

## Friends of Kelly Creek, LLC

Thomas Eubanks  
Managing Member  
Friends of Kelly Creek (FOKC)  
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VIA EMAIL

David Anderson  
(danderson@schwabe.com)  
Schwabe, Williamson & Wyatt  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204

Brian Chenoweth  
(bdc@chenowethlaw.com)  
Chenoweth Law Group  
610 SW Fifth Avenue, 4th Floor  
Portland, OR 97204

Re: Legal Invalidity of the Contract to Purchase the Salquist Road Property from the  
Gresham-Barlow School District

CC (via email):

Kim McFeron – kim.mcferon@fnf.com (Fidelity National Title Company of Oregon)

John Koch – koch@gresham.k12.or.us (Interim Superintendent, Gresham-Barlow School District)

Kris Howatt – howatt3@gresham.k12.or.us (Board Chair, Gresham-Barlow School District)

Elliott R. Field – efield@ghrlawyers.com (District Counsel)

Dear Mr. Anderson and Mr. Chenoweth,

On behalf of Friends of Kelly Creek (FOKC), I am writing to formally place your clients, HEX Investments LLC and John L. Scott Real Estate of Sandy, OR, on notice of serious legal defects surrounding the attempted sale of the Salquist Road property by the Gresham-Barlow School District. This letter outlines FOKC's position that the contract is void, warns of the legal risks inherent in relying on an unlawful transaction, and reiterates our public records and preservation demands regarding communications related to the property.

#### I. The Contract Is Void for Violating Oregon Law and Public Policy

FOKC believes the contract between the Gresham-Barlow School District and HEX Investments LLC is void ab initio based on multiple violations of Oregon law, local policy, and constitutional provisions:

1. ORS 332.155 clearly states that the District's Board may sell property only after it determines the property is no longer needed for school purposes. The Board has not made this determination.

2. Under District Policy DN, the Board must formally designate a property as surplus before it may be sold. That policy was not followed, and no such Board action was taken with respect to the Salquist property. In the September 4, 2024 Board meeting, the Board refused to vote to surplus the property, which prompted the District to terminate the sale (as confirmed in the District's letter dated October 10, 2024).

3. The termination letter was rescinded in an email from District legal counsel Elliott R. Field on October 29, 2024, despite the Board's prior decision not to proceed with the sale. This action occurred without Board approval, in direct contradiction to their public position, and without legal authority.

4. District policy DN also incorporates state procedures for the sale of District assets. For land sales this invokes ORS Title 25, Chapter 270. No compliance with the required appraisal, notice, or competitive process occurred. A sale of public land without these elements is unlawful.

5. Finally, the proposed transaction appears to violate Oregon Constitution Article XI, Section 9, which prohibits public bodies from lending public credit for the benefit of private entities. Based on your clients' own claims of expected profits — \$12 million for HEX and \$2.9 million for John L. Scott, Sandy — the transaction constitutes a transfer of public wealth to private parties without adequate public return. That is precisely the kind of public-to-private subsidization prohibited by the Constitution.

## II. Caveat Emptor: Buyer Beware

As a private developer, HEX Investments should have been fully aware that public land transactions are subject to heightened legal scrutiny, procedural safeguards, and constitutional limitations. If HEX was not informed of these factors, its real estate agents should have advised them accordingly. If not, the title company involved — Fidelity National Title — had an obligation to recognize the legal context of the transaction.

FOKC supports fair compensation for legitimate expenses incurred by HEX during due diligence. However, any claim for lost profits arising from an unlawful and unenforceable contract has no legal basis. No private party is entitled to recover lost speculative profits based on an agreement that was never validly authorized or executed under Oregon law.

### III. Public Records Request and Preservation Notice

FOKC has submitted a public records request to the Gresham-Barlow School District regarding communications between its real estate representatives and external parties, including your clients.

We hereby formally request that you instruct your clients to:

- Preserve all communications — emails, texts, letters, or internal notes — relating to the Salquist Road property from January 1, 2022, to the present.

This includes, but is not limited to, communications involving:

- Employees of Gresham-Barlow School District
- KMO Real Estate — Sue O'Halloran, Darren O'Halloran
- John L. Scott Real Estate agents and brokers
- Developers, surveyors, and other third parties
- Board members, past, elected or interim
- Fidelity National Title Company and any escrow agents

Destruction or alteration of these materials may constitute spoliation of evidence in future proceedings.

FOKC remains committed to lawful and transparent public land use in Gresham and the protection of school district assets from unlawful transfers. If your clients proceed with this transaction, they do so at serious legal risk, including civil action for injunctive and declaratory relief.

Thank you for your immediate attention to these matters.

Sincerely,

Thomas Eubanks

Managing Member

Friends of Kelly Creek (FOKC)