



MEMORANDUM

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

DATE: October 25, 2023

RE: An appeal of the Hearings Officer's Remand Decision Approving a Single-Family Dwelling in the Forest Use (F2) Zone; File No. 247-23-000599-A and Appeal No. 247-23-000728-A

On November 1, 2023, the Board of County Commissioners ("Board") will consider hearing an appeal of the Hearings Officer's remand decision conditionally approving a single-family dwelling in the F2 Zone.

I. PROPOSAL

The Applicant is requesting conditional use approval to establish a single-family dwelling in the F2 Zone. The requested Forest Use dwelling type is a "Template Dwelling", and the property is located at 59770 Scale House Road, Bend, OR 97702.

II. PROCEDURAL HISTORY

In 2021-2022, the Hearings Officer approved the Applicant's conditional use request. However, this decision was appealed to the Land Use Board of Appeals ("LUBA") and the Oregon Court of Appeals. Ultimately, the Hearings Officer's decision was remanded back to the County for further review.

On July 28, 2023, the Applicant initiated the subject remand application. Since the Hearings Officer was the final decision maker in the previous review, the Hearings Officer was the initial reviewer for the subject remand application. After reviewing the submitted information, the Hearings Officer found the Applicant sufficiently addressed the issues on remand and approved the Applicant's request. On October 10, 2023, the Windlinx Ranch Trust ("Appellant") filed an appeal of the Hearings Officer's decision.

III. WINDLINX RANCH TRUST APPEAL

The Appellant requests the Board review the Hearings Officer's decision, as part of a *de novo* review, to address the following key issues related to the template dwelling test requirements:

1. To determine the location of Lot 7B and Lot 7C.
2. To determine whether Lot 7C is located within the Applicant's 160-acre square template.
3. To determine if Lot 7 is a "parcel" as defined in ORS 215.010.

IV. STAFF RECOMMENDATION

Staff recommends the Board not hear the appeal for the following reasons:

- The appeal issues are primarily matters of state law interpretation and a Board decision would not be given deference if appealed to LUBA.
- The Hearings Officer's decision is well written and reasoned, and could be supported, as the record exists today on appeal to LUBA.
- The County's review of a remand application must be completed within 120 days and the County will have used 95 of the 120 days as of November 1st. Therefore, it is unlikely there would be sufficient time for the Board to review the subject appeal and meet the 120-day deadline.
- Both parties were well represented by land use attorneys.

V. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeals. In determining whether to hear the appeals, the Board may only consider:

1. The record developed before the Hearings Officer;
2. The Notice of Appeal; and
3. Recommendation of staff¹

Option 1: Hear the Appeal

If the Board decides to hear the appeal, the Board must make a decision on the scope of the review. As noted above, the Appellant has requested a *de novo* review. Per the Deschutes County Code ("DCC"), the Board has two choices for the scope of the review:

¹ Deschutes County Code 22.32.035(D)

1. On the Record

- This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.

2. De Novo

- This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board's review.

Lastly, the Board should give staff direction on when to schedule the appeal hearing and the Board may want to establish time limits for testimony at the hearing.

Option 2: Not Hear the Appeal

Should the Board decline to hear the appeal, the Hearings Officer's decision will become the final decision of the County. Upon the mailing of the Board's decision to decline review, the party appealing may continue their appeal as provided under the law.

VI. 120-DAY LAND USE CLOCK

The 120th day on which the County must take final action on this application is November 25, 2023.

VII. RECORD

The record for File no. 247-23-000599-A and the Notice of Appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

Attachments:

1. DRAFT Board Order 2023-050 Accepting Review of the Hearings Officer's Decision
2. DRAFT Board Order 2023-050 Declining Review of the Hearings Officer's Decision
3. Notice of Appeal – 247-23-000728-A

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of the Hearings *
Officer’s Decision in File No. 247-23-000599-A. *

ORDER NO. 2023-050

WHEREAS, on October 10, 2023, the Hearings Officer approved File No. 247-23-000599-A; and

WHEREAS, on October 20, 2023, the Windlinx Ranch Trust, the Appellant, appealed (Appeal No. 247-23-000728-A) the Deschutes County Hearings Officer’s Decision on File No. 247-23-000599-A; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That it will hear on appeal Appeal No. 247-23-000728-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record

developed before the lower hearings body for File No. 247-23-000599-A, as presented at the following website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of the Hearings *
Officer's Decision in File No. 247-23-000599-A * ORDER NO. 2023-050

