

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 15-11-03-03

IN THE MATTER OF VACATING AN UNNAMED
PUBLIC ROAD, LOCATED WITHIN WATT'S
ADDITION TO BLUE RIVER CITY, WITHOUT A
PUBLIC HEARING (16-45-21-34)

WHEREAS, a petition has been received by the Surveyor's Office of the Lane County Department of Public Works requesting, under authority of ORS Chapter 368.341, the vacation of a public road easement, said easement being conveyed to Lane County for road purposes by that certain Bargain and Sale Deed recorded on Reel 239-D, Instrument 49096, Lane County Oregon Plat Records. The area being more particularly described as follows:

Lot 6, Block 2, Watt's Addition to Blue River City, and the southerly 10 feet of the road vacated on March 25, 1964, more particularly described as follows:

Beginning at the galvanized iron spike set in Blue River Drive (former McKenzie Highway) marking the southwest corner of Section 21, Township 16 South, Range 4 East of the Willamette Meridian (being referenced on the ground by an iron pipe bearing N 1° 53' 14" W 33.10 feet); thence North 406.32 feet and East 1738.99 feet to an iron pin marking the northwest corner of Lot 2, Block 2 of Watt's Addition to Blue River City according to County Survey No. 13089; thence N 52° 37' E 200.00 feet to the northwest corner of Lot 6, Block 2 of said Plat and the TRUE POINT OF BEGINNING; thence N 52° 37' E 50.00 feet to an iron pin marking the northeast corner of said Lot 6, Block 2; thence N 52° 37' E 10.00 feet to a point, thence S 37° 23' E 120.00 feet to a point; thence S 52° 37' W 10.00 feet to an iron pin marking the southeast corner of said Lot 6; thence S 52° 37' W 50.00 feet to a point; thence N 37° 23' W 120 feet to the true point of beginning in Lane County Oregon.

WHEREAS, the petition, marked as Exhibit "A", and made a part of this Order, complies with the provisions of ORS 368.351 in that the petitioners, who are the landowners of 100% of the property abutting the proposed vacation, request the vacation be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public roads and rights of way without a public hearing; and

WHEREAS, the Surveyor's Office notified Century Link Communications, Lane Electric, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the nearby property owners regarding the vacation and they either had no objection to the vacation or did not respond to the referral; and

WHEREAS, the Oregon Utility Notification Center was contacted and there are no known utilities lying within the area proposed to be vacated; and

WHEREAS, no property will be denied legal access by this vacation; and

WHEREAS, the road proposed to be vacated is not improved or open for public travel; and

WHEREAS, the public interest will be served by this vacation, as it will allow the land to be put to productive residential use and relieve the public from potential liability for injury or misuse; and

WHEREAS, the Director of the Department of Public Works has provided a written report in support of the proposed vacation, as required by ORS 368.351, marked as Exhibit "B", attached, and made a part of this Order; and

WHEREAS, the Director of Lane County Public Works has provided a staff report marked as Exhibit "C", attached, and made a part of this Order, determining the special benefit to the applicant; and

WHEREAS, the Special Benefit Fee was determined to be \$15,000, and the petitioner has deposited this amount with the Lane County Surveyor; and

WHEREAS, the petitioners have paid a vacation fee deposit of \$3,400 and will pay actual costs incurred, including recording fees, upon final approval of the vacation; and

WHEREAS, the petitioners have requested the southwesterly 15 feet of the vacated area be vested to Stephen W. and Elizabeth L. Gabriel, owners of the adjacent property on the southwesterly side, and the northeasterly 45 feet of the vacated area be vested to the Dorothy L. Behm Marital Trust, owner of the adjacent property on the northeasterly side; and

WHEREAS, the county governing body may determine the vesting of the property vacated in the Order to Vacate per ORS 368.366(2); and

WHEREAS, all statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned for is in the best interest of the public.

NOW, THEREFORE, the Board of Commissioners of Lane County **ORDERS** as follows:

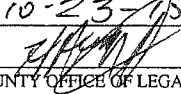
1. The above described public road is hereby VACATED.
2. The southwesterly 15 feet of the vacated area be vested to Stephen W. and Elizabeth L. Gabriel, and the northeasterly 45 feet of the vacated area be vested to the Dorothy L. Behm Marital Trust, as requested in the Petition to Vacate.

