

JEFFERSON COUNTY
Community Development Department

85 S.E. "D" St. • Madras, Oregon 97741 • Ph: (541) 475-4462 • FAX: (541) 475-4270



Planning Commission Staff Report Casefile 23-A-01
(Appeal of Decision – CDD File 23-MP-02)
Staff Report 3 - Hearing Date: November 21, 2023

Appellant's Name: 1) Jason Eckhoff on behalf of DPP-VJE, LLC;
2) Michael Metke, M.D. successor trustee of the John Patrick and Ursula R. Metke Irrevocable Trust;
3) L. Paden Prichard trustee of the Prichard Joint Trust.

Appellant's Agent: David C. Allen, Attorney at Law

Appeal Date: August 21, 2023

Basis for Appeal: Appeal statements attached as Exhibit A, B and C.

23-MP-02 decision: August 3, 2023

Appeal due date: Prior to 5:00pm on August 21, 2023

Applicant: Brad and Shellie Souza, Co-Trustees
Bradley Emile Souza and Shellie Ann Souza Revocable Trust
PO Box 412
Camp Sherman, OR 97730

Applicant's Agent: Stephanie Marshall
Bennu Law, LLC
147 NE Alpenview Lane
Bend, OR 97701

Request: The applicant/owner is applying for a land partition which creates three lots.

Map: 13-09-16A-700

Applicable criteria: Jefferson County Zoning Ordinance (JCZO) Section 907 for casefile 23-A-01 and the applicable criteria found in 23-MP-02 in JCZO Sections 321, 343, 401, 409, 426, 703.1, 703.2, 704.5, 705.1 and 707.

Exhibit Y

From Stephanie Marshall – Bennu Law - received – during hearing 10/26/23
4 page letter, Title Insurance information, and three maps.

General staff summary of Exhibit Y: Stephanie E Marshall – Bennu Law – Applicant’s written rebuttal to items in the record and supporting information showing the applicant has met the requirements for the application.

Finding 1: Staff finds that per the applicants request Exhibit Y is entered into the record.

Exhibit Z

From David Allen - received – during hearing 10/26/23
Copy of the Partition Plat MJP-85-6.

General staff summary of Exhibit Z: David Allen submitted Exhibit Z into the record and shared questions the appellants have about Metke Lane.

Finding 2: Staff finds that per the appellants representative Exhibit Z is entered into the record.

Exhibit AA

From staff - email with information about a portion of Metke Lane sent/received – 11/1/2023
General staff summary of Exhibit AA: David Allen submitted Exhibit Z into the record and shared questions the appellants have about Metke Lane. Exhibit AA is a response from staff answering questions from the appellant and also at the request of the Planning Commission.

Finding 3: Staff finds that Exhibit AA is entered into the record.

Exhibit BB

From Stephanie Marshall (Part 1 of 2 emails) – Bennu Law - received – 11/2/23
Email plus 4-page letter with applicant Exhibit 1 (Copy of Exhibit AA).
General staff summary of Exhibit BB: Stephanie E Marshall – Bennu Law – Applicant’s written rebuttal to items in the record and supporting information showing the applicant has met the requirements for the application.

Finding 4: Staff finds that Exhibit BB is entered into the record.

Exhibit CC

From Stephanie Marshall (Part 2 of 2 emails) – Bennu Law - received – 11/2/23
Email plus applicant Exhibit 2, 3, 4 and 5.
General staff summary of Exhibit CC: Stephanie E Marshall – Bennu Law – Applicant’s written rebuttal to items in the record and supporting information showing the applicant has met the requirements for the application.

Finding 5: Staff finds that Exhibit CC is entered into the record.

Planning Commission request for USFS participation in the hearing.

Finding 6: Staff finds that access via Tamarack Lane is under the jurisdiction of the USFS. As such, staff finds any use of the forest service road would require a land owner to contact the forest service about questions pertaining to use of the road. Staff further finds that the applicant has established access via Metke Lane, thereby making a discussion about access via Tamarack Road not being needed or required based on review of the Jefferson County Zoning Ordinance.

Potential Planning Commission motions:

- 1.) I make a motion to **deny** the Appeal request from the appellants based on the staff report, application and all evidence entered into the record appearing to support the staff decision approving the partition as found in casefile 23-MP-02 and as the record shows with this file 23-A-01.

- 2.) I make a motion to **affirm** the Appeal request from the appellants based on the staff report, application and all evidence entered into the record appearing to not show adequate evidence supporting approval of the partition based on criteria as found in casefile 23-MP-02. More specifically for the following reasons:

Respectfully submitted,



Phil Stenbeck, Planning Director

11/14/23

Date

C: Exhibits Y through CC attached

File 23-A-01

Planning Commission Staff Report 3 - Exhibits Y-EE (November 21, 2023 meeting)
Planning Commission Staff Report 2 (Exhibits E through X) (October 26, 2023 meeting)
Planning Commission Staff Report 1 (Exhibits A, B, C, and D)

Exhibit Y

From Stephanie Marshall – Bennu Law - received – during hearing 10/26/23
4 page letter, Title Insurance information, and three maps.

Exhibit Z

From David Allen - received – during hearing 10/26/23
Copy of the Partition Plat MJP-85-6.

Exhibit AA

From staff – email with information about a portion of Metke Lane sent/received – 11/1/2023

Exhibit BB

From Stephanie Marshall (Part 1 of 2 emails) – Bennu Law - received – 11/2/23
Email plus 4-page letter with applicant Exhibit 1 (Copy of Exhibit AA).

Exhibit CC

From Stephanie Marshall (Part 2 of 2 emails) – Bennu Law - received – 11/2/23
Email plus applicant Exhibit 2, 3, 4 and 5.

Exhibit Y

**From Stephanie Marshall – Bennu Law - received – during hearing 10/26/23
4 page letter, Title Insurance information, and three maps.**



BENNU LAW

EXHIBIT Y



October 26, 2023

Jefferson County Planning Commission
c/o Jefferson County Community Development Department
85 S.E. "D" Street
Madras, OR 97741

VIA EMAIL

re: Applicant's Second Submitted Statement in Support of Tentative Partition Plan Approval, Casefile 23-MP-02

Applicants: Brad and Shellie Souza, Co-Trustees of the Bradley Emile Souza and Shellie Ann Souza Revocable Trust

Appellants: DPP-VJE, L.L.C; Prichard Joint Trust; and John Patrick and Ursula R. Metke Irrevocable Trust

Dear Planning Commissioners:

The Applicant, Brad and Shellie Souza,¹ respectfully submit this letter and attachments for the Planning Commission's consideration at the continued hearing on October 26, 2023 for the referenced appeals. We request that this letter be entered into the record and considered by the Planning Commissioners in your decision on the pending appeal. For the reasons set forth herein and as demonstrated in the Applicant's prior submissions and in testimony, we request that the Planning Commission: (a) affirm the Staff Decision in Casefile 23-MP-02 approving the proposed tentative partition plan approval with nine (9) conditions; and (b) deny the appeal filed by the appellants referenced above. The proposed partition meets all applicable criteria as conditioned and is consistent with the Jefferson County Comprehensive Plan.

A. Title Report and Revised Tentative Plan

Enclosed herewith is a copy of a Title Insurance Policy for the subject Property, to be included in the record. At the hearing today, we will also bring three (3) oversized drawings for submission in the record. These include: (a) a revised Tentative Plan, which shows a corrected location of a culvert on Metke Lane² for N. Fork Lake Creek; (b) a map of N.E. ¼ Sec. 16 T. 13S R.9E W.M. in Jefferson County which evidences the location of TL 700 (proposed to be partitioned), TL 2100 to the west, TL 800 and 900 to the west of proposed Parcel 3; and (c) a map of N.E. ¼ N.E. ¼ Sec. 16 T. 13S R.9E W.M. in Jefferson County which evidences the location of all properties, roads and tax lots east of Metke Lane between

¹ Mr. and Mrs. Souza are co-trustees of the Bradley Emile Souza and Shellie Ann Souza Revocable Trust, in which name the Property is owned.

² Note that "Metke Lane" is inadvertently referred to as "Metke Road" on the oversized exhibits.

Metke Lane and Camp Sherman Road. Please note two minor corrections to the Tentative Plan concerning the width of Metke Lane, which has been confirmed as 30-foot wide along its entire north-south length, referencing dedication no. 8620077-83, and a slight revision to the overall acreage of TL 700 made after the Applicant's surveyor located pins at the north and south terminus of Metke Lane.

Clint Ward of Ward Surveying, LLC, the Applicant's surveyor, will testify at the hearing today regarding the methodology and instruments used to create the Tentative Plan, records reviewed, and his professional conclusions regarding the discrepancy in tax lot size between the survey and Jefferson County records. Mr. Ward will testify regarding the accuracy of the surveying software he used to create the Partition Plat, the fact that the course measurements are the same, and that the difference in overall acreage could be due to the fact that older measurements were not made with current technology. Mr. Ward will also testify that he requested another surveyor to review and confirm his work and that he is confident in his measurements. With respect to the proposed driveways to Parcels 2 and 3, the width is shown as 15 feet. The location, degree of course and approximate grade will be confirmed at the time Jefferson County reviews future development application(s), if any, for Parcels 2 and/or 3. The Applicant is not a developer, nor does he have any intent of developing Parcels 2 and/or 3.

B. Metke Lane is a Public Road

As the Planning Commission recalls, the Appellants' arguments are focused on alleged deficiencies of Metke Lane. The Applicant correctly pointed out in argument at the last hearing that the Planning Commission does not have authority to find that Metke Lane is not a public road in this quasi-judicial proceeding or to determine that the legal status of this public road differs from that which is set forth in the Jefferson County Transportation Plan or the County's road system. Appellants' arguments call into question the conclusions of the Jefferson County Public Works Director and they do not offer any substantial evidence to support their allegations. While Appellants are correct that the burden of proof is on the Applicant to support the application for Tentative Plan approval, the Appellants must present evidence on which a reasonable fact-finder could rely (not mere supposition, assumptions and conjecture)³, for the Planning Commission to reach any conclusions that differ from those of staff in approving the Tentative Plan. Appellants have not introduced any independent survey or expert opinion to support their challenge to the conclusions of the Jefferson County Public Works Director.