WHEREAS, on October 10, 2023, the Hearings Officer approved File No. 247-23-000599-A;
and

WHEREAS, on October 20, 2023, the Windlinx Ranch Trust, the Appellant, appealed (Appeal
No. 247-23-000728-A) the Deschutes County Hearings Officer's Decision on File No. 247-23-
000599-A; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code ("DCC") allow
the Deschutes County Board of County Commissioners ("Board") discretion on whether to hear
appeals of Hearings Officers' decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application
on appeal; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY
ORDERS as follows:

Section 1. That it will not hear on appeal Appeal No. 247-23-000728-A pursuant to Title
22 of the DCC and/or other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal
fee not yet spent processing the subject application. If the matter is further appealed to the Land
Use Board of Appeals and the County is required to prepare a transcript of the hearing before the
Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by
the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and
considered by the Board are the notice of appeal, recommendations of staff, and the record
developed before the lower hearing body for File No. 247-23-000599-A, as presented at the
following website:

<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner

247-23-000728-A

RECEIVED

OCT 20 2023

Deschutes County CDD



COMMUNITY DEVELOPMENT

APPEAL APPLICATION - BOARD OF COUNTY COMMISSIONERS

FEE: \$4,448

EVERY NOTICE OF APPEAL SHALL INCLUDE:

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

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

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

Appellant's Name (print): Windlinx Ranch Trust Phone: (541) 410-0191

Mailing Address: 59895 Scale House Road City/State/Zip: Bend, Oregon 97702

Email Address: rwindlinx@empnet.com

Land Use Application Being Appealed: 247-23-000599-A (Remand)

Property Description: Township 18 Range 12 Section 31 Tax Lot 600

Appellant's Signature: Robert Windlinx Date: 10-20-2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

NOTICE OF APPEAL

Windlinx Trust Appeal Statement

Dear Chair DeBone, Vice-Chair Adair, and Commissioner Chang:

Windlinx Ranch Trust respectfully appeals a recent hearings officer decision that approves a template dwelling in the F2 zone. This appeal statement presents the specific reasons for appeal and the reasons the Board should provide de novo review as provided in DCC 22.32.027.

Background for Appeal.

The application involves a request to add a new template dwelling in the F2 zone. The proposed template is depicted on Exhibit 1 to this document. This appeal involves the parcel identified as Lot 7C. The applicants asserted that Lot 7C and a parcel identified as Lot 7A were created in 1910 when the owner of the larger parcel, Ferguson, conveyed right-of-way to the Oregon Trunk Railway. The 1910 deed, a copy of which is attached as Exhibit 2, did not contain any legal description of the property interest conveyed. It referred to a strip 50 feet on either side of a centerline of a railroad now or hereafter located and staked over the west half of the southwest quarter of Section 31. Although the proposed template illustrated a location for Lot 7B, the "railroad parcel", the applicants acknowledged that that strip could not be specifically located. That is because the railroad was never constructed, a fact established by former County Surveyor, Mike Berry. The parcel noted as Lot 7C was not part of the request because the applicants stated that they could not locate the railroad parcel and thus, could not show that Lot 7C was located in their template. At most, applicants stated that they believed that a small part of Lot 7C was in the template. Appellant asserts that the applicants never revised or amended their statement that they were not using Lot 7C for establishing compliance with the template test.

A hearings officer approved the request, and that approval was appealed to LUBA. LUBA remanded for the county to further evaluate whether Lots 7C, 7A, and Lot 2 were lawfully created. Both parties appealed LUBA's decision and the court of appeals affirm LUBA on all counts.

On remand, the applicants asserted that the hearings officer had already decided that the specific location of Lot 7B and Lot 7C was, as a matter of fact, within the proposed template. They argued that LUBA and the court of appeals confirmed that finding. Appellant asserted the contrary that the specific location of Lots 7B and 7C was never determined because it was impossible to determine said location. On remand, the hearings officer concluded that the issue of whether Lot 7C was in the template was resolved in the prior proceedings even though LUBA expressly stated that Lot 7C was not part of the application. The hearings officer further found that the applicants demonstrated that Lot 7C was within the proposed template. The hearings officer noted that each iteration of the proposed template showed Lot 7C within the template, apparently concluding that all an applicant must do is recite on a template that a parcel is within the template they propose. The hearings officer accepted applicants' surveyors' reliance on ODOT maps that depicted possible locations of a railroad line that was never constructed. He disregarded the testimony of five professional surveyors who agreed with the applicants' initial representation that because Lot 7B (railroad parcel) cannot be located, it is not possible to locate Lot 7C within the applicants'

template. Each professional surveyor stated that the railroad parcel cannot be located because there is no legal description, and the railroad was never constructed.