3. This Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration, and be further recorded in the Lane County, Oregon Deed Records.

ADOPTED this 3rd day of November, 2015.



Jay Boziewich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 10-23-15


LANE COUNTY OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

ALL-PURPOSE ACKNOWLEDGMENT

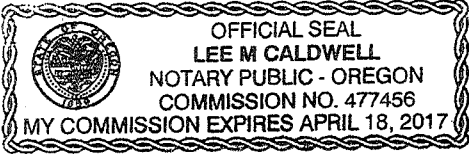
State of Oregon

County of Lane

On May 23rd 2015 before me, Lee M. Caldwell
DATE NAME OF NOTARY PUBLIC

personally appeared Jerry Behm and Stephen W. Gebroel and Elizabeth L. Gebroel
NAME(S) OF SIGNER(S)

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), an that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal or Stamp Here

[Signature]
SIGNATURE OF NOTARY

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it may prove valuable to persons relying on this Acknowledgment and could prevent fraudulent reattachment of this certificate to another document.

DESCRIPTION OF ATTACHED DOCUMENT

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT

Petition for Venue, etc.
TITLE OR TYPE OF DOCUMENT

Three
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "B"

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

DIRECTOR'S REPORT

IN THE MATTER OF VACATING AN UNNAMED
PUBLIC ROAD, LOCATED WITHIN WATT'S
ADDITION TO BLUE RIVER CITY, WITHOUT A
PUBLIC HEARING (16-45-21-34)

The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing. ORS 368.326 to 368.366 allows a county governing body to vacate a subdivision or part of subdivision, a road or right-of-way, or public interest in property under the jurisdiction of the county, based on the determination that the vacation is "in the public's interest".

The road lies within the boundary of Watt's Addition to Blue River City, but was not one of the original platted roads. The area proposed to be vacated was conveyed to Lane County for road purposes in 1964 and accepted as a public road easement by the Board of County Commissioners. The road is 60 feet wide and 120 feet in length. There is no evidence the road has ever been constructed or used for public travel, but it appears to be used for a driveway. All the adjoining owners have direct access off of Blue River Road.

The petitioners wish to vacate the described road to eliminate structural encroachment issues that have developed over time. It would eliminate unnecessary road right of way and allow better residential used of the land.

The Surveyor's Office notified Century Link Communications, Lane Electric, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral. The Oregon Utility Notification Center was contacted and there are no known utilities lying within the area proposed to be vacated.

A written report is provided, marked as Exhibit "C", determining the special benefit of the vacation to the applicant pursuant to Lane Manual 60.853(3). The petitioners have deposited the determined amount with the Lane County Surveyor.

The road is not needed by the Lane County Transportation System and no property will be denied legal access as a result of this vacation. It is concluded the vacation of this road is in the public's interest, as it will allow the land to be put to productive residential use and eliminate unnecessary road right of way. It is therefore recommended the public road dedicated to the public and as described in the Order, be vacated. It is further recommended the vacation be allowed without a public hearing.

DATED this 20th day of October, 2015.



Marsha A. Miller, Public Works Director
Department of Public Works

EXHIBIT "C"

MAP & TAX LOT No.: 16-45-21-34-00800
16-45-21-34-00200
16-45-21-34-00701

LANE COUNTY

Notification of Determination of Amount of Special Benefit Deposit
in Connection with a Proposed Vacation of an Unnamed, Dedicated Street
Pursuant to Lane Manual 60.853(3)(a)

Pursuant to the provisions of Lane Manual 60.853(3)(a), my determination of the amount of "Special Benefit" and therefore the amount of deposit required in connection with the proposed vacation of an unnamed, dedicated street, is **\$15,000.00**.

My determination is based on a Staff Report and recommendation, a copy of which is attached hereto and marked as "Attachment 1".

Dated this 20th day of July, 2015.