It is important for the Planning Commission to understand that any finding that affects the use or status of Metke Lane would affect the rights of the public as a whole, and not just the Applicant. Appellants cannot use this quasi-judicial land use process to obtain any relief concerning the public road. Allegations that Metke Lane was not properly dedicated or that the traveled way deviates from the dedicated right-of-way⁴ cannot be resolved by the Planning Commission, but may be raised in a separate court proceeding and/or by the Board of County Commissioners if a petition for road vacation is filed. The applicable criterion is whether the Applicant has demonstrated access from a public road. It is a yes or no question. The Applicant has met this criterion and the County Public Works Director concurs.

C. Access from Metke Lane

Minimum Access Requirements are set forth in JCZO Section 401.1:

Evidence of legal access providing physical ingress and egress that meets the emergency vehicle access standards of Section 426.2(E) is required prior to issuance of building or septic permits. Access shall be provided by one of the following means:

- A. A driveway connecting via direct parcel frontage to a public road, a nonconforming private road or private road in a destination resort, a Bureau of Land Management (BLM) road or U.S. Forest Service (USFS) road.*

³ Appellants offer nothing but a call for speculation and conjecture, which is not evidence on which the Planning Commission may rely. See *Cusma v. City of Oregon City*, 92 Or. App. 1, 7, 757 P.2d 433 (1988); JCZO Section 105(B).

⁴ One of the Appellants testified that they could place a fence on their property boundary to block ingress and egress along Metke Lane. Such an action would likely constitute an actionable "spite fence," subjecting that property owner to an award of damages against them.

B. A recorded, exclusive easement for ingress and egress.

We understand that Matt Powlinson, Jefferson County Public Works Director, will be testifying at today's hearing. He will confirm his findings – which have not been refuted with evidence – that the proposed parcels will have frontage on and access from a public road in compliance with Section 401.1. CDD follows the Public Works Director's direction on this issue. Appellants have not produced any expert to challenge the findings made by Mr. Powlinson. While they obviously dislike the idea of any additional traffic on Metke Lane, that is not a legal basis for denial of the application. To the extent Appellants argue that Metke Lane should not be considered a local access road under ORS 368.031, that argument is misplaced in these proceedings. Any change to the status or classification of Metke Lane will affect the public as a whole and is beyond the authority of the Planning Commission. Under Federal, State and Jefferson County Codes, the public has the right to unrestricted use of the SW Metke Lane right-of-way.

The following excerpt from a July 12, 2023 email from Mr. Powlison to Mr. Souza, which is in the record, should be considered:

All of SW Metke Ln located within T13S, R09E, Section 16, NE ¼ of the NE ¼ is located either on a public right of way or has a dedication to the public of record at the office of the Jefferson County Clerk.

The portion of the alignment located along the southerly edge of The Pines subdivision is dedicated on the subdivision plat.

The portions of the alignment located on the private parcels each have a declaration of dedication. The road has not been adopted into the County, State, or Federal road systems. This makes SW Metke Lane a local access road as defined in Oregon Revised Statute Chapter 368, section .001(3)&(5). The County jurisdiction over local access road is stated in ORS 368.031. There is a private access and utility easement on 13-09-16-A-600 that is a 30'x30' easement described as an exclusive private easement not a public dedication.

Chapter 12 of the Jefferson County Codes establishes the local standards for the regulation and use of public roads. Under Federal, State and Jefferson County Codes the general public has the right to un-restricted use of the SW Metke Lane right-of-way.

(emphasis added). Since the hearing two weeks ago, Mr. Powlison has given a report to Planning Director Phil Stenbeck from the former County Engineer, Rich Black, which report details the history and creation of SW Metke Lane in detail. This report should also be included in the record. Because the general public has the right to unrestricted use of SW Metke Lane, there is no basis on which the Planning Commission can deny the partition application on the basis of access.

Recognizing the unrestricted use of SW Metke Lane (whether by future owners of two new lots created by the partition, any other property owner, or the general public) cannot be precluded by the Planning Commission for the purposes of denying the Souzas' application. Even if appellants had viable claims for "trespass" or "violation of ORS 368.106," as an "ineffective" dedication, the proper forum in which to determine appellants' rights vis-à-vis the public with respect to SW Metke Lane is in court. Such determinations cannot be made by the Planning Commission in the context of a quasi-judicial land use application and the Planning Commission lacks the jurisdiction to do so. JCZO Section 903.5; see also ORS 201.020 and ORS 215.030.

No development is proposed; no construction will occur as a result of land partitioning. If there was any evidence to support a determination that construction traffic at some future date resulting from approval of the partition (keeping in mind the fact that *any other property owner in the area could engage in construction-related activities on their properties and could not be restricted from using SW Metke Lane* because it is a public road), the Planning Commission could consider a narrowly-

tailored condition of approval. Any condition of approval would have to have a nexus to and be roughly proportionate to proven, established impacts of applicant's partition.⁵ JCZO 905.1.

D. WILDLIFE

The Applicant incorporates their arguments presented at the prior hearing on the issue of wildlife. It is important to reiterate that the Appellants' claim that "alternative access" to proposed Parcels 2 and 3 could be made via creation of a new road or driveway over the Applicant's property cannot and will not satisfy the requirements of JCZO Section 321 (Wildlife Overlay Zone). It is impossible to site a dwelling on either parcel within 300 feet of a public road that was in existence in 1992. Appellants are well aware of this result, yet they have nonetheless put forth this "alternative," knowing it could never be required, let alone approved.

It makes no sense for the Appellants to raise wildlife concerns, yet at the same time, ask the Planning Commission to ignore the long-time existence of a public road from which access would have minimal disruption to wildlife. The Appellants' apparent desire to transform a public road to a private drive is the motivating factor for the proposed "alternative." Even if it could be permitted, which it cannot, it would be absurd for the Planning Commission to rule that removal of vast swaths of trees, another culvert/creek crossing and significant loss of habitat is preferable to access from a public road, across from which are several other dwellings owned by the Appellants.

E. CONCLUSION

The Applicant is entitled to use and enjoy their Property to the extent allowable under local and state law. Appellants do not have the right to demand that property be left in large tracts for their enjoyment, or to object to use of a public road by any future owner of lots partitioned from the Applicant's property. If Appellants object to creation of new lots in the vicinity and wish to preserve large swaths of land, they have every right to ask the Board of County Commissioners to change the zoning laws and minimum lot sizes in the area. The Planning Commission's authority is granted and constrained by JCZO 903.5. It does not extend to second-guessing the Public Works Director's determination that Metke Lane is a public road, or whether division of property in compliance with minimum lot sizes and other standards should not be approved because neighbors prefer the current, undisturbed nature of the area.


Thank you once again for considering this application. We will be available to answer any questions for the Planning Commission at the hearing today. We again request that the Planning Commission affirm staff's approval of the proposed tentative partition plan application and to deny the appeal. To the extent the Planning Commission finds that compliance with any criterion may be met with a revised or additional condition of approval, denial is inappropriate.

Sincerely,

/s/ Stephanie Marshall

Stephanie E. Marshall
cc: clients

⁵ Evidence in the record must be such that a reasonable person would conclude that considering the impacts of the proposed development, there is a need for the condition to further a legitimate planning purpose. See *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258, 263 (1991); *Olson Memorial Clinic v. Clackamas County*, 21 Or LUBA 418, 421-22 (1991); *Sellwood Harbor Condo Assoc. v. City of Portland*, 16 Or LUBA 505, 522 (1988).

 First American Title™	Owner's Policy of Title Insurance
	ISSUED BY First American Title Insurance Company
Owner's Policy	POLICY NUMBER 5011400-1634787e

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS. **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title
4. No right of access to and from the Land.

(Covered Risks Continued on Page 2)

In Witness Whereof, First American Title Insurance Company has caused its corporate name to be hereunto affixed by its authorized officers as of Date of Policy shown in Schedule A.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

For Reference:

File #: 141596AM

Issued By:

AmeriTitle
15 Oregon Avenue
Bend, OR 97701

(This Policy is valid only when Schedules A and B are attached)

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5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE:

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) no: Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental

protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located

- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any

appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and

expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

- (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- the Amount of Insurance; or
 - the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- the Amount of Insurance shall be increased by 10%; and
 - the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the

Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the

Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.**

Order No.: **141596AM**
Policy No.: 5011400-1634787e

SCHEDULE A

Address Reference: **Tax lots 1600, 700, 2100 & 600, 26308 SW Metke Lane, Camp Sherman, OR 97730**

Amount of Insurance: **\$2,400,000.00**

Premium: **\$4,200.00**

Date of Policy: **February 2, 2017 1:34PM**

1. Name of Insured:

Brad Souza and Shellie Souza

2. The estate or interest in the Land that is insured by this policy is:

FEE SIMPLE

3. Title is vested in:

Brad Souza and Shellie Souza

4. The Land referred to in this policy is described as follows:

See attached Exhibit "A"

Order No.: 141596AM
Policy No.: 5011400-1634787e

Exhibit "A"

PARCEL 1:

A tract of land in the West half of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, described as follows:

Beginning at the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 16, and running thence Northerly along the East line of the Northwest quarter of the Northeast quarter 276.5 feet; thence West 276.5 feet; thence Southerly parallel with the East line 276.5 feet to a point on the South line of the Northwest quarter of the Northeast quarter; thence West along said line 359.5 feet to a point on the West bank of a creek; thence Southwesterly along the West bank of the creek to a point 12 feet North of the Southwest corner of this tract; thence South 12 feet crossing the creek to a point on the South bank of the creek; thence Easterly 896 feet parallel with the North line of the Southwest quarter of the Northeast quarter and 319 feet distant from it to a point on the East line of the Southwest quarter of the Northeast quarter; thence Northerly along said East line 319 feet to the point of beginning, in Jefferson County, Oregon.

PARCEL 2:

Beginning at a point 835 feet East of the Northwest corner of the Northwest quarter of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian; thence East 417 feet; thence South 1045 feet; thence West 208.7 feet; thence South 277 feet; thence West 208.7 feet; thence North 1320 feet to the point of beginning.

