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BOOK 167 PAGE 271

Return Address:

Faye I. Shepard
2181 Belle Center Rd.
Washougal, WA 98671

FILED FOR RECORD
SKAMIA CO WASH
BY Faye Shepard

JUL 18 10 12 AM '97

G. Lawry
AUDITOR
GARY M. OLSON

Please Print or Type Information.

Document Title(s) or transactions contained therein: 1. Road Maintenance Agreement 2. 3. 4.
GRANTOR(S) (Last name, first, then first name and initials) 1. Shepard, Faye I. etal 2. Birkeland, Tony etux etal 3. U.S.A., Bonneville Power Administration 4. <input type="checkbox"/> Additional Names on page _____ of document.
GRANTEE(S) (Last name, first, then first name and initials) 1. James Sherard Road 2. 3. 4. <input type="checkbox"/> Additional Names on page _____ of document.
LEGAL DESCRIPTION (Abbreviated: I.E., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter) Lots 1 and 2 of the Blankenship Short Plat. and E2 W2 NW4 NW4 and W2 E2 NW4 NW4 Sect 8 T1N R5E <input type="checkbox"/> Complete legal on page 1 & 2 of document.
REFERENCE NUMBER(S) Of Documents assigned or released: Vol 2 of Short Plats Page 148. <input type="checkbox"/> Additional numbers on page _____ of document.
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER 01-05-08-0-0-0500 thru 0502-00 <input type="checkbox"/> Property Tax Parcel ID is not yet assigned. <input type="checkbox"/> Additional parcel #'s on page _____ of document.
The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

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JUL 18 1997
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EXHIBIT "B"

This is to certify that this is a true and exact copy of the original document.

Cheryl Black
Recorder

Return to:

Susan K. Lorne
Lorne & Connors
P. O. Box 1116
White Salmon, WA 98672

ROAD MAINTENANCE AGREEMENT

AGREEMENT made this 12 day of February, 1997, by and among FAYE I. SHEPARD, a single woman (hereinafter "Shepard"), TONY BIRKELAND AND EVELYN BIRKELAND, husband and wife (hereinafter "Birkeland"), and the UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR, BONNEVILLE POWER ADMINISTRATION (hereinafter "United States").

RECITALS:

WHEREAS, the parties hereto all have mutual rights of public record to use an existing road, and enjoy easements across said road, which is located on real property belonging to Shepard and to Birkeland and more particularly described as follows:

SHEPARD PARCEL 1: A tract of land in the Southwest Quarter of the Southwest Quarter of Section 5 and in the Northwest Quarter of the Northwest Quarter of Section 8, all in Township 1 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington described as Lot 1 the Blankenship Short Plat, recorded in Book 2 of Short Plats, Page 148, Records of Skamania County, Washington (hereinafter "Lot 1 of Blankenship Short Plat").

SHEPARD PARCEL 2: A tract of land in the Southwest Quarter of the Southwest Quarter of Section 5 and in the Northwest Quarter of the Northwest Quarter of Section 8, all in Township 1 North, Range 5

ROAD MAINTENANCE AGREEMENT
Page 1

RECORDER'S NOTE:
NOT AN ORIGINAL DOCUMENT

East of the Willamette Meridian, in the County of Skamania, State of Washington described as Lot 2 the Blankenship Short Plat, recorded in Book 2 of Short Plats, Page 148, Records of Skamania County, Washington (hereinafter "Lot 2 of the Blankenship Short Plat").

BIRKELAND PARCEL: The East Half of the West Half of the Northwest Quarter of the Northwest Quarter and the West Half of the East Half of the Northwest Quarter of the Northwest Quarter, all in Section 8, Township 1 North, Range 5 East of the Willamette Meridian, Skamania County, Washington (hereinafter "the Birkeland Tract").

WHEREAS, the route of the aforesaid existing road easement is more particularly shown as the "James Shepard Road (PVT)" on a survey, a copy of which is attached hereto as Exhibit A and incorporated hereat by reference.

WHEREAS, the parties hereto wish to establish the terms and conditions under which said road shall be repaired, maintained, and improved and which of the parties hereto shall be responsible for what proportion of costs incurred in the repair, maintenance and improvement of said existing road (hereinafter "James Shepard Road").

WHEREAS, use of James Shepard Road by Shepard and Birkeland is regular and for residential ingress, egress and utilities to and from their respective properties.

WHEREAS, use of James Shepard Road by the United States is extraordinary, infrequent and for purposes other than residential ingress, egress and utilities.

WHEREAS, the parties desire to share costs of maintenance, repair and improvement of James Shepard Road in a manner which fairly reflects the actual use by each.

WHEREAS, Shepard and Birