there are any unauthorized users of any private access roads? If so, those unauthorized users could acquire certain legal rights by continuous use over a long period of time.

4. ZONING, ENVIRONMENTAL, CONSERVATION, GOVERNMENTAL LIMITATIONS, DEED RESTRICTIONS, ETC.: Buyers should make sure there are no public or private limitations or restrictions that will interfere with Buyer's intended use of the property. Buyers should verify the zoning, visit the local building department, and review all recorded limitations and use restrictions. This is where an expert land-use consultant can become very important.

5. SOIL CONDITIONS, BURIED UNDERGROUND STORAGE TANKS, CONTAMINATION: Some vacant land can contain fill dirt or debris that will need to be removed, depending upon Buyer's intended use. Prior use of the land is important to know. Are there any potential contaminants, underground storage, or fuel tanks, abandoned or not, located on the property? Have any environmental studies been performed? If not, should one or more studies be made a condition of purchase? Use of a good soils engineering and environmental consulting companies may be appropriate before purchase.

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6. WATER RIGHTS, SOURCES, WELLS: Buyers should not purchase vacant land unless and until they are thoroughly satisfied and aware of all sources of water for irrigation and potable drinking water and the owner has established and properly registered all necessary water rights. If there are one or more wells used for domestic water purposes upon acceptance of an offer to purchase the land, the seller must have the well(s) tested for certain contaminants, such as bacteria, coliform, arsenic, etc. See [ORS 448.271](#) and [ORS 333.061.0325](#). After flow of all operating wells should be tested. Buyers should confirm whether all work to construct, alter, abandon, or convert a well has been properly permitted. [ORS 448.271](#) only applies to wells that have been made operational to supply groundwater for domestic purposes. Capped domestic wells on unimproved lots are not required to be tested; see website at public.health.oregon.gov. For more information, Buyer should check with the Oregon Water Resources Commission and the Water Resources Department. See also [ORS Chapter 537](#) and [OREF 082 – Private Well Addendum](#)

7. FLOODING, DRAINAGE, NATURAL DISASTERS: Does the property lie in a floodplain or floodway? Has Buyer reviewed a floodplain map? Has Buyer spoken to the local jurisdiction regarding any history of flooding? Is the land near a river or other body of water? Have there been any natural or manmade disasters affecting the land, including settling or shifting ground? Is the property located within a drainage district? Are there any drainage easements? Have easements been recorded on the public record? A close review of the preliminary title report will tell Buyer what documents have been recorded on the property. If there is a legal right affecting the use of the property, it should be recorded and appear on the preliminary title report.

8. SPECIAL ASSESSMENT BASED ON USE: Is the property specially assessed due to its current use (for example, farm, forest, or other)? If Buyer intends to continue such use and take benefit of the current tax deferral, they should carefully verify before closing that the property is not in danger of disqualification for the deferral or that Buyer's intended use will not jeopardize its current tax status. Loss of a special assessment status could result in a recapture of the prior deferred taxes.

9. UTILITIES: Are public utility services available, such as sewer, water, electricity, and telephone service? If so, Buyer should determine where all underground utilities are located. If there are any private utilities on the land, how old are they, and what condition are they in? Have repairs ever been necessary,

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and if so, are there any records? Was all work permitted where required? Has a percolation test ever been performed on the property? What about the location and condition of any drain fields, septic, or other sewage systems? Where appropriate, identifying the location, type, and condition/repair of the private utilities should be made a condition of purchase.

10. PRIOR AND EXISTING USE OF THE PROPERTY: What is Buyer's intended use for the property (for example, the raising of crops or cattle)? Has the land ever been put to that use before? If so, has the use ever been changed? Is Buyer's intended use restricted or limited in any way? Is the land located near any industrial or commercial facilities or operations that may have an environmental impact on the property (for example, sound, odor, vibration, or contamination, under or above the ground)? If there are any abandoned structures on the property, will they have to be removed because of prior drug manufacture or for other reasons, such as attractive nuisances for trespassers or children?

11. VERIFICATION OF APPROVED USES: Before purchasing vacant property, Buyer should verify all approved uses. If residential construction is intended, will fire protection be available? Vacant property can be subject to certain land-use laws. Before purchase, Buyer should: (a) check with the appropriate city or county planning department to verify that the property is a lawfully established lot or parcel; (b) verify that the approved uses are consistent with Buyer's intended use; and (c) inquire about the rights of neighboring property owners, if any.

12. ACKNOWLEDGMENT: The undersigned Buyer(s) acknowledge they: (a) have read and understand this Advisory; (b) have been provided with a copy for their own files; and (c) are aware the use of one or more experts is recommended before entering into a binding transaction for the purchase of vacant land.

Buyer _____ Date _____ a.m. p.m. ←
Print Name _____

Buyer _____ Date _____ a.m. p.m. ←
Print Name _____