Also the following:

Beginning at a point on the North line of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, said point being 1252 feet East of the Northwest corner of the Northwest quarter of the Northeast quarter of said Section 16; thence South 1043.5 feet; thence East 67.8 feet; thence North 208.7 feet; thence East 208.7 feet; thence North 834.8 feet to the North line of said Northeast quarter; thence West 265.5 feet to the point of beginning. All being in Jefferson County, Oregon.

PARCEL 3:

Commencing at a point which is 654.7 feet East of the Northwest corner of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, Jefferson County, Oregon, and is also the Northwest corner of that tract conveyed to Eunice C. Brandt, by deed recorded in Jefferson County Deed Volume 42, page 671; thence East 180 feet; thence South 217 feet to the Southeast corner of said tract sold to Margaret C. Lumpkin by contract recorded in Book 63, Instrument No. 133642, Deed Records of Jefferson County, Oregon, which is the true point of beginning of this description; thence West along the South line of said tract recorded in Jefferson County Deed Vol. 63, Instrument No, 133642 and Vol. 42, page 671, 180 feet to the Southwest corner thereof; thence North 217 feet to the North line of said Northeast quarter; thence West 28.7 feet to the Northwest corner of that tract conveyed to Clifford J. Wynkoop and Marjorie B. Wynkoop, by deed recorded in Jefferson County Deed Vol. 31, page 188; thence South along the West line of said Wynkoop tract 395.88 feet to a point; thence East to a point which is in the East line of said tract recorded in Jefferson County Deed Book 31, page 188, and 178.88 feet South of the point of beginning; thence North along said East line 178.88 feet to the point of beginning.

Order No.: 141596AM
Policy No.: 5011400-1634787e

PARCEL 4:

That portion of the Northeast quarter of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, bounded and described as follows:

Beginning at the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 16; thence East along the South line of said Northeast quarter of the Northeast quarter a distance of 208.7 feet to the Southwest corner of that tract of land conveyed to Luther Metke by Warranty Deed recorded February 24, 1950, in Jefferson County Deed Book 21, page 599; thence North along the West line of said Metke tract a distance of 485.2 feet; thence West on a line parallel to the South line of said Northeast quarter of the Northeast quarter a distance of 208.7 feet to the West line of said Northeast quarter of the Northeast quarter, thence South along said West line a distance of 485.2 feet to the point of beginning.

PARCEL 5:

Beginning at a point 626 feet East of the Northwest corner of the Northeast quarter in Section 16, Township 13 South, Range 9 East, Willamette Meridian, Jefferson County, Oregon; thence South 1258 feet; thence West 307 feet; thence South 62 feet; thence East 516 feet; thence North 1320 feet to the North line of said Northeast quarter; thence West 208.7 feet to the point of beginning.

EXCEPTING THEREFROM THE NORTH 395.88 FEET

Order No.: 141596AM
Policy No.: 5011400-1634787e

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Rights of the public and governmental bodies in and to that portion of said premises now or at any time lying below the high water line of North Fork Lake Creek, including any ownership rights which may be claimed by the State of Oregon as to any portion now or at any time lying below the ordinary high water line.

Such rights and easements for navigation and fishing as may exist over that portion of the property now or at any time lying beneath the waters of North Fork Lake Creek.

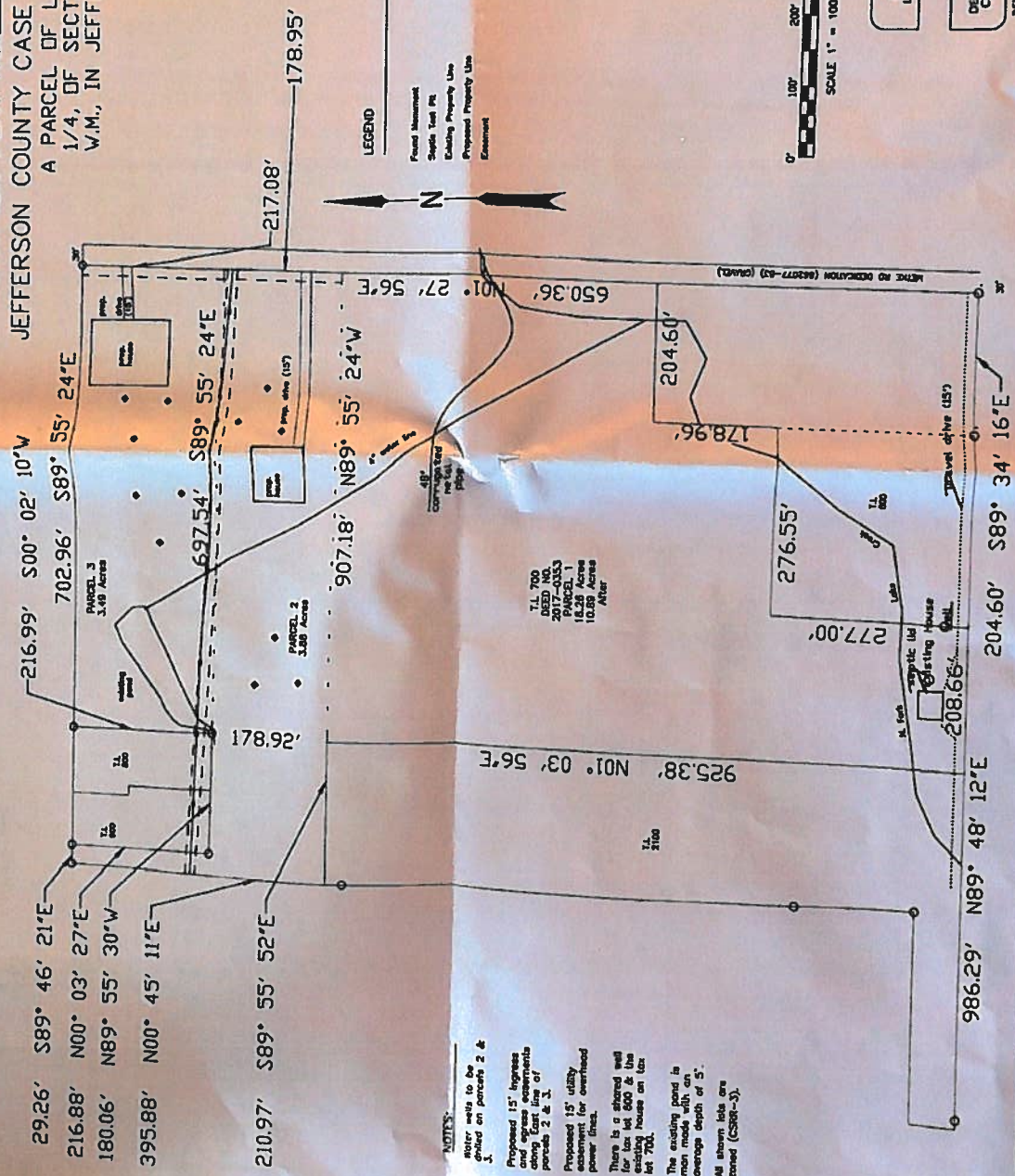
All matters arising from any shifting in the course of North Fork Lake Creek including but not limited to accretion, reliction and avulsion.

7. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
8. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:
Recorded: May 14, 1949
Instrument No.: 034779
9. Building and fence encroachments as disclosed in document,
Recorded: January 26, 1984
Instrument No.: 150191

END OF EXCEPTIONS

EX Y CONT.

PARTITION PLAT NO. JEFFERSON COUNTY CASE FILE NO. 23-MP-02
A PARCEL OF LAND LOCATED IN THE NE 1/4, OF SECTION 16, T.13 S., R09 E., W.M., IN JEFFERSON COUNTY, OREGON

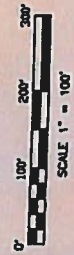


NOTES:

- Water wells to be drilled on parcels 2 & 3.
- Proposed 15' ingress and egress easements along East line of parcels 2 & 3.
- Proposed 15' utility easement for overhead power lines.
- There is a shared well for lots 600 & the existing house on lot 700.
- The existing pond is men made with an average depth of 5'. All shown lots are zoned (CS99-3).

LEGEND

- Point Measurement
- Survey Tool Pin
- Existing Property Line
- Proposed Property Line
- Easement



REGISTERED PROFESSIONAL LAND SURVEYOR
FOR REVIEW
OREGON DECLARATION 2014
CLINTON S. WARD
88375
RENEWS: 06-30-2024

Ward Surveying, LLC
(541)480-1106
clintward@gmail.com
60826 Beazeman Trail
Bend, OR 97702

Project Name and Address
David A. Swails Supto
20308 SW Malibu Ln
97730 Sherman, Oregon

DATE	8/24/2023
SCALE	1" = 100'
SHEET	1

of this paragraph was assessed
 received upon or offered to the land and become
 to the satisfaction of the
 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)