Grounds for Appeal.

1. The hearings officer erred in misapplying the law to conclude that the issue over whether Lot 7C is located within the 160-acre square proposed by applicants was previously decided and could not be raised in the remand proceedings. He erred in determining that the specific location of Lot 7B was determined. Neither the hearings officer nor LUBA determined that the specific location of those parcels was established or decided that Lot 7C was in the template because the applicants did not include Lot 7C in their template analysis as LUBA expressly noted in its decision. In fact, LUBA specifically noted that Lot 7C was not part of the applicants' request. The LUBA decision was not preclusive on this issue because it did not conclude that Lot 7C is within the applicants' proposed template. The only issue decided with respect to Lot 7C was whether it was lawfully created.
2. The hearings officer erred in making a decision not supported by the preponderance of the evidence, or substantial evidence, that Lot 7C is located within the applicants' 160-acre square. The hearings officer accepted unsupported opinions from applicants' surveyors that they could locate Lot 7C based on the location of the "railroad parcel" as depicted on ODOT maps. The hearings officer ignored credible evidence from five professional surveyors who stated that the location of Lot 7C could not be determined because to locate that parcel of land one would need to be able to locate property described as the railroad parcel. The refuted evidence established that the railroad was never constructed and thus, it was impossible for anyone to locate it on the ground. To the extent the hearings officer agreed that the 1911 deed on the adjacent parcel established the location of the railroad strip on the Ferguson parcel in Section 31, he committed two errors. First, the grantor in the 1911 deed, Mueller, did not own the Ferguson parcel (Lot 7) at that time and could not have created any interest in it. Second, if the hearings officer agreed that the 1911 Mueller deed created an interest in a strip of property on the Ferguson parcel (Lot 7), he ignored the text in the 1911 deed that expressly states that the strip was only a right-of-way easement that reverted back to Mueller if the railroad was not constructed in five years. A copy of that deed is attached as Exhibit 3. Mike Berry provided unrefuted evidence that the railroad was never constructed. Thus, there could not have been any strip in the Ferguson parcel or the Mueller property after 1916. The hearings officer sanctioned an applicant asserting contrary positions.

Statement on why the Board should accept the appeal.

It is important that the Board accepts this appeal and reverses the hearings officer because his erroneous decision could pave the way for future dwellings in resource areas based upon applicants using "parcels" that do not exist or cannot be located. The "railroad parcel" was clearly conveyed to allow only a possible railroad in a general location. LUBA ruled that the conveyance for railroad purposes created a fee parcel. Appellant accepts that ruling. However, LUBA's ruling that such a deed not only creates a lawful parcel but also lawful parcels on each side of it creates a dangerous precedent when the primary "parcel" cannot be located. It allows applicants to show the special

use "parcel" almost anywhere they want in a parcel creating additional parcels that they show wherever they want and then use for qualifying for a dwelling. Indeed, under the hearings officer's decision, the railroad strip still exists even though no one could ever locate it and the 1911 deed stated that it went away after five years. The hearings officer's decision allows the applicants to use in its template a historic parcel description that went away over 100 years ago.

Further, under the hearings officer's current decision, any deed conveying an interest for a utility can be a parcel. If the document does not define a specific location, an applicant can show it anywhere on a parcel and then manipulate it to "create" additional parcels for a template test. Appellant submits that this is not the type of "parcel" the county intended to be used for qualifying for a dwelling. A proper template test should include only real parcels that can be found and identified in a specific location.

An additional reason the Board should hear this appeal is that the hearings officer's decision potentially allows unauthorized dwellings in a forest zone and that will increase the potential for wildfires. It will also have negative impacts on established and accepted forestry operations.