Marsha A. Miller, Director
Lane County Public Works

STAFF REPORT

Recommendation in the Matter of Determination of Special Benefit
in Connection with a Proposed Vacation of an Unnamed, Dedicated Street
Pursuant to Lane Manual 60.853(3)(a)

Date: July 15, 2015

Applicants: Jerry Behm and US Bank NA, Trustees of the Dorothy L. Behm Marital Trust
Stephen W. and Elizabeth L. Gabriel, Husband and Wife

Proposed Vacation of an Unnamed, Dedicated Street:

The proposed vacation of the unnamed, dedicated street is described on Reel 239D, Recorders Number 49096 as recorded in Lane County Deeds and Records, Lane County, Oregon. The street is a parcel of land adjacent to the Petitioners property known as Map and Tax Lots 16-45-21-34-00800, 16-45-21-34-00200, and 16-45-21-34-00701. The road was dedicated in 1964 by deed in exchange for a platted street and was accepted by the Lane County Board of County Commissioners, but was never constructed and has not been used by the public as a roadway.

The street to be vacated is a 60-foot wide by 120-foot long and is approximately 7,200 S.F. in area. The land has a slope with some trees along the sides. There are no utilities within the proposed vacation area (see Exhibit 1).

Nature of Benefit to be Received if Proposed Vacation is Approved:

According to the deed, the land was conveyed to Lane County, subject to it being used for road purposes, and was accepted by Lane County as a public road easement. The parcel is Lot 6, Block 2 of Watt's Addition to Blue River City and the southwesterly 10 feet of what is now the vacated platted street of the subdivision. The street has not been open for public travel since 1964, but there is evidence that it has been used as a driveway. It appears that the integrity of the platted lot (lot 6, Block 2) has been maintained, so it is reasonable to assume that once the right of way is vacated, it will become a standalone, legally buildable lot. For these reasons, the valuation will be based on a buildable lot site value at 50% of fee simple ownership. As per the petition, each party will receive a portion of the vacated street, i.e. a divided interest in a potentially buildable lot. The "Dorothy L. Behm Marital Trust will receive the northeasterly 45 feet, which is 75% of the property, and Stephen W. and Elizabeth L. Gabriel will receive the southwesterly 15 feet, which is 25% of the property.

Value Indication(s) of Properties to be Benefited:

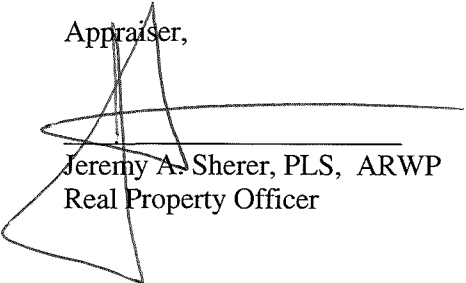
The highest and best use of the street to be vacated is a residential buildable lot. Comparable sales of slightly larger, river front residential land in the Blue River and Rainbow communities range in site value between \$59,000 and \$69,000. Similarly sized parcels in other small communities in Lane County range from \$20,000 to \$28,500, depending on location.

Summary and Recommendation of Special Benefit:

The comparable sales in the Blue River/Rainbow area are larger and have water frontage. These parcels are superior to the proposed vacation and require a downward adjustment. The comparable sales in other small communities are similar in size but vary in location. These parcels are similar or slightly inferior to the proposed vacation and require a slight upward adjustment.


Based on the highest and best use, the site value of the County property is estimated to be \$30,000. Pursuant Lane Manual 60.853(3)(a), the "special benefit" is determined to be 50% of fee, or a value of \$15,000. Proportionally, the "special benefit" determinations allocated between the petitioner's properties are **\$11,250** toward The Dorothy L. Behm Marital Trust properties and **\$3,750** toward Stephen W. and Elizabeth L. Gabriel's property.

Appraiser,



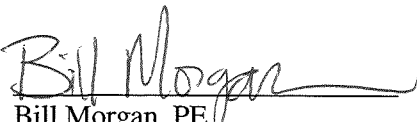
Jeremy A. Sherer, PLS, ARWP
Real Property Officer

Reviewed by,



Jay Blomme, PLS
Interim Lane County Surveyor

Approved by,



Bill Morgan, PE
Lane County Engineer

"ATTACHMENT 1" of EXHIBIT "C"

View of unimproved, dedicated street (subject property) looking northwest from Blue River Rd



Aerial view of unimproved, dedicated street (subject property)



EXHIBIT "D"