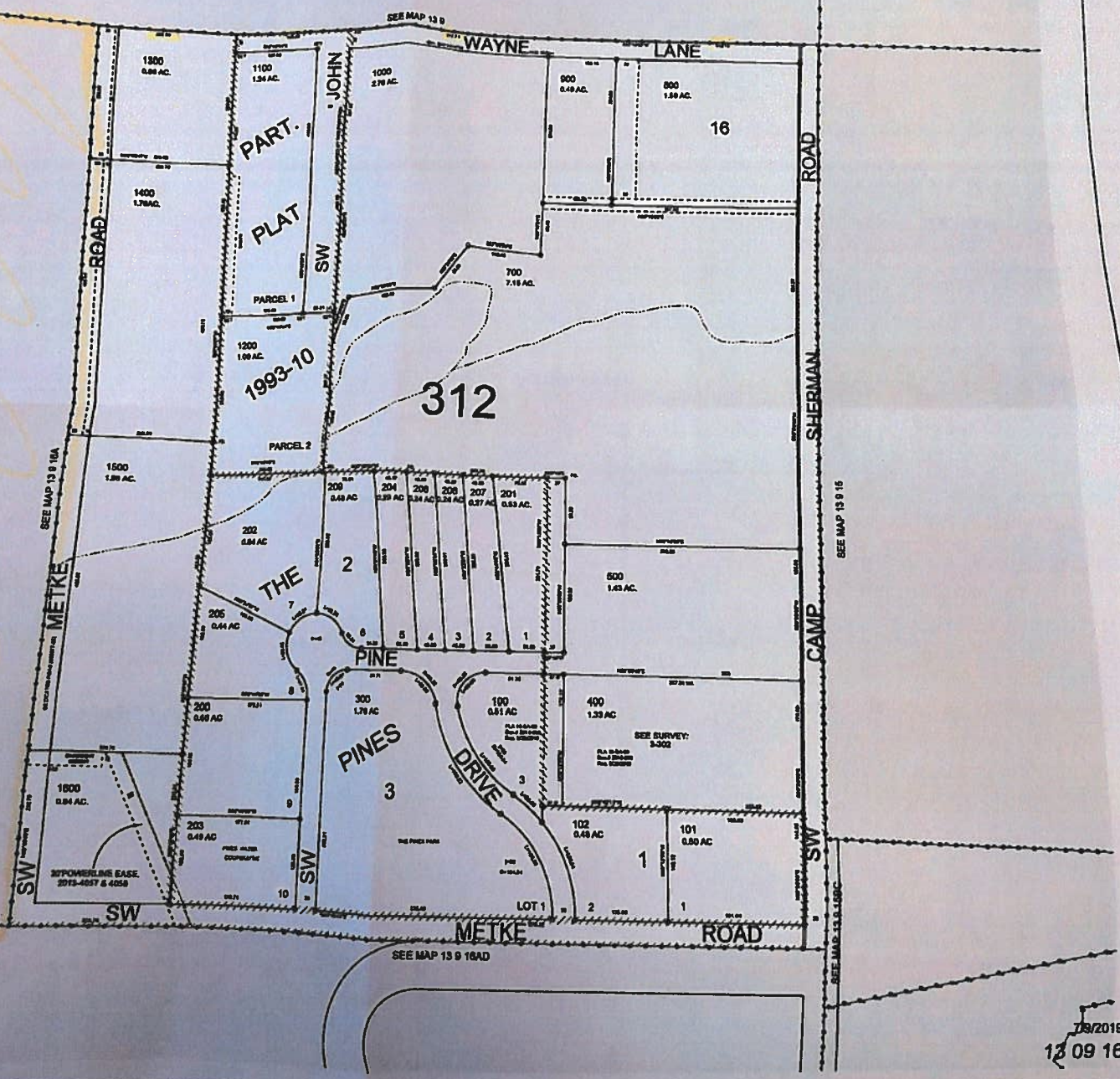
OF THE COUNTY ENGINEER
 From: Rich Black, P.E.
 County Engineer
 Brian Metke
 Owner
 Date: 4/17/14
 Subject: SW Metke Ln Road
 You have been in contact with this
 the use and maintenance of SW Metke
 outside the limits of the road and utility
 civil issues between you and the town.
 The issues involving the use and main
 1. SW Metke Lane public dedication
 All of SW Metke Ln located within T
 County Clerk.
 The portion of the...
 Basis for Appeal: (Please explain)
 have not been met. Attach
 JCZO 701.1(d)

EVY CONST.

THIS MAP WAS PREPARED FOR
 ASSESSMENT PURPOSE ONLY

N.E. 1/4 N.E. 1/4 SEC. 16 T. 13S. R. 9E. W.M.
 JEFFERSON COUNTY

13 09 16AA
 CANCELED: 600



7/8/2019
 13 09 16AA

EX Y (cont.)

N.E. 1/4 SEC. 16 T. 13S. R. 9E. W.M.
JEFFERSON COUNTY

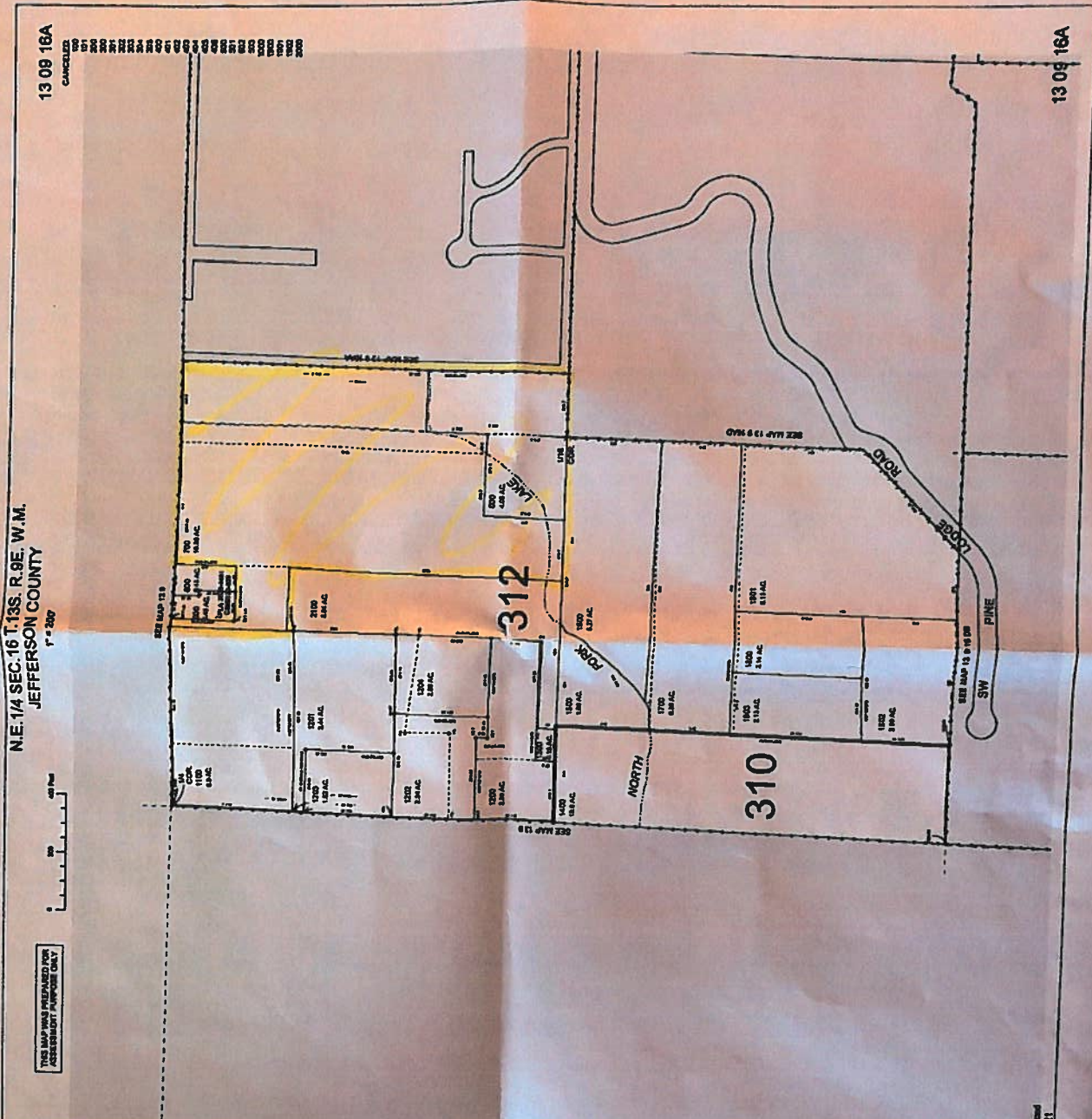
13 09 16A

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THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

ACCT	MAP ID
8258	130716A00000
8259	130716A00000
8260	130716A00000
8261	130716A00000
8262	130716A00000
8263	130716A00000
8264	130716A00000
8265	130716A00000
8266	130716A00000
8267	130716A00000
8268	130716A00000
8269	130716A00000
8270	130716A00000
8271	130716A00000
8272	130716A00000
8273	130716A00000
8274	130716A00000



13 09 16A

Map Prepared
12/18/2011

Exhibit AA

From staff – email with information about a portion of Metke Lane sent/received –

Tanya Cloutier

11/1/2023

From: Phil Stenbeck
Sent: Wednesday, November 1, 2023 1:56 PM
To: Tanya Cloutier
Cc: Stephanie Marshall; David Allen; Matt Powlison; Scott Edelman
Subject: Metke Lane dedication on the DPP-VJE LLC property.
Attachments: 23-A-01 Exhibit AA.pdf

Hi Tanya,

Attached please find Exhibit AA which is in response to questions asked during the hearing about the public right-of-way on the DPP-VJE LLC property.

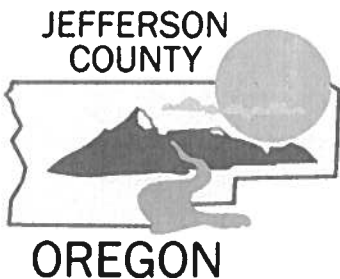
Exhibit AA is documentation of the public dedication for the 30' wide right-of-way on the property which is legally identified as Account ID 8356 aka 130916AA01300.

Staff retrieved the County recorded Document 862079 from the County Clerk and the drafted some graphics for ease of understanding.

Please add this to the record as Exhibit "AA" since we have passed the letter Z.

Cordially,

Phil



Phil Stenbeck, CFM
Planning Manager
Jefferson County Community Development Department
85 S.E. "D" Street
Madras, Oregon 97741
(541) 475-4462

862079

DECLARATION OF DEDICATION

Allen R. Purcell & Ruth A. Purcell do/does hereby dedicate to the public for roadway and utility purposes the following described real property: The West 33 feet of a parcel located in the NE1/4 NE1/4 of Section 16, T. 135. N. 9E. W.M., Jefferson County, Oregon, described as follows: Beginning at a point 200.7 feet East of the Northwest corner of the NE1/4 NE1/4 of said Section 16; thence South 233.7 feet; thence East 200.7 feet; thence North 200.7 feet; thence West 200.7 feet to the point of beginning.

IN WITNESS WHEREOF, this document is executed this 18 day of July, 1986.

Allen R. Purcell (Signature) Ruth A. Purcell (Signature)

STATE OF OREGON) County of Jefferson) ss.