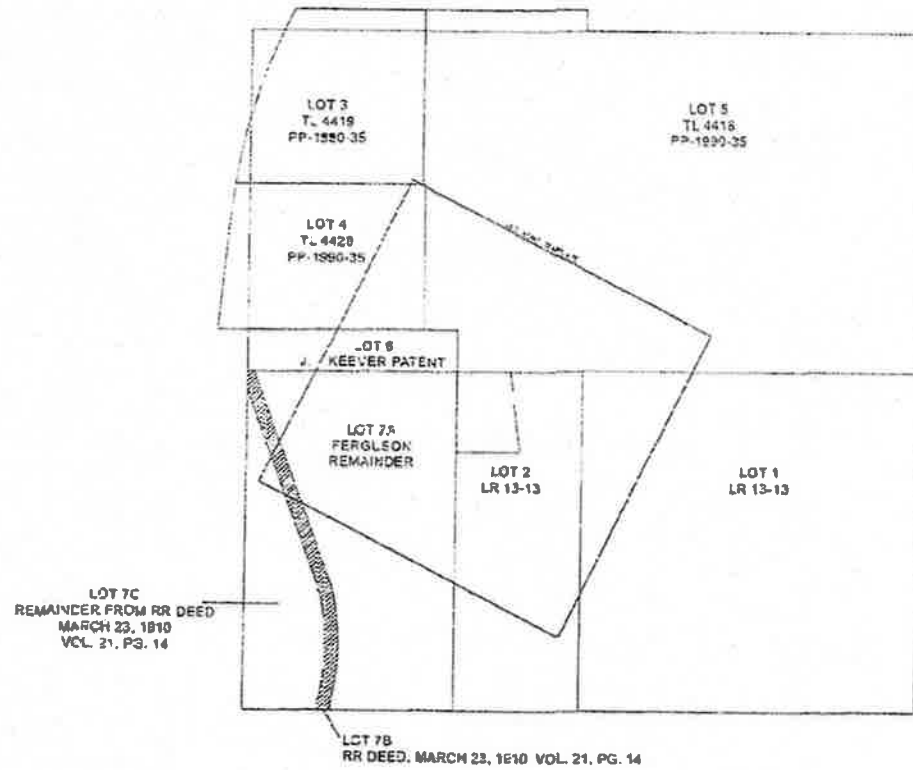
Appellant requests that if the Board accepts the appeal, it conduct a de novo hearing.

DCC 22.32.027 (B)(2)(d) provides: "**Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.**"

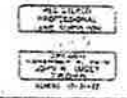
As stated above this appeal presents a significant policy issue on how the county should apply DCC 18.40.050 to parcels that were created for a special purpose and not intended for use commonly associated with dwelling applications.

Thank you in advance for your consideration of this matter.

EXHIBIT - 160 ACRE TEMPLATE



NOTE:
 This map is not to be used for any other purpose.



AXIS MAPPING & SURVEYING COMPANY 1254 NW FRESNO AVENUE, BEND, OR 97703 541-728-8474

Attachment 11
 Page 1 of 1

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IN WITNESS WHEREOF, WE THE GRANTORS ABOVE NAMED, HERCUNTO SET, OUR HANDS AND SEALS
THIS 7TH DAY OF MARCH 1910

WITNESS TO THE EXECUTION HEREOF: SIDNEY S. STEARNS (SEAL)
NORA F. STEARNS; LORA L. STEARNS FRANCES E. STEARNS (SEAL)

STATE OF OREGON, }
COUNTY OF CROOK } ss.

THIS CERTIFIES, THAT ON THIS 7TH DAY OF MARCH A.D. 1910 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC; IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED SIDNEY S. STEARNS AND FRANCES E. STEARNS, HIS WIFE, WHO ARE KNOWN TO ME TO BE THE IDENTICAL INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME-THAT THEY EXECUTED THE SAME, FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN SET FORTH.

IN TESTIMONY WHEREOF, I HAVE HERCUNTO SET MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

ALFRED A. AYA
(NOTARIAL SEAL) NOTARY PUBLIC IN AND FOR THE STATE OF OREGON.

4365

JOHN FERGUSON & WIFE
TO
OREGON TRUNK RAILWAY.

VOLUME 21, DEEDS, PAGE 14.
TRANSCRIPT FROM CROOK COUNTY
FILED MARCH 23rd, A.D. 1910

WARRANTY DEED.