Proposed to be Vacated Unnamed Road in Watt's Addition to Blue River

Section 21, T. 16 S., R. 4 E. W.M.
Lane County



NO SCALE

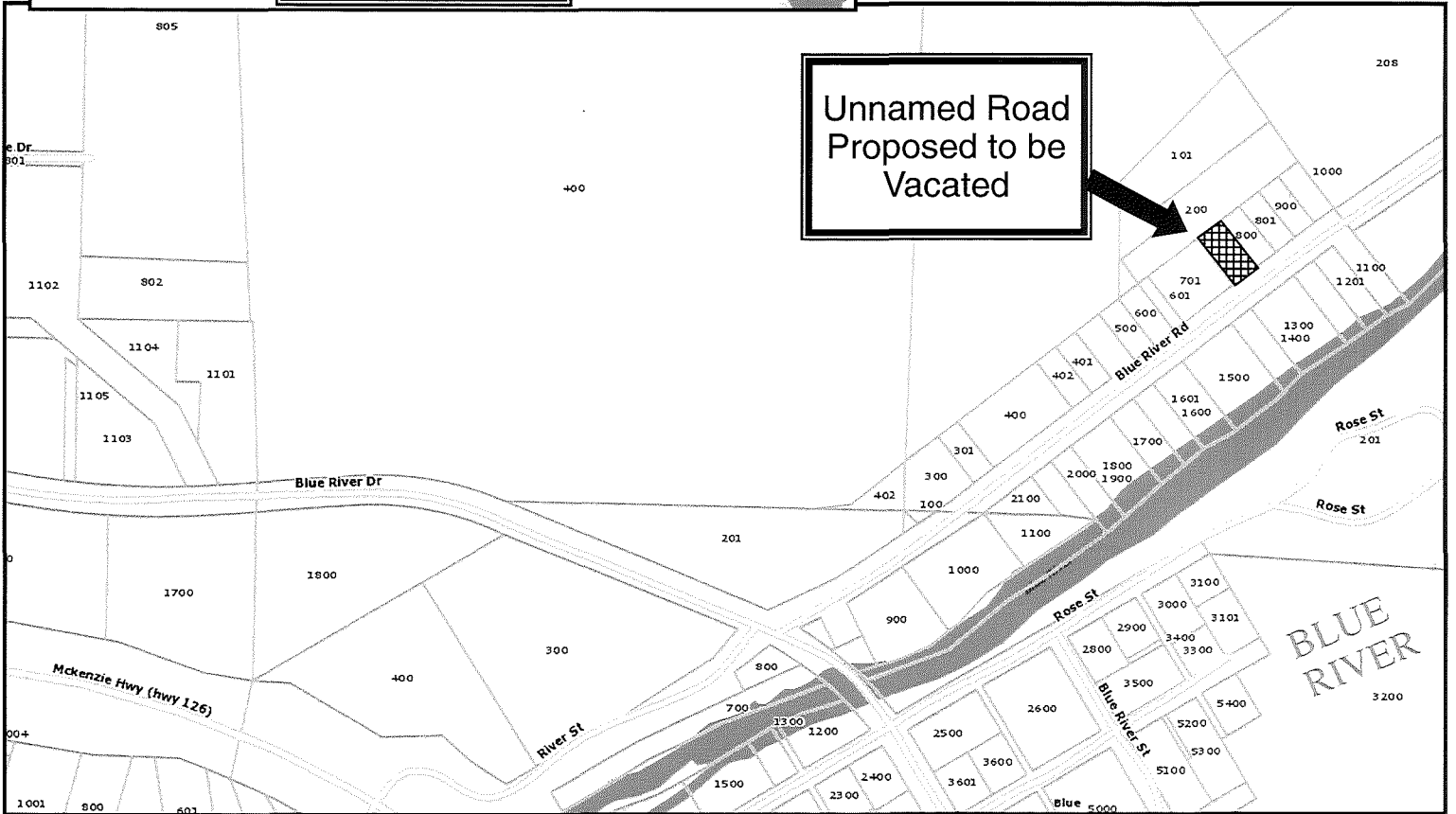
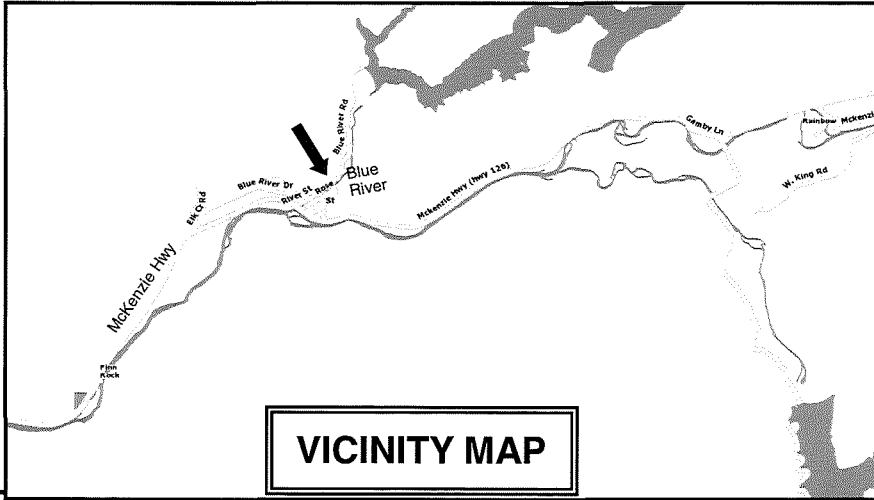


EXHIBIT "A"

IN THE BOARD OF COUNTY COMMISSIONERS OF LAND COUNTY, OREGON

IN THE MATTER OF THE VACATION OF A STREET)
DEDICATED IN 1964 PER R239D/49096 AND LOCATED)
WITHIN "WATTS ADDITION TO BLUE RIVER CITY") PETITION TO VACATE
SUBDIVISION, IN THE SOUTHEAST 1/4 SOUTHWEST 1/4,)
SECTION 21, TOWNSHIP 16 SOUTH, RANGE 4 EAST OF)
THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON)

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Jerry Behm and US Bank NA, trustees of the Dorothy L. Behm Marital Trust, and Stephen W. and Elizabeth L. Gabriel, husband and wife, as owners of the adjacent real property hereby petition for the vacation of "UNNAMED" Street, said area to be vacated is described as follows:

Lot 6, Block 2, Watt's Addition to Blue River City, and the southerly 10 feet of the street vacated in 1964, more particularly described as follows: Beginning at the galvanized iron spike set in the McKenzie Highway marking the southwest corner of Section 21, Township 16 South, Range 4 East of the Willamette Meridian (being referenced on the ground by an iron pipe bearing N 1° 53' 14" W 33.10 feet); thence North 406.32 feet and East 1738.99 feet to an iron pin marking the northwest corner of Lot 2, Block 2 of Watt's Addition to Blue River City according to County Survey No. 13089; thence N 52° 37' E 200.00 feet to the northwest corner of Lot 6, Block 2 of said Plat and the TRUE POINT OF BEGINNING; thence N 52° 37' E 50.00 feet to an iron pin marking the northeast corner of said Lot 6, Block 2; thence N 52° 37' E 10.00 feet to a point, thence S 37° 23' E 120.00 feet to a point; thence S 52° 37' W 10.00 feet to an iron pin marking the southeast corner of said Lot 6; thence S 52° 37' W 50.00 feet to a point; thence N 37° 23' W 120 feet to the true point of beginning in Lane County Oregon

WHEREAS, the undersigned petitioners are the owners of 100% of all the real property adjacent to the above described area to be vacated; and

WHEREAS, petitioners allege as follows:

- 1. The purpose of this vacation is to vacate an unused, unimproved and unnecessary right-of-way to allow better residential use of the land, as allowed by the zoning district, and to correct trespass issues.
2. There are no phone lines, power lines or other utility lines or easements within the area to be vacated. If any are found, their disposition will be to the property owners unless otherwise provided by title.
3. Necessary easements for all existing public and private utilities, if they exist, will be retained and run with the land, as provided by law.