The foregoing instrument was acknowledged before me by Allen R. Purcell and Ruth A. Purcell this 18 day of July, 1986.

Notary Public for Oregon My Commission Expires: 4-29-90 Jefferson County, acting by and through the Board of Commissioners, does hereby accept the above dedicating as a public road pursuant to ORS 92.014. DATED this 6 day of August, 1986.

3-3-85 15 11 2 40 CLARENCE W. HENNINGSON COUNTY CLERK

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY Joseph Peard (Signature) Commissioner

ATTEST: William L. Henderson Recording Secretary

STATE OF OREGON) County of Jefferson) ss.

Before me, a Notary Public, personally appeared Joseph Peard, Helen Walker, and Gordon Sherry, the above named Board of County Commissioners of Jefferson County, Oregon, acknowledged the foregoing instrument, on behalf of Jefferson County, Oregon.

DATED this 6 day of August, 1986. Notary Public for Oregon My Commission Expires: 1-12-87

1986-2079 STATE OF OREGON) COUNTY OF JEFFERSON)

I CERTIFY that the within instrument of writing was recorded in the record on the 13th day of August, A.D. 1986, at 2:30 PM, at which time it was recorded in Book 1110, Page 2079, of said County. Charles L. Henderson, County Clerk By: Michael A. York, Deputy

1986-2079

862079

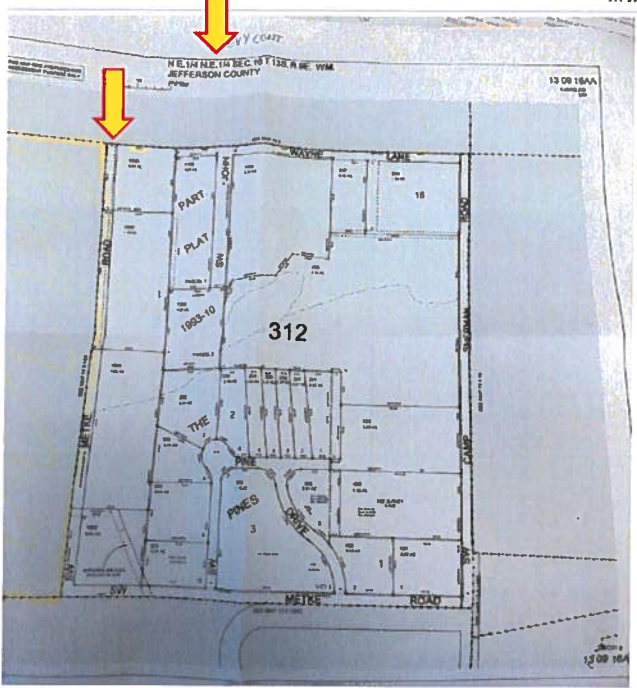


Exhibit BB

Phil Stenbeck **From Stephanie Marshall (Part 1 of 2 emails) – Bennu Law - received – 11/2/23**
Email plus 4-page letter with applicant Exhibit 1 (Copy of Exhibit AA).

From: Stephanie Marshall
Sent: Thursday, November 2, 2023 4:05 PM
To: Tanya Cloutier; Phil Stenbeck
Cc: Brad Souza; dallen@dalawco.com
Subject: Souza Open Record Partition Plat Application/Appeal
Attachments: souza letter-11-02_224817285 (1).pdf; Souza Ex. 1.pdf

Good afternoon,

I am emailing from my personal email address as I have had issues sending emails from my business address. Attached please find the applicant's open record submittal for the partition plat application/appeal.

I have had issues scanning the files, which are large, so this email is 1 or 2.

Let me know if there are any questions.

Sincerely,

Stephanie Marshall

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



BENNU LAW

November 2, 2023

Jefferson County Planning Commission
c/o Jefferson County Community Development Department
85 S.E. "D" Street
Madras, OR 97741

VIA EMAIL

re: Applicant's Open Record Submittal in Support of Tentative Partition Plan Approval, Casefile 23-MP-02

Applicants: Brad and Shellie Souza, Co-Trustees of the Bradley Emile Souza and Shellie Ann Souza Revocable Trust

Appellants: DPP-VJE, LLC; Prichard Joint Trust; and John Patrick and Ursula R. Metke Irrevocable Trust

Dear Planning Commissioners:

The Applicant, Brad and Shellie Souza, respectfully submit this letter and attachments into the record for the Planning Commission's consideration for the referenced appeals. On November 1, 2023, Planning Staff submitted Exhibit AA, which constitutes documentation of the public dedication for the 30-foot right-of-way over the "questioned" approximately 208 feet of SW Metke Lane, which traverses in a north-south direction over land dedicated by the property owner¹ of Tax Lot 1300², one of the appellants herein. As noted in Planning Manager Phil Stenbeck's November 1, 2023 email to Tanya Cloutier, "Staff retrieved the County recorded Document 8620789 from the County Clerk and the [sic] drafted some graphics for ease of understanding." A copy of Mr. Stenbeck's email is enclosed with this letter as **Exhibit 1**. Also enclosed are our own, larger copies of the 1986 Declaration of Dedication and Statutory Warranty Deed from Percival to DPP-VJE, LLC, dated April 13, 2017, **Exhibit 2**.

Questions concerning SW Metke Lane have been the focus of appellants' arguments,³ summarized as follows:

- (a) whether the entirety of SW Metke Lane has, in fact, been dedicated to the public such that Parcels 2 and 3 may take access from this public road;

¹ DPP-VJE, LLC (Mr. Eckoff appearing as representative of the LLC).

² Account ID 8356, also known as 130916AA01300.

³ The Applicant does not address the appellants' other allegations concerning wildlife, "clustered" development, or the laundry list of miscellaneous objections posed by the appellants in this Open Record submittal. Such arguments are not waived. The Applicant's previous arguments and evidence on those issues are incorporated herein by this reference. The Applicant's final written argument to be submitted on November 16, 2023, will address all issues before the Planning Commission.

(b) whether the traveled way of a portion of SW Metke Lane deviates from the dedicated right-of-way and, if so, whether any deviation impacts access from the public road to Parcels 2 and 3; and

(c) whether construction traffic associated with future development of the two new proposed lots would result in damage to SW Metke Lane or any portion thereof such that the application should be denied.

Appellants also suggested that an “alternative” access is available for the proposed two lots through other portions of property owned by the Souzas.⁴ However, the only proposal before the Planning Commission is that which was approved by Staff in Casefile 23-MP-02, and is illustrated on the tentative plan prepared by the Souzas’ surveyor. The Planning Commission has authority to approve, condition or deny the proposal. The Code does not grant the Planning Commission authority to consider, let alone to order an applicant to construct, an opposing party’s preferred alternative access. It has no authority to require modification of the application in this regard. The Planning Commission is limited to deciding whether the Souzas’ proposal meets all applicable criteria - nothing more.

A. The Entirety of SW Metke Lane has been Dedicated to the Public for Roadway Purposes

The Planning Commission has been provided evidence that the approximately 208 feet of SW Metke Lane fronting Tax Lot 1300 (the former Percival tract) was, in fact, dedicated to the public for roadway and utility purposes. Exhibit AA; see also enclosed documents with this letter. Appellants have not disputed that 1,115.39 feet of SW Metke Lane was dedicated to the public by Declaration of Dedication #862077. Therefore, issue (a) above has been resolved.

Substantial evidence in the record supports a finding that SW Metke Lane is a public road, defined in JCZO Section 105(F) as, “The entire right-of-way of any road over which the public has a right of use that is a matter of public record.” Therefore, as a matter of law, legal access may be taken from SW Metke Lane to Parcels 2 and 3, which front on this public road, per JCZO Section 401.1. Notably, and as will be discussed in the next section below, “public road,” is determined by the location of the right-of-way, and not the “traveled way.” There is no dispute that accesses to Parcels 2 and 3 are proposed from the SW Metke Lane right-of-way and thus, from a public road.

Appellants have also argued that SW Metke Lane should not be considered a local access road under ORS 368.031 and that it was not properly monumented or surveyed pursuant to ORS 368.106. Surveyor Clint Ward testified on October 26, 2023 the requirements of road monumenting and surveying are relatively recent and that there are many roads, all over the state of Oregon, that are not monumented or surveyed. This testimony was not disputed. Perhaps more importantly, appellants’ argument is inappropriate in these proceedings.⁵ Any change to the status or classification of SW Metke Lane will affect the public as a whole and is beyond the authority of the Planning Commission. Under Federal, State and Jefferson County Codes, the public has the right to unrestricted use of the SW Metke Lane right-of-way. The Planning Commission does not have jurisdiction to determine that SW Metke Lane was not properly created. The continued right of the public to use of SW Metke Lane cannot be precluded by the Planning Commission, nor used as a basis to deny the Souzas’ application.

B. The Location of the Traveled Way of SW Metke Lane is Not a Basis for Denial

At the hearing on October 11, 2023, Appellants acknowledged that if the traveled way of SW Metke Lane was straight, “we wouldn’t be here.” There is no question that the entirety of the Metke Lane right-of-way is a public road, open to use by the traveling public, including the Souzas or their successors in interest. This has been the case for 40 years. All owners of properties to the east of Metke Lane were required to dedicate a portion of their property for public roadway and utility purposes as a condition of previous partition plat applications. The private property rights of the Souzas depend on the

⁴ Appellants submitted sketches to support their theory, but did not retain a surveyor or engineer, let alone address the impossibility of siting homes on the two new lots where such homes would not be within 300 feet of a road or driveway existing in 1992 and thus prohibited in the Wildlife Overlay zone.

⁵ The proper forum in which to determine appellants’ rights vis-à-vis the public with respect to SW Metke Lane is in court. Such determinations cannot be made by the Planning Commission in the context of a quasi-judicial land use application and the Planning Commission lacks the jurisdiction to do so. JCZO Section 903.5; *see also* ORS 201.020 and ORS 215.030.

County upholding and honoring the fact of the prior roadway dedications. The rights of the general traveling public also depend on SW Metke Lane retaining its public road status. Any finding that affects the use or status of SW Metke Lane would affect the rights of the public as a whole, and not just the Applicant and therefore is beyond the scope of these quasi-judicial proceedings.