KNOW ALL MEN BY THESE PRESENTS, THAT JOHN FERGUSON AND SARAH FERGUSON, HIS WIFE OF COUNTY OF CROOK, STATE OF OREGON, IN CONSIDERATION OF ONE & 00/100 DOLLARS TO THEM IN HAND PAID BY THE OREGON TRUNK RAILWAY, A CORPORATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DO HEREBY GIVE, GRANT, BARGAIN, SELL AND CONVEY UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER, ALL THE FOLLOWING DESCRIBED REAL PROPERTY, FREE FROM ALL INCUMBRANCES, TO-WIT: A STRIP OF LAND FOR RAILROAD PURPOSES ONE HUNDRED FEET IN WIDTH BEING FIFTY (50) FEET ON EACH SIDE OF AND PARALLEL WITH THE CENTER LINE OF THE OREGON TRUNK RAILWAY, AS THE SAME IS NOW OR MAY HEREAFTER BE LOCATED AND STAKED OUT OVER AND ACROSS AND UPON THE FOLLOWING DESCRIBED REAL ESTATE IN CROOK COUNTY, STATE OF OREGON: THE WEST HALF OF THE SOUTHWEST QUARTER (1/2 SW) OF SECTION THIRTY ONE (31); TOWNSHIP EIGHTEEN SOUTH, RANGE TWELVE (12) EAST, WILLAMETTE MERIDIAN. TOGETHER WITH THE RIGHT TO TAKE FROM THE LANDS ADJACENT TO AND OUTSIDE OF THE STRIP HEREIN ABOVE DESCRIBED SUCH MATERIALS AND STONE AS MAY BE NECESSARY FOR THE CONSTRUCTION OF SAID RAILROAD; AND NO MORE. TOGETHER, WITH ALL AND SINGULAR, THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING,

TO HAVE AND TO HOLD THE ABOVE DESCRIBED PREMISES, TOGETHER WITH THEIR APPURTENANCES, UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER. AND JOHN FERGUSON AND SARAH FERGUSON GRANTORS ABOVE NAMED DO HEREBY COVENANT TO AND WITH THE OREGON TRUNK RAILWAY COMPANY AFORESAID, ITS SUCCESSORS AND ASSIGNS, THAT THE ABOVE GRANTED PREMISES ARE FREE FROM ALL INCUMBRANCES; THAT THEY HAVE GOOD RIGHT AND TITLE TO CONVEY THE SAME IN MANNER AFORESAID, AND THAT THEY WILL AND THEIR HEIRS, EXECUTORS AND ADMINISTRATORS SHALL FOREVER WARRANT AND DEFEND THE ABOVE GRANTED PREMISES, AND EVERY PART AND PARCEL THEREOF, AND THE PEACEABLE POSSESSION THEREOF UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS AGAINST THE LAWFUL CLAIMS OF ALL PERSONS WHOMSOEVER.

IN WITNESS WHEREOF, THEY HAVE HEREUNTO SET THEIR HANDS AND SEALS ON THIS NINETEENTH DAY OF MARCH A.D. 1910

EXECUTED IN THE PRESENCE OF
D. LYNES; E.O. STADTER

JOHN FERGUSON (SEAL)
SARAH FERGUSON (SEAL)

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STATE OF OREGON, }
COUNTY OF CROOK } ss.

THIS CERTIFIES, THAT ON THIS 19TH DAY OF MARCH A.D. 1910 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED JOHN FERGUSON, AND SARAH FERGUSON HIS WIFE WHO ARE KNOWN TO ME TO BE THE INDIVIDUALS DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES THEREIN MENTIONED.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL, THE DAY AND YEAR LAST ABOVE WRITTEN.

(NOTARIAL SEAL)

E.O. STADTER
NOTARY PUBLIC FOR THE STATE OF OREGON

4366

CROOK COUNTY INVESTMENT CO.
TO
R. M. MOORE.

VOLUME 21, DEEDS, PAGE 15
TRANSCRIPT FROM CROOK COUNTY
FILED MARCH 23", A.D. 1910

THIS INDENTURE, MADE AND ENTERED INTO BY AND BETWEEN THE CROOK COUNTY INVESTMENT COMPANY, A CORPORATION, INCORPORATED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OREGON, PARTY OF THE FIRST PART, AND R.M. MOORE PARTY OF THE SECOND PART.

