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# *APPEAL APPLICATION*

**FEE:** $250

**EVERY NOTICE OF APPEAL SHALL INCLUDE:**

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

**It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.**

**Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.**

Appellant's Name (print): Annunziata Gould Phone: (541) 420-3325

Mailing Address: 19845 J W Brown Rd. City/State/Zip: Bend, OR 97703

Land Use Application Being Appealed: 247-21-000537-SP, Central Land and Cattle Company, LLC Kameron Delashmutt

Property Description: Township_____ Range_____ Section_____ Tax Lot_____ See Exhibit A.

Appellant's Signature: Annunziata Gould

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A $5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE *DE NOVO* HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

(over)

Appellant's attorney is Jeffrey L. Kleinman,
1207 SW 6th Av., Portland, OR 97204.

# EXHIBIT A

Map and Tax Lots: 7700, 7800 Assessor's Map 15-12-00

**NOTICE OF APPEAL**

PLEASE SEE EXHIBIT B, ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

(This page may be photocopied if additional space is needed.)

**EXHIBIT B–STATEMENT OF REASONS FOR APPEAL OF ANNUNZIATA GOULD**

***As a preliminary matter, appellant hereby requests a de novo hearing of this appeal before the county's land use hearing officer.***

**Statement of Reasons**

**1.** The original tentative plan and site plan for this subphase ("Phase A-1") of the Thornburgh Resort remain under review. The proposed site plan herein is inextricably linked to the above Phase A-1 application. It is entirely dependent upon the ultimate outcome of the proceedings in question and cannot be adjudicated now.

Specifically, the county's approval of Phase A-1 in File Nos. 247-18-000386-TP, 247-18-000454-SP, and 247-18-000592-MA, Order No. 2018-073, was returned to the county on remand from LUBA in LUBA No. 2018-140. Following remand, it was decided by the county hearings officer under File No. 247-21-000731-A. That decision was appealed to the board of commissioners, who declined to hear the appeal. A further appeal is now pending before LUBA in LUBA No. 2021-109.

The proposed welcome center, gatehouse, clubhouse, and community hall (collectively, "structures") are proposed to be situated on farmland and cannot be approved independently of a destination resort and its approved master plan. A freestanding recreational development would be impermissible. Until the issues

pending in the new LUBA appeal are fully resolved and there is a finally approved phase or subphase of the resort of which the structures are a part, the proposed site plan cannot be approved.

Proceeding any earlier would effect a substantial change in the CMP and FMP. Under DCC 18.113.080, the development of the structures on lots created or existing outside the framework of any phase or "subphase" of the resort, especially on EFU land, would be a substantial change to the approved Conceptual Master Plan and must "be reviewed in the same manner as the original CMP."

**2.** To the extent that subdivision or partitioning is proposed here, the application cannot be approved. Under DCC 17.04.02, "[n]o person may subdivide or partition land within the County except in accordance with ORS 92 and the provisions of DCC Title 17." Under ORS 92.012, "[n]o land may be subdivided or partitioned except in accordance with ORS 92.010 to 92.192."

At the end of July 2021, two parcels/lots were conveyed by deed out of one of the existing lots without partitioning or any other required process. The county is obligated to verify lot of record status for EFU lands prior to the issuance of any land use permit. DCC 22.24.040. The requested land use permit for the structures has not been issued. The county lacks authority under DCC 22.24.040 to issue a land use permit for any parcel of EFU land that is not a lot of record at the time the permit is issued. The county further lacks authority under DCC 22.20.15(A) to

make any land use decision for a property that is in violation of applicable land use regulations. Thornburgh's effort to correct its ostensible mistake does not cure anything. The land use permit for the subject EFU land requested herein must be denied.

**3.** The applicant has failed to meet its burden of proving compliance with FMP Conditions 10 and 38, regarding its OWRD permit and its obtaining the required water for mitigation, for this subphase of the resort. The needed extension of the OWRD permit to withdraw ground water is subject to a challenge under the Oregon Administrative Procedures Act which remains unresolved.

The record will also show that Thornburgh does not in fact possess and may not in the future possess "water from Big Falls Ranch to mitigate for water quantity and quality impacts of the golf course and lake development proposed under this application as well as for the development approved under the Phase A-1 tentative plan." In any event, Thornburgh has not met its burden of proof in this regard.

FMP Condition 38 provides:

> **38.** The applicant shall abide by the April 2008 Wildlife Mitigation Plan, the August 2008 Supplement, and agreements with the BLM and ODFW for management of off-site mitigation efforts. Consistent with the plan, the applicant shall submit an annual report to the county detailing mitigation activities that have occurred over the previous year. The mitigation measures include removal of existing wells on the subject property and coordination with ODFW to model stream temperatures in Whychus Creek.

The applicant has not met its burden of proving that it has abided by the

April 2008 Wildlife Mitigation Plan, the August 2008 Supplement, and agreements with the BLM and ODFW for management of off-site mitigation efforts. This is most particularly a result of (1) the absence of a useable state water right permit (OWRD Permit G-17036), the extension of which is the subject of a contested case proceeding, and (2) Thornburgh's failure to prove up an enforceable contract to procure Big Falls Ranch (BFR) water, and to prove that BFR's transfer of its surface water rights in Deep Canyon Creek to ground water on its ranch has been effectively reversed; that those rights have in fact been transferred to surface water; and that the cold surface water in question has been permanently placed instream in the creek as required.

We would note here that the "August 2008 Supplement" to the Wildlife Mitigation Plan *is* in fact the "Thornburgh Resort Fish and Wildlife Mitigation Plan Addendum Relating to Potential Impacts of Ground Water Withdrawals On Fish Habitat," dated April 21, 2008. This is the document setting out Thornburgh's agreement with ODFW as to preservation of anadromous fish habitat, including the above requirement to place the right to the cold spring water in Deep Canyon Creek permanently instream. Thus, Condition 10 is not the only one setting out the obligations in question.

In light of Thornburgh's failure to maintain the required source of water for

its quasi-municipal use; its failure to comply with its obligations under the FWMP; and its four recently filed applications with OWRD showing its intent to source water from elsewhere, with different ensuing impacts upon fish and wildlife resources, there has in fact been a "substantial change from the approved FMP." Thus, Condition 38 is not met and a new master plan application is indeed required.

**4.** Relatedly, the decision is in error in not conditioning issuance of building permits upon a demonstration of full compliance with Conditions 10 and 38, with the necessary final, fully useable OWRD permit in hand, and an unequivocal showing that the necessary mitigation water has been obtained; that it is available in sufficient quality and quantity; and that it can now be permanently placed instream in Deep Canyon Creek. Further, based upon the record regarding this resort, the review of any such showing will entail the exercise of discretion and must allow for public participation.

**5.** The applicant is not in compliance with the portion of FMP Condition 28 relating to implementation of the mitigation plan developed in consultation with ODFW "throughout the life of the resort." At the present time, Thornburgh is not in compliance.

**6.** The applicant has not yet demonstrated compliance with requirements for use of the proposed access road over property owned by BLM.