For reasons that are neither in the record nor important for the Planning Commission's decision, a relatively short portion of the traveled way on Metke Lane meanders around a stand of trees. There is no evidence in the record as to whether or by how much the traveled way encroaches onto private property. Although an argument could be made that the historic and un-challenged use (until now) of this portion of the traveled way has given rise to an easement by prescription, the Planning Commission has authority to impose a condition of approval, to the extent it determines necessary, to require removal of the stand of trees that is within the dedicated right-of-way for SW Metke Lane.

Appellants are not entitled to rely on a self-created "deficiency" of SW Metke Lane to demand that the Planning Commission find that access is not permitted from this public road. The road is a local access road and is not maintained by the County. Presumably, appellants and other owners along SW Metke Lane have either accepted or preferred the traveled way to exist in the location it has for 40 years. Not until this application have there been any objections. The road is not a private drive. It does not exist solely for the pleasure and use by the owners to the east of the road. There is not substantial evidence in the record to support the determination that any additional, limited use by future owner(s) of Parcels 2 and 3 may be denied. Appellants may not block the Souzas from using, or from selling Parcels 2 and/or 3 to a new owner to use, the public road.

The applicable criterion is whether the Applicant has demonstrated access from a public road. All evidence in the record supports the determination that this criterion is met. To the extent the traveled way deviates from the right-of-way, that can be corrected by a condition of approval, if the Planning Commission finds that such a condition may and should be imposed. Deviation from the right-of-way does not mean the right-of-way does not exist. It does. No one disputes that fact. SW Metke Lane is a public road and access to/from this road is expressly authorized by JCZO Section 401.1.

C. Allegations Regarding "Construction Traffic"

Appellants have vaguely argued that they believe SW Metke Lane is deficient and/or cannot handle construction traffic. No evidence, only speculation has been offered. Appellants did not retain an engineer to provide any calculations or prepare any reports to support their theory that the public road is not "sufficient" to allow public travel. There is no restriction posted on the road to warn any member of the traveling public of any danger associated with travel on SW Metke Lane. There are no traffic incidents or accident reports in the record. As noted in the Applicant's October 26, 2023 letter, any other property owner in the area could engage in construction-related activities on their properties and could not be restricted from using SW Metke Lane because it is a public road.

Without any evidence, let alone substantial evidence, there is no basis on which the Planning Commission may deny or condition approval of the proposed partition. The Planning Commission cannot impose any conditions of approval that lack an essential nexus to and are roughly proportional to impacts of future development. JCZO 905.1. To do so would violate the Applicant's constitutionally protected private property and due process rights under both the Oregon and United States Constitutions. The Applicant acknowledges that the Planning Commission cannot make a finding on constitutionally protected rights, but preserves this argument in the record.

D. Access from Tamarack Lane

Questions regarding access to Parcels 2 and 3 via Tamarack Lane, which is a United States Forest Service Road, have been raised at hearing. If a special use permit could be issued to the Applicant to allow such access, travel for use of Parcels 2 and 3 would be minimized, if not avoided, along the majority of the north-south corridor of SW Metke Lane. Mr. Souza testified that he has been in discussions with the Forest Service regarding a potential special use permit to allow access from Tamarack Lane, but as of today's date, a special use permit has not issued. It does not appear likely at this point for the reasons discussed next.

David Allen, attorney for the appellants, and Jason Eckoff both made statements at the October 26, 2023 hearing that it was unlikely a special use permit would be granted because the Forest Service acknowledges the property has access from SW Metke Lane. Not surprisingly, several members of the Planning Commission found these statements interesting and sought clarification. Instead, Mr. Allen and Mr. Eckoff implied that the access to which the Forest Service was referring was the private drive to Tax Lots 600 and 700 from the location at which SW Metke Lane turns from an east-west road to a north-south road. In Mr. Souza's discussions with the Forest Service, it was clear that the Forest Service considers access to Parcels 2 and 3 from SW Metke Lane, as proposed in the Tentative Plan, sufficient. Even if the Planning Commission were to find otherwise, there is no guarantee that the Souzas would be able to secure a special use permit for access from Tamarack Lane. To condition approval of the application on this basis would deny the Souzas their constitutionally protected private property rights, including the same rights enjoyed by the public as a whole to travel along SW Metke Lane, a public road, without restriction.

E. Title Report

Mr. and Mrs. Souza lost many documents related to their property in a fire. Nonetheless, they were able to locate a copy of their title policy and Schedules A and B, issued by First American Title, copies of which were submitted on October 26, 2023. Nonetheless, the appellants have continued to complain that the title document is insufficient because they allegedly need to see the "graphic depictions of the location of all easements and encumbrances that are of record." See JCZO Section 703.1. The Applicant's submittal of their title documents to meet this requirement was confirmed and accepted by Planning Manager Phil Stenbeck, as evidenced in the attached email chain dated October 20, 2023-October 25, 2023, **Exhibit 3**.

Appellants have not set forth any basis on which to challenge the County's acceptance of the title policy and Schedule A and Schedule B (exceptions from coverage) attached thereto. Since the hearing on October 26, 2023, Mr. Souza has reached out to First American Title to request a report that includes "graphic depictions" of easements and encumbrances of record, which the title company has not provided in part because such term is unfamiliar, as evidenced in the enclosed email, **Exhibit 4**. The Planning Commission has a list in Schedule B of all easements and encumbrances of record, specifically, items 8 and 9. We are enclosing another copy of Schedules A and B with this letter for reference, **Exhibit 5**. Item 8 references an easement recorded in 1949 and Item 9 references a building and fence encroachment disclosed in a document recorded in 1984. Neither document is available online at the Jefferson County Clerk's records search, as shown in the enclosed documents, **Exhibit 6**.

Any property owner is precluded from interfering with existing, valid, recorded easements. Approval of the proposed partition plat will not interfere with existing easements because it is merely a proposed division of land. If any future development of Parcels 2 and/or 3 would interfere with the easement referenced in General Exception #8 of Schedule B, the owner of such parcel(s) will have to adjust development plans accordingly. This does not constitute a basis on which to deny the partition plat application.

F. Conclusion

For all the reasons set forth by the Applicant, we request that the Planning Commission affirm staff's approval of the proposed tentative partition plan application and to deny the appeal.

Sincerely,

/s/ Stephanie Marshall

Stephanie E. Marshall
cc: clients

EXHIBIT 1



Stephanie Marshall <stephanie@bennulaw.com>

Metke Lane dedication on the DPP-VJE LLC property.

2 messages

Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us> Wed, Nov 1, 2023 at 1:56 PM
To: Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>
Cc: Stephanie Marshall <stephanie@bennulaw.com>, David Allen <dallen@dalawco.com>, Matt Powlison <Matt.Powlison@co.jefferson.or.us>, Scott Edelman <scott.edelman@co.jefferson.or.us>

Hi Tanya

Attached please find Exhibit AA which is in response to questions asked during the hearing about the public right-of-way on the DPP-VJE LLC property.

Exhibit AA is documentation of the public dedication for the 30' wide right-of-way on the property which is legally identified as Account ID 8356 aka 130916AA01300.

Staff retrieved the County recorded Document 862079 from the County Clerk and the drafted some graphics for ease of understanding.

Please add this to the record as Exhibit "AA" since we have passed the letter Z.

Cordially,

Phil



Phil Stenbeck, CFM
Planning Manager
Jefferson County Community Development Department
85 S.E. "D" Street
Madras, Oregon 97741
(541) 475-4462

23-A-01 Exhibit AA.pdf
475K

Stephanie Marshall <stephanie@bennulaw.com>
To: Brad Souza <bsouzamail@yahoo.com>

Wed, Nov 1, 2023 at 1:57 PM

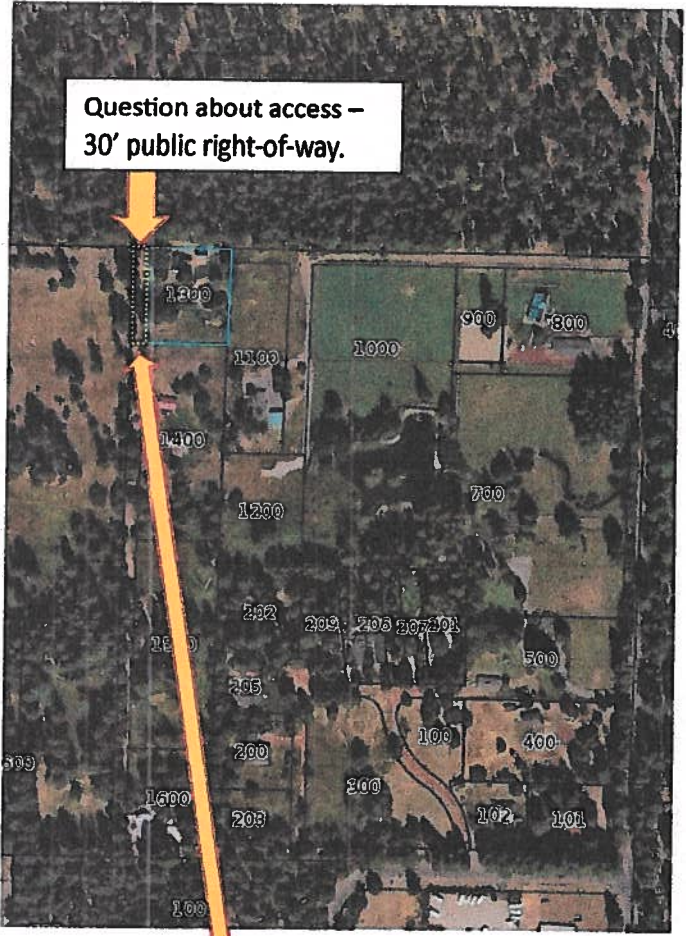


EXHIBIT "A"

<p>Western Title & Escrow 10000 NE 28th Street, Suite 100 Portland, OR 97219</p>	<p>Jefferson County Official Record Jefferson County, Oregon</p> <p>Book 04212317 08; Page 023 to 024 of 024 of 08</p>
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STATUTORY WARRANTY DEED

Paul A. Hendrick, Trustee of the Paul and Phyllis Hendrick Trust dated August 4, 2009, trustee herein and herein as executor, JAG, a Jefferson County Landmark Company, Oregon, the following described real property less of encumbrances except as specifically set forth herein:

ACCORDING TO THE BEST OF HIS KNOWLEDGE:

This property is free of encumbrances, EXCEPT: All those liens of record, if any, on the date of this deed, whether or not existing hereon, but not hereon.