WITNESSETH, SAID PARTY OF THE FIRST PART, FOR AND IN CONSIDERATION OF THE SUM OF ONE HUNDRED FIFTY (\$150.00) DOLLARS TO IT IN HAND PAID, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DOES BY THESE PRESENTS GRANT, BARGAIN, SELL AND CONVEY UNTO SAID PARTY OF THE SECOND PART, HIS HEIRS AND ASSIGNS FOREVER, THAT CERTAIN REAL PROPERTY SITUATED IN CROOK COUNTY, OREGON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: LOTS NINE (11) AND TEN (10) IN BLOCK NINETY-FOUR (94) IN HILLMAN, AS THE SAME APPEARS OF RECORD IN THE OFFICE OF THE COUNTY CLERK OF CROOK COUNTY, OREGON. TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

TO HAVE AND TO HOLD THE SAME UNTO SAID PARTY OF THE SECOND PART HIS HEIRS AND ASSIGNS FOREVER. AND SAID PARTY OF THE FIRST PART DOES HEREBY COVENANT, TO AND WITH SAID PARTY OF THE SECOND PART, HIS HEIRS AND ASSIGNS, THAT SAID PREMISES ARE FREE FROM ALL INCUMBRANCES, AND THAT SAID PARTY OF THE FIRST PART WILL WARRANT AND DEFEND THE SAME, AND EVERY PART THEREOF, AGAINST THE LAWFUL CLAIMS AND DEMANDS AND DEMANDS OF ALL PERSONS, WHOMSOEVER.

IN WITNESS WHEREOF, SAID CROOK COUNTY INVESTMENT COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED, AND ITS CORPORATE SEAL TO BE HERETO AFFIXED, BY ITS PRESIDENT AND SECRETARY, THIS 3RD DAY OF MARCH 1910 UNDER DUE AUTHORITY CONFERRED THEREFOR BY THE BOARD OF DIRECTORS OF SAID CORPORATION.

EXECUTED IN THE PRESENCE OF
TILLY ANDERSON; F.B. EDGINGTON

CROOK COUNTY INVESTMENT COMPANY
By F.P. COOPER, PRESIDENT
By T.W. TAYLOR SECRETARY

(CORPORATE SEAL)

ALL OF LOT FOUR (4) BLOCK EIGHT (8) AS THE SAME APPEARS UPON THE OFFICIAL MAP OF IMPERIAL TOWNSHIP, SAID MAP BEING RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CROOK COUNTY, AT PRINEVILLE, STATE OF OREGON, ON THE 2ND DAY OF MARCH 1911, IN MAP BOOK THREE AT PAGE---, TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

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TO HAVE AND TO HOLD, THE SAID PREMISES, WITH THE APPURTENANCES, UNTO THE SAID PARTY OF THE SECOND PARTY AND TO HIS HEIRS AND ASSIGNS FOREVER. THE SAID PARTY OF THE FIRST PARTY DOES HEREBY COVENANT TO AND WITH THE ABOVE NAMED PARTY OF THE SECOND PART THAT SHE, HER HEIRS, EXECUTORS AND ADMINISTRATORS, SHALL WARRANT AND DEFEND THE ABOVE GRANTED PREMISES, AGAINST THE DEEDS AND DEEDS OF THE SAID PARTY OF THE FIRST PART AND ALL PERSONS CLAIMING BY, FROM, THROUGH OR UNDER, SAID PARTY OF THE FIRST PART, UNTO THE SAID PARTY OF THE SECOND PART, HIS HEIRS, AND ASSIGNS FOREVER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.

WITNESSES TO THE EXECUTION HEREOF
B. MONTGOMERY
W. F. BOYLAN
CONSTANCE REID (SEAL)

STATE OF OREGON
COUNTY OF MULTNOMAH

THIS CERTIFIES, THAT ON THIS 3RD DAY OF MARCH A. D. 1911, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE WITHIN NAMED CONSTANCE REID (AN UNMARRIED WOMAN), WHO IS KNOWN TO ME TO BE THE IDENTICAL PERSON DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME, AS HER FREE ACT AND DEED, FOR THE USES AND PURPOSES THEREIN EXPRESSED.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR LAST ABOVE WRITTEN

B. MONTGOMERY
NOTARY PUBLIC IN AND FOR THE STATE OF OREGON.
(NOTARIAL SEAL)

9643.
THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY
TO
OREGON TRUNK RAILWAY

VOL. 24, DEEDS, PAGE 444.
TRANSCRIPT FROM CROOK COUNTY.
FILED APR. 11, 1911, AT 5 O'CLOCK P.M.
WARREN BROWN COUNTY CLERK

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT THE THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OREGON, IN CONSIDERATION OF ONE AND 00/100 DOLLARS TO IT SAID BY THE OREGON TRUNK RAILWAY A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF

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WASHINGTON, AND DOING BUSINESS IN THE STATE OF OREGON AND ELSEWHERE; THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DOES HEREBY GIVE, GRANT, BARRAIN, SELL AND CONVEY UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER, ALL THE FOLLOWING DESCRIBED REAL PROPERTY, FREE FROM ALL INCUMBRANCES AND SITUATE IN THE COUNTY OF CROOK, STATE OF OREGON, TO-WIT:

ALL THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER (E½ SW¼) OF SECTION SEVENTEEN (17), TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, LYING WESTERLY OF A LINE PARALLEL TO AND FIFTY (50) FEET EASTERLY OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY, AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION SEVENTEEN;

ALSO, ALL THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER (SE¼ NW¼) OF SECTION FIVE (5) TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH, BEING FIFTY (50) FEET ON EACH SIDE OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION FIVE (5)

ALSO ALL THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER (W½ OF NW¼) OF SECTION THIRTY-ONE (31) TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH BEING FIFTY (50) FEET ON EACH SIDE OF THE CENTER LINE OF THE OREGON TRUNK RAILWAY AS THE SAME IS NOW STAKED OUT OVER AND ACROSS SAID SECTION THIRTY-ONE (31)

SAID CENTER LINE ACROSS SECTION SEVENTEEN AND FIVE, TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11) EAST OF THE WILLAMETTE MERIDIAN, AND ACROSS SECTION THIRTY-ONE (31), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE EAST OF THE WILLAMETTE MERIDIAN, BEARS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 26204.86, A POINT ON THE SOUTH LINE OF SECTION SEVENTEEN (17) TOWNSHIP TWENTY (20) SOUTH, RANGE ELEVEN (11), EAST OF THE WILLAMETTE MERIDIAN, 1236 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION SEVENTEEN (17) THENCE N 2° 58' E. 5305.7 FEET TO STATION 2673191.8 A POINT ON THE NORTH LINE OF SAID SECTION SEVENTEEN (17), 1464.4 FEET FROM THE NORTHWEST CORNER OF SAID SECTION SEVENTEEN (17); THENCE CONTINUING N. 2° 58' E 5396.7 FEET TO STATION 2727188.5 A POINT ON THE SOUTH OF SAID SECTION FIVE (5), 1765 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION FIVE (5); THENCE CONTINUING N. 2° 58' E. 2788.5 FEET TO STATION 2755*74; THENCE CURVING TO THE LEFT ON A 1° 00' CURVE 1640.4 FEET THROUGH AN ANGLE OF 16° 24' TO STATION 2772*14.4; THENCE N. 13° 26' W. 814.6 FEET TO STATION 2780*29, A POINT ON THE NORTH LINE OF SAID SECTION FIVE (5), 1544 FEET FROM THE NORTHWEST CORNER OF SAID SECTION FIVE (5); THENCE CONTINUING NORTHERLY AND NORTHEASTERLY BY VARIOUS COURSES AND DISTANCES TO STATION 3225*36, A POINT ON THE WEST LINE OF SECTION SIX (6) TOWNSHIP NINETEEN (19) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, 1261.2 FEET FROM THE NORTHWEST CORNER OF SAID SECTION SIX (6); THENCE N. 50° 56' E. 220.0 FEET TO STATION 3227*56.0; THENCE ON A SPIRAL CURVE TO THE LEFT INCREASING TO A 3° 00' CURVE 180 FEET THROUGH AN ANGLE OF 2° 42' TO STATION 3229*36°; THENCE ON A 3° 00' CURVE TO THE LEFT 2620.0 FEET THROUGH AN ANGLE OF 78° 36' TO STATION 3255*56.0; THENCE ON A DECREASING SPIRAL CURVE TO THE LEFT 180 FEET THROUGH AN ANGLE OF 2° 42' TO STATION 3257 *36.0; THENCE N. 33° 04' W 1008.2 FEET TO STATION 3267*44.2; THENCE ON A SPIRAL CURVE TO THE RIGHT INCREASING TO 3° 00' CURVE, 180 FEET THROUGH AN ANGLE OF 2° 42' TO STATION 3269*24.2 THENCE ON A ^{3° 00'} CURVE TO THE RIGHT 1825.0 FEET THROUGH AN ANGLE OF 54° 45' TO STATION 3287*49.2;

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THENCE ON A DECREASING SPIRAL CURVE TO THE RIGHT 180 FEET THROUGH AN ANGLE OF 2° 42' TO STATION 3289+29.2; THENCE N. 27° 05' E 931.5 FEET TO STATION 3298+60.7 A POINT ON THE NORTH LINE OF SECTION THIRTY-ONE (31), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, 394.4 FEET FROM THE NORTHWEST CORNER OF SAID SECTION THIRTY-ONE (31)

THE TOTAL AREA OF LAND HEREBY CONVEYED BEING SIX AND 5/10 (6.5) ACRES MORE OR LESS.

