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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JOSEPHINE COUNTY
5

6 In the Matter of the Petition of, Darin J. Fowler,)
7 Daniel E. DeYoung, and Lily N. Morgan, as the) Case No.
8 Board of Josephine County Commissioners,) **PETITION FOR VALIDATION (ORS**
9 For a Judicial Examination and Judgment of the) **33.710(2)**
10 Court as to the Validity of Resolution 2020-039) ORAL ARGUMENT REQUESTED
11 Titled: In the Matter of Establishing an Accurate)
12 Hazard Level While Awaiting a Coronavirus)
13 Cure)

14 **PETITION**

15 1.

16 The Court has jurisdiction over this action pursuant to ORS 28.010 and ORS 33.710(2).

17 2.

18 Venue is proper under ORS 14.050 because the cause of this petition, or some part
19 thereof, arose in Josephine County.

20 3.

21 Petitioners are the governing body of Josephine County ("County"), which is a local
22 government entity organized and existing under the laws of the State of Oregon. Petitioners
23 have been duly elected, sworn and qualified, and are now acting as the Board of Josephine
24 County Commissioners (the Board) as of the date of the filing of this petition.

25 4.
26

1 This Petition is filed pursuant to the provisions of Oregon Revised Statutes 33.710 and
2 33.720 for a judicial determination as to the validity of the authority of the Board to enact
3 Resolution 2020-039: In the Matter of Establishing an Accurate Hazard Level While Awaiting a
4 Coronavirus Cure, the validity of the Resolution itself, and the regularity and legality of the
5 actions of the Board in so doing.

6 5.

7 In response to the Coronavirus and in reliance upon statute, the governor of Oregon
8 has passed a series of executive orders that severely limit the movements and activities of
9 persons and entities within Josephine County.

10 6.

11 Petitioners intend for Resolution 2020-039 be available for use by all persons and
12 entities within Josephine County as prima facia evidence of good faith compliance with
13 relevant state and local laws and rules, including administrative rules, while engaging in
14 activities that are inconsistent with executive orders related to the Coronavirus. Petitioners
15 further intend for Resolution 2020-039 to constitute prima facia evidence that in Josephine
16 County the hazard posed by the Coronavirus is one of low risk, and that reasonable
17 precautions taken by persons and entities constitute good faith efforts to minimize the virus's
18 spread.

19 WHEREFORE, Pursuant to ORS 33.710 and ORS 33.720, Petitioners now pray for the
20 Order of this Court:

- 21 1. Fixing a time and place for a hearing on this Petition.
- 22 2. Directing the publication of a notice in Josephine County, Oregon, to all interested
23 persons, such notice to be served on all parties in interest by publication of such notice at least
24 once a week for three (3) successive weeks in a newspaper of general circulation published in
25 Josephine County where these proceedings are pending. The jurisdiction of this Court shall be
26 complete within ten (10) days after the date of completing publication of such notice.

1 3. That any persons interested may at any time before the expiration of the ten (10)
2 days appear and contest the validity of these proceedings and the actions set forth herein.

3 4. Requiring that this proceeding be tried forthwith and judgment rendered as
4 expeditiously as possible, declaring that the following actions of the Board are proper and
5 valid, and that such actions do not constitute any error and that the Board acted within its
6 authority in so doing:

7 A. In Resolving that, subject to the rules of evidence and any other rules the
8 court deems relevant, certified true copies of Resolution 2020-039 may be tendered to any
9 court or tribunal, including proceedings before administrative bodies, as prima facia evidence
10 of good faith compliance with relevant state and local laws and rules, including administrative
11 rules, while engaging in activities that are inconsistent with executive orders related to the
12 Coronavirus.

13 B. In Resolving that persons and entities, including medical providers, within
14 Josephine County are not subject to findings of negligence-per-se on the sole basis of having
15 engaged in activities that are inconsistent with executive orders related to the Coronavirus.

16 C. In Resolving that in Josephine County, the hazard posed by the Coronavirus
17 is one of low risk, and that reasonable precautions taken by persons and entities to minimize
18 the virus's spread constitute good faith efforts regardless of whether such precautions are
19 consistent with executive orders related to the Coronavirus.

20
21 DATED this _____ day of November, 2020.

22 _____
23 M. Wally Hicks, OSB #080809
24 Josephine County Legal Counsel
25 *whicks@josephinecounty.gov*