Encumbrances are identified to preserve any valid claims appurtenant to the property described in this deed, but not hereon, and are not intended to create any other claims or encumbrances on the property.

The grantor warrants that the encumbrances listed herein are correct and true to the best of his knowledge and belief, and that he is not aware of any other encumbrances on the property.

Witness my hand and the seal of the County of Jefferson, Oregon, this 1st day of April, 2017.

Paul A. Hendrick, Trustee

Recorded on: 04/11/2017
The Notary Public:
Dr. Sarah C. Plummer
Paul A. Hendrick, Trustee

State of Oregon, County of Jefferson, Oregon, I, _____, Notary Public, do hereby certify that Paul A. Hendrick is a duly qualified and acting Notary Public in and for the County of Jefferson, Oregon.

Notary Public
Sarah C. Plummer

Beginning at a point 208.7 feet East of the Northwest corner of the Northeast quarter of section 16, Township 13 South, Range 9 East of the Willamette Meridian, Jefferson County, Oregon; thence South 208.7 feet; thence East 208.7 feet; thence North 208.7 feet; to the point of beginning.

Excepting therefrom the Westerly 30 feet as dedicated to the public for roadway and utility purposes by Document 852079, Jefferson County Records.

(See next page for Document 862079 – Declaration of Dedication).

11/1/23, 3:29 PM

Bennu Law Mail - Metke Lane dedication on the DPP-VJE LLC property.

FYI, sending this along to you for your files too

[Quoted text hidden]



23-A-01 Exhibit AA.pdf

475K

882079

DECLARATION OF DEDICATION

Alvan H. Beckel & Ruth A. Perival do/does hereby dedicate to the public for roadway and utility purposes the following described real property: The West 33 feet of a parcel located to the NE1/4 of Section 18, T.12N., R.9E., W.3E., Jefferson County, Oregon, described as follows: Beginning at a point 200.7 feet East of the Northwest corner of the NE1/4 of said Section 18; thence South 200.7 feet; thence East 200.7 feet; thence North 200.7 feet; thence West 200.7 feet to the point of beginning.

IN WITNESS WHEREOF, this document is executed this 18 day of July, 1986.

Alvan H. Beckel (Signature) Ruth A. Perival (Signature)

STATE OF OREGON) County of Jefferson) ss

The foregoing instrument was acknowledged before me by Alvan H. Beckel & Ruth A. Perival this 18 day of July, 1986.

Notary Public for Oregon My Commission Expires: 1-23-90 S. J. ... Jefferson County, acting by and through the Board of Commissioners, does hereby accept the above dedication as a public road pursuant to ORS 92.016. DATED this 6 day of August, 1986.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY ... (Signatures)

ATTEST: ... Recording Secretary

STATE OF OREGON) County of Jefferson) ss Before me, a Notary Public, personally appeared ... the above named Board of County Commissioners of Jefferson County, Oregon, acknowledged the foregoing instrument, on behalf of Jefferson County, Oregon. DATED this 6 day of August, 1986.

Notary Public for Oregon My Commission Expires: 1-12-87

1986-2378 STATE OF OREGON) COUNTY OF JEFFERSON) I CERTIFY that the within instrument of writing was recorded in the record on this 18 day of July, 1986, at 11:26 AM and appears as ...

882079

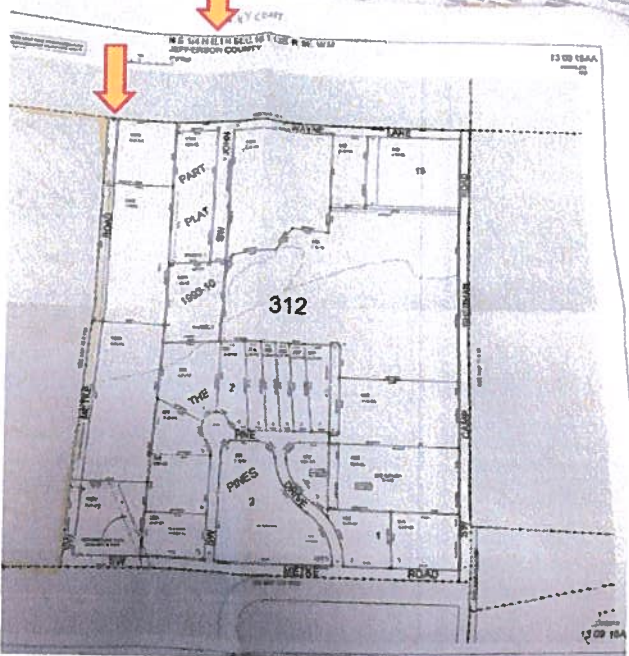


Exhibit CC

From Stephanie Marshall (Part 2 of 2 emails) – Bennu Law - received – 11/2/23

Phil Stenbeck

Email plus applicant Exhibit 2, 3, 4 and 5.

From: Stephanie Marshall
Sent: Thursday, November 2, 2023 4:07 PM
To: Tanya Cloutier; Phil Stenbeck
Cc: Brad Souza; dallen@dalawco.com
Subject: Re: Souza Open Record Partition Plat Application/Appeal
Attachments: Souza Ex. 2-4.pdf; ex. 5 souza.pdf

Here is part 2 of 2.

On Thu, Nov 2, 2023 at 4:04 PM Stephanie Marshall wrote:

Good afternoon,

I am emailing from my personal email address as I have had issues sending emails from my business address. Attached please find the applicant's open record submittal for the partition plat application/appeal.

I have had issues scanning the files, which are large, so this email is 1 or 2.

Let me know if there are any questions.

Sincerely,

Stephanie Marshall

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

EXHIBIT 2

862079

DECLARATION OF DEDICATION

Glenn R. Percival & Ruth A. Percival do/does hereby dedicate to the public for roadway and utility purposes the following described real property:

The West 30 feet of a parcel located in the NE 1/4 NE 1/4 of Section 16, T.13S., R.9E., M.M., Jefferson County, Oregon, described as follows:

Beginning at a point 208.7 feet East of the Northwest corner of the NE 1/4 NE 1/4 of said Section 16; thence South 208.7 feet; thence East 208.7 feet; thence North 208.7 feet; thence West 208.7 feet to the point of beginning.

IN WITNESS WHEREOF, this document is executed this 18 day of July, 1986.

[Signature] (signature)

[Signature] (signature)

STATE OF OREGON) County of Jefferson) ss.

The foregoing instrument was acknowledged before me by Glenn R. and Ruth A. Percival this 18 day of July, 1986.



Notary Public for L.S. Nathaniel Beck My Commission Expires: 8-23-90

Jefferson County, acting by and through its Board of Commissioners, does hereby accept the above dedication as a public road pursuant to ORS 92.014.

DATED this 6 day of August, 1986.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY

[Signature] Judge [Signature] Commissioner [Signature] Commissioner

CLERK OF COUNTY CLERK ELAINE HENDERSON

ATTEST: [Signature] Recording Secretary

STATE OF OREGON) County of Jefferson) ss.

Before me, a Notary Public, personally appeared Herschel Reed, Gordon Shown, Helmer Walker, the above named Board of County Commissioners of Jefferson County, Oregon, acknowledged the foregoing instrument, on behalf of Jefferson County, Oregon.

DATED this 6 day of August, 1986.

[Signature] Notary Public for Oregon My Commission Expires: 1-12-87

STATE OF OREGON)
) SS
COUNTY OF JEFFERSON)

I CERTIFY that the within instrument of writing
was received to the record on the 15th day of August
A.D. 19 86 at 2:40 o'clock 10 M. and recorded in
Book MF# 862079 of said County.

Elaine L. Henderson, County Clerk

By Madison R. York Deputy



862079

Executed this 13 day of April, 2017

The Percival Family Trust

BY: Ruth A. Percival
Ruth A. Percival, Trustee

State of Oregon County of Multnomah) ss.
This instrument was acknowledged before me on this 13 day of April, 2017 by Ruth A. Percival,
Trustee of the Percival Family Trust dated August 7, 2007.

Mary Patricia Gray
Notary Public for the State of Oregon
My commission expires: 8/8/2017

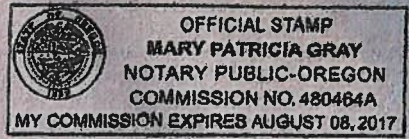



EXHIBIT "A"

Beginning at a point 208.7 feet East of the Northwest corner of the Northeast quarter of the Northeast quarter of section 16, Township 13 South, Range 9 East of the Willamette Meridian, Jefferson County, Oregon; thence South 208.7 feet; thence East 208.7 feet; thence North 208.7 feet; thence West 208.7 feet to the point of beginning.

Excepting therefrom the Westerly 30 feet as dedicated to the public for roadway and utility purposes by Document 862079, Jefferson County Records.

Order Number: 129788	Jefferson County Official Records Kathleen B. Marston, County Clerk	2017-1429
 Western Title & Escrow 212 SW 4 th Street, Suite 101 Madras, OR 97741	D-WD Cr#1 St#0 KATES \$15.00 \$11.00 \$10.00 \$20.00 \$5.00	04/21/2017 09:37:00 AM \$61.00
DPP-VJE, LLC, a Missouri Limited Liability Company 555 N. New Balles Road, Suite 130 St. Louis, MO 63141-6884		
Same as Above		

Reserved for Recorder's Use

STATUTORY WARRANTY DEED

Ruth A. Percival, Trustee of the Percival Family Trust dated August 7, 2007, Grantor, conveys and warrants to DPP-VJE, LLC, a Missouri Limited Liability Company, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

SEE ATTACHED EXHIBIT "A"

Account: 8356
Map & Tax Lot: 130916AA01300

This property is free of encumbrances, EXCEPT: All those items of record, if any, as of the date of this deed, including any real property taxes due, but not yet payable.