TOGETHER, WITH ALL AND SINGULAR, THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING.

TO HAVE AND TO HOLD THE ABOVE GRANTED PREMISES, TOGETHER WITH THEIR APPURTENANCES, UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS FOREVER, UPON THE EXPRESS CONDITION HOWEVER THAT THE GRANTEE HEREIN CONSTRUCTS AND OPERATES ITS RAILROAD THROUGH THE LANDS OF GRANTOR, OVER THE RIGHT OF WAY AS DESCRIBED HEREIN WITHIN FIVE (5) YEARS FROM THE DATE HEREOF; AND IN CASE OF THE FAILURE OF GRANTEE TO CARRY OUT THIS CONDITION GRANTOR RESERVES FOR ITSELF THE RIGHT TO ^{RE-}ENTER THE PREMISES HEREBY DESCRIBED AND TAKE POSSESSION OF THE SAME.

AND THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY, GRANTEE ABOVE NAMED DOES HEREBY COVENANT TO AND WITH THE OREGON TRUNK RAILWAY AFORESAID, ITS SUCCESSORS AND ASSIGNS, THAT THE ABOVE GRANTED PREMISES ARE FREE FROM ALL INCUMBRANCES, THAT IT HAS GOOD RIGHT AND TITLE TO CONVEY THE SAME IN MANNER AFORESAID, AND THAT IT WILL AND ITS SUCCESSORS AND ASSIGNS SHALL FOREVER WARRANT AND DEFEND THE ABOVE GRANTED PREMISES, AND EVERY PART AND PARCEL THEREOF, AND THE PEACEABLE POSSESSION THEREOF UNTO THE SAID OREGON TRUNK RAILWAY, ITS SUCCESSORS AND ASSIGNS AGAINST THE LAWFUL CLAIMS OF ALL PERSONS WHOMSOEVER.

IN TESTIMONY WHEREOF, THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY, ON THE 10 DAY OF FEBRUARY 1911, HAS CAUSED THIS INSTRUMENT TO BE EXECUTED, ITS CORPORATE SEAL TO BE HEREUNTO AFFIXED, AND ITS CORPORATE NAME TO BE HEREUNTO SIGNED BY ED C. MUELLER ITS PRESIDENT AND BY F. W. MUELLER ITS SECRETARY, THEY BEING LAWFULLY AUTHORIZED THEREUNTO BY A RESOLUTION OF THE BOARD OF DIRECTORS OF SAID THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY OF THE 10 DAY OF FEB. 1911,

EXECUTED IN THE PRESENCE OF US AS WITNESSES, (

A. A. BRYAN	}	THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY,
ED. H. BEIN		BY ED C. MUELLER ITS PRESIDENT
		BY F. W. MUELLER ITS SECRETARY.
		(CORPORATE SEAL)

STATE OF IOWA
 SS.
 SCOTT COUNTY

ON THIS 10TH DAY OF FEBRUARY 1911, BEFORE ME APPEARED ED. C. MUELLER AND F. W. MUELLER TO ME PERSONALLY KNOWN, WHO, EACH BEING DULY SWORN DID SAY THAT HE IS THE PRESIDENT AND SECRETARY, RESPECTIVELY OF THE CHRISTIAN MUELLER LAND AND TIMBER COMPANY, AND THAT THE SEAL AFFIXED TO SAID INSTRUMENT IS THE CORPORATE SEAL OF SAID CORPORATION, AND THAT SAID INSTRUMENT WAS SIGNED AND SEALED IN BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS BOARD OF DIRECTORS AND SAID ED C. MUELLER AND F. W. MUELLER SEVERALLY ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE ACT AND DEED OF SAID CORPORATION.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND SERRIED MY OFFICIAL SEAL THIS THE DAY AND YEAR FIRST IN THIS, MY CERTIFICATE WRITTEN.

E. A. GOETTIG

(NOTARIAL SEAL)

NOTARY PUBLIC, SCOTT COUNTY, IOWA.