

VACANT LAND – BUYER ADVISORY

1 *The following Advisory is intended to briefly address some of the practical and legal issues that can arise in the purchase of*
 2 *vacant land. What follows is a summary of a few of the more important issues - however, it is by no means exhaustive. Your real*
 3 *estate agent is not an expert in water law, zoning, environmental issues, easements, etc. and you should secure your own*
 4 *independent expert(s) when purchasing vacant land. Caveat: This Advisory is not intended to be a complete summary of all*
 5 *issues, does not constitute legal advice, and should not be relied upon in lieu of securing legal advice from one or more experts.*

6 **As a part of your due diligence in making a decision to purchase vacant land, you may wish to consider**
 7 **contacting neighbors and local officials in order to learn about the subject property as well as any**
 8 **neighborhood issues or concerns.**

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

17 **2. BOUNDARIES, ENCROACHMENTS AND FENCES:** Vacant land consisting of acreage may have been surveyed at some
 18 point in time. If so, the buyer should review the survey and if there are any questions or concerns, they should be reviewed by an
 19 expert. Encroachments (i.e., where other property or structures cross over a boundary line) are not uncommon with large parcels of
 20 land. Buyers cannot necessarily rely upon the location of a fence (especially an old fence) as representing the legally described
 21 boundary line contained in the deed. If in doubt, the buyer should consider having a new survey before finalizing the purchase.
 22 Continuous occupancy of land can give rise to certain legal rights to the occupant, so it is important that this issue be discussed with
 23 the seller and anyone else familiar with the history of the property. (Note: An owner's policy of title insurance does not insure the
 24 buyer against legal claims of ownership or use arising in third parties over the lapse of time.)

25 **3. ACCESS AND EASEMENTS:** Is there legal access into and out of the property to a public road or highway? If the access is
 26 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
 27 recorded? Has the easement been surveyed? Is the survey recorded? Sometimes private access roads allow others to use them
 28 as well. If so, the buyer should make sure they know the exact location of the easement, that it is legally described in writing, and
 29 that the obligations for sharing the cost of maintenance, repair, insurance and other related expenses are covered. The buyer
 30 should make sure that the purpose of the easement is clearly defined and that it is adequate to meet the buyer's intended purpose.
 31 Are there any limitations on use of the easement? Does it appear that there are any unauthorized users of any private access
 32 roads? If so, those unauthorized users could acquire certain legal rights by continuous use over a long period of time.

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

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

42 **6. WATER RIGHTS, SOURCES, WELLS:** Buyers should not purchase vacant land unless and until they have thoroughly satisfied
 43 themselves that they are aware of all sources of water for irrigation and potable drinking water, and that the owner has established and
 44 properly registered all necessary water rights. If there are one or more wells used for domestic water purposes upon acceptance of an offer
 45 to purchase the land, the seller must have the well(s) tested for certain contaminants, such as bacteria, coliform, arsenic, etc. [See, ORS

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Buyer Initials ____ / ____ Date _____

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46 448.271 (Transfer of Property that includes Well) and OAR 333-061-0325 (as in "Oregon Administrative Rules") (Well Testing)] **ORS**
47 **448.271 only applies to wells that have been made operational to supply groundwater for domestic purposes. Capped domestic wells on**
48 **unimproved lots are not required to be tested. (See website at public.health.oregon.gov).** Water flow of all operating wells should be tested.
49 Buyers should confirm whether all work to construct, alter, abandon or convert a well has been properly permitted. For more information,
50 buyers should check with the Oregon Water Resources Commission and the Water Resources Department. (See also, ORS Chapter 537.)

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

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

61 **9. UTILITIES:** Are public utility services available, such as sewer, water, electricity, and telephone service? If so, the buyer should
62 determine where all underground utilities are located. If there are any private utilities on the land, how old are they, and what condition are
63 they in? Have repairs ever been necessary, and if so, are there any records? Was all work permitted where required? Has a percolation
64 test ever been performed on the property? What about the location and condition of any drainfields, septic or other sewage systems?
65 Where appropriate, identifying the location, type and condition/repair of the private utilities should be made a condition of purchase.

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

72 **11. VERIFICATION OF APPROVED USES:** Prior to purchasing vacant property, buyers should verify all approved uses. If
73 residential construction is intended, will fire protection be available? Vacant property can be subject to certain land use laws. Prior
74 to purchase buyers should: (a) Check with the appropriate city or county planning department to verify that the property is a lawfully
75 established lot or parcel; (b) Verify that the approved uses are consistent with buyer's intended use; and (c) Inquire about the rights
76 of neighboring property owners, if any.

77 **12. CONCLUSION.** Buyers of vacant land have a responsibility to perform their own due diligence in order to ensure that their intended
78 use is legally permissible and economically feasible. Land use laws, zoning and other regulations can change, and buyers should be sure
79 to find out if any such changes might be enacted in the future that could negatively impact their intended use. This includes checking with
80 the appropriate governmental agencies, departments, and planners, and possibly hiring an independent expert.

81 ACKNOWLEDGEMENT

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

85 Buyer _____ Date _____ ← Buyer _____ Date _____ ←

86 Buyer's Agent _____ Buyer's Agent's Firm _____

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