EXCEPTING AND RESERVING TO GRANTOR ALL WATER RIGHTS APPURTENANT TO THE PROPERTY DESCRIBED IN ATTACHED EXHIBIT "A", INCLUDING BUT NOT LIMITED TO THOSE WATER RIGHTS SPECIFICALLY DESCRIBED AS THAT PORTION OF CERTIFICATE OF WATER RIGHT 88890 APPURTENANT TO THE PROPERTY.

The true consideration for this conveyance is \$285,000.00, which is paid by an Accommodator as part of an IRC 1031 Exchange. (Here comply with requirements of ORS 93.030.)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**RETURN TO WESTERN
TITLE & ESCROW**

EXHIBIT 3



Stephanie Marshall <stephanie@bennulaw.com>

Title Report

7 messages

Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us> Fri, Oct 20, 2023 at 1:49 PM
To: Stephanie Marshall <stephanie@bennulaw.com>, Brad Souza <bsouzamail@yahoo.com>

Good afternoon Stephanie and Brad,

Phil Stenbeck has asked that I reach out to you regarding the Title Report that was raised at the hearing. He has asked that you get one for the parcel so that it can be added to the record. It will be made a condition of approval in the staff report for next weeks hearing. Thanks and if you have questions, please contact myself or Phil.



Tanya Cloutier

Assistant Planner

p: 541.475.4462

f: 541.325.5004

a: 85 S.E. D Street, Madras, OR 97741

w: www.co.jefferson.or.us e: tanya.cloutier@co.jefferson.or.us



Stephanie Marshall <stephanie@bennulaw.com> Fri, Oct 20, 2023 at 1:54 PM
To: Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>
Cc: Brad Souza <bsouzamail@yahoo.com>

Thanks Tanya. Brad has a title insurance policy on the parcel. which provides more information than a mere title report. Please let me know if submittal of that document will satisfy the County.

Let me know if there are any questions,

Stephanie
[Quoted text hidden]

Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us> Fri, Oct 20, 2023 at 2:04 PM
To: Stephanie Marshall <stephanie@bennulaw.com>
Cc: Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>

I would think so but I will let Phil answer that question (cc'd)

[Quoted text hidden]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Stephanie Marshall <stephanie@bennulaw.com>
To: Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>
Cc: Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>

Fri, Oct 20, 2023 at 2:07 PM

Thank you!
[Quoted text hidden]

Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>

Wed, Oct 25, 2023 at 3:11 PM

To: Stephanie Marshall <stephanie@bennulaw.com>, Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>

Hi Stephanie,

Yes it will...

Thank you.

Cordially,

Phil

[Quoted text hidden]

Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>

Wed, Oct 25, 2023 at 3:12 PM

To: Stephanie Marshall <stephanie@bennulaw.com>, Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>

Apologies on the slow response.

I had a major electronic glitch happen..

that impaired my access to my work computer since last Wednesday...

required me to get a new phone, new phone number and use an authenticator app on my phone...

I am back up and running.....



Phil Stenbeck, CFM
 Planning Manager
 Jefferson County Community Development Department
 85 S.E. "D" Street
 Madras, Oregon 97741
 (541) 475-4462

From: Stephanie Marshall <stephanie@bennulaw.com>
Sent: Friday, October 20, 2023 2:08 PM
To: Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>
Cc: Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>
Subject: Re: Title Report

Thank you!

[Quoted text hidden]

Stephanie Marshall <stephanie@bennulaw.com>
To: Phil Stenbeck <Phil.Stenbeck@co.jefferson.or.us>
Cc: Tanya Cloutier <Tanya.Cloutier@co.jefferson.or.us>

Wed, Oct 25, 2023 at 3:37 PM

Thank you Phil. We will see you tomorrow!

Stephanie
 [Quoted text hidden]



Stephanie Marshall | Senior Attorney
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EXHIBIT 4

Order No.: 141596AM
Policy No.: 5011400-1634787e

SCHEDULE A

Address Reference: **Tax lots 1600, 700, 2100 & 600, 26308 SW Metke Lane, Camp Sherman, OR 97730**

Amount of Insurance: **\$2,400,000.00**

Premium: **\$4,200.00**

Date of Policy: **February 2, 2017 1:34PM**

1. Name of Insured:

Brad Souza and Shellie Souza

2. The estate or interest in the Land that is insured by this policy is:

FEE SIMPLE

3. Title is vested in:

Brad Souza and Shellie Souza

4. The Land referred to in this policy is described as follows:

See attached Exhibit "A"

Order No.: 141596AM
Policy No.: 5011400-1634787e

Exhibit "A"

PARCEL 1:

A tract of land in the West half of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, described as follows:

Beginning at the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 16, and running thence Northerly along the East line of the Northwest quarter of the Northeast quarter 276.5 feet; thence West 276.5 feet; thence Southerly parallel with the East line 276.5 feet to a point on the South line of the Northwest quarter of the Northeast quarter; thence West along said line 359.5 feet to a point on the West bank of a creek; thence Southwesterly along the West bank of the creek to a point 12 feet North of the Southwest corner of this tract; thence South 12 feet crossing the creek to a point on the South bank of the creek; thence Easterly 896 feet parallel with the North line of the Southwest quarter of the Northeast quarter and 319 feet distant from it to a point on the East line of the Southwest quarter of the Northeast quarter; thence Northerly along said East line 319 feet to the point of beginning, in Jefferson County, Oregon.

PARCEL 2:

Beginning at a point 835 feet East of the Northwest corner of the Northwest quarter of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian; thence East 417 feet; thence South 1045 feet; thence West 208.7 feet; thence South 277 feet; thence West 208.7 feet; thence North 1320 feet to the point of beginning.

Also the following:

Beginning at a point on the North line of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, said point being 1252 feet East of the Northwest corner of the Northwest quarter of the Northeast quarter of said Section 16; thence South 1043.5 feet; thence East 67.8 feet; thence North 208.7 feet; thence East 208.7 feet; thence North 834.8 feet to the North line of said Northeast quarter; thence West 265.5 feet to the point of beginning. All being in Jefferson County, Oregon.

PARCEL 3:

Commencing at a point which is 654.7 feet East of the Northwest corner of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, Jefferson County, Oregon, and is also the Northwest corner of that tract conveyed to Eunice C. Brandt, by deed recorded in Jefferson County Deed Volume 42, page 671; thence East 180 feet; thence South 217 feet to the Southeast corner of said tract sold to Margaret C. Lumpkin by contract recorded in Book 63, Instrument No. 133642, Deed Records of Jefferson County, Oregon, which is the true point of beginning of this description; thence West along the South line of said tract recorded in Jefferson County Deed Vol. 63, Instrument No, 133642 and Vol. 42, page 671, 180 feet to the Southwest corner thereof; thence North 217 feet to the North line of said Northeast quarter; thence West 28.7 feet to the Northwest corner of that tract conveyed to Clifford J. Wynkoop and Marjorie B. Wynkoop, by deed recorded in Jefferson County Deed Vol. 31, page 188; thence South along the West line of said Wynkoop tract 395.88 feet to a point; thence East to a point which is in the East line of said tract recorded in Jefferson County Deed Book 31, page 188, and 178.88 feet South of the point of beginning; thence North along said East line 178.88 feet to the point of beginning.

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PARCEL 4:

That portion of the Northeast quarter of the Northeast quarter of Section 16, Township 13 South, Range 9 East of the Willamette Meridian, bounded and described as follows:

Beginning at the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 16; thence East along the South line of said Northeast quarter of the Northeast quarter a distance of 208.7 feet to the Southwest corner of that tract of land conveyed to Luther Metke by Warranty Deed recorded February 24, 1950, in Jefferson County Deed Book 21, page 599; thence North along the West line of said Metke tract a distance of 485.2 feet; thence West on a line parallel to the South line of said Northeast quarter of the Northeast quarter a distance of 208.7 feet to the West line of said Northeast quarter of the Northeast quarter, thence South along said West line a distance of 485.2 feet to the point of beginning.

PARCEL 5:

Beginning at a point 626 feet East of the Northwest corner of the Northeast quarter in Section 16, Township 13 South, Range 9 East, Willamette Meridian, Jefferson County, Oregon; thence South 1258 feet; thence West 307 feet; thence South 62 feet; thence East 516 feet; thence North 1320 feet to the North line of said Northeast quarter; thence West 208.7 feet to the point of beginning.

EXCEPTING THEREFROM THE NORTH 395.88 FEET

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Policy No.: 5011400-1634787e

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Rights of the public and governmental bodies in and to that portion of said premises now or at any time lying below the high water line of North Fork Lake Creek, including any ownership rights which may be claimed by the State of Oregon as to any portion now or at any time lying below the ordinary high water line.

Such rights and easements for navigation and fishing as may exist over that portion of the property now or at any time lying beneath the waters of North Fork Lake Creek.

All matters arising from any shifting in the course of North Fork Lake Creek including but not limited to accretion, reliction and avulsion.

7. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
8. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:
Recorded: May 14, 1949
Instrument No.: [034779](#)
9. Building and fence encroachments as disclosed in document,
Recorded: January 26, 1984
Instrument No.: [150191](#)

END OF EXCEPTIONS

EXHIBIT 5



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Document Details

Document Number

◀ **1949-034779** ▶

Recording Date

01/01/1949 12:00:00 AM

Document Type

HISTORICAL

Historic Number

20, 686

Return To

JEFFERSON COUNTY TRANSCRIBED RECORDS

Consideration

\$10.00

Parties

DIRECT

BRUNS, JOHN H

BRUNS, RUTH V

INDIRECT

KORISH, KATHRYN M

KORISH, WAYNE L

Legal Descriptions

Sct Twn Rng

16 13 9

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No References to display

There are no documents that make reference to this document

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Document Details

Document Number

◀ **1984-150191** ▶

Recording Date

01/01/1984 12:00:00 AM

Document Type

HISTORICAL

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Consideration

Parties

DIRECT

WILLIAMS, LONNIE

WILLIAMS, CAROL

INDIRECT

No INDIRECT parties to display

Legal Descriptions

No legal descriptions to display

This document does not reference any other document

No References to display

There are no documents that make reference to this document

No References to display