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, the public interest will be served by:

- 1. Adding land to the tax base;
2. Relieving the public from potential liability for injury or misuse;
3. Allowing the land to be put to productive residential use as anticipated by SB 100, Statewide Planning Rules, and Statewide Planning Goals 2 and 10;
4. Eliminating from public ownership land that is not improved, has no anticipated use and will likely never be developed for public uses. The "unnamed" stub was dedicated in 1964 as a replacement of an adjacent street (vacated) that was platted 112 years ago. Neither was ever improved;

EXHIBIT "A"

- 5. Eliminating redundant and unnecessary road right of way. Blue River Road, which is improved to County Standards, is sufficient to serve local transportation needs. Construction of the "unnamed" stub would lead to nowhere.
- 6. Eliminating structural trespass issues that have developed over time.
- 7. The section of roadway is not needed for legal access. Parcels adjacent to the east and west take access directly from Blue River Road. The Parcel to the north is part of a large tract that has access directly from Blue River Road.

WHEREAS, petitioners, separately and collectively, acknowledge that the filing fee is a deposit and an estimate of the vacation fee, and that we accept responsibility for full payment of fees associated with the processing of this vacation in accordance with Lane Manual 60.853, regardless of whether this vacation is approved or denied; and


WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation with or without a hearing; and


THEREFORE, the petitioners request the Board of Commissioners of Lane County;

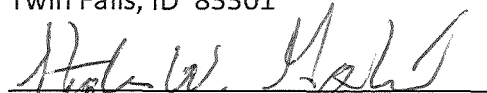
- 1. To set a date to consider the vacation of the above described portion of road, with or without a hearing, pursuant to ORS Chapter 368.
- 2. Upon review of this matter, to order the vacation of the above described road, and direct that title to the vacated area and vest the southwesterly 15 feet to Stephen W. and Elizabeth L. Gabriel and the northeasterly 45 feet to the Dorothy L. Behm Marital Trust in accordance with ORS 368.366(2).


DATED this 29th day of May, 2015.

PETITIONERS:


 Jerry Behm
 Trustee, Dorothy L. Behm Marital Trust
 MAP 16-45-21-34, TL 800 and TL 200
 241 Shoshone St. North
 Twin Falls, ID 83301

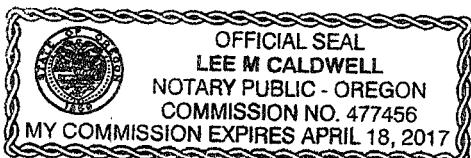

 on behalf of US Bank NA
 Trustee, Dorothy L. Behm Marital Trust
 MAP 16-45-21-34, TL 800 and TL 200


 Stephen W. Gabriel
 MAP 16-45-21-34, TL 701
 PO Box 181
 Blue River, OR 97413


 Elizabeth L. Gabriel
 MAP 16-45-21-34, TL 701
 PO Box 181
 Blue River, OR 97413

✓ STATE of OREGON)
 ✓ COUNTY of LANE) ss.

On May 23rd, 2015, 2014, personally appeared the above named Jerry Behm, Trustee, Dorothy L. Behm Marital Trust, and acknowledged the foregoing instrument to be a voluntary act before me: Lee M. Caldwell, Notary Public, Lane County, Oregon




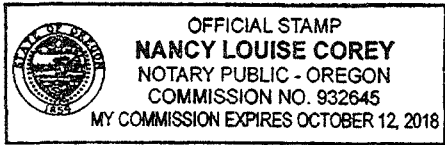

 Notary Public for Oregon
 My Commission Expires: 04/18/2017

EXHIBIT "A"

STATE of OREGON)
COUNTY of LANE) ss.

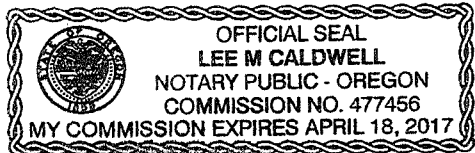
On May 29, 2015, 2014, personally appeared the above named L. Thomas Bush on behalf of US BANK NA, trustee of the Dorothy L. Behm Marital Trust, and acknowledged the foregoing instrument to be a voluntary act before me:



Nancy Louise Corey
Notary Public for Oregon
My Commission Expires: 10-12-18

✓ STATE of OREGON)
✓ COUNTY of LANE) ss.

On May 23rd, 2015, 2014, personally appeared the above named Stephen W. and Elizabeth L. Gabriel, and acknowledged the foregoing instrument to be a voluntary act before me:



Lee M Caldwell
Notary Public for Oregon
My Commission Expires: 04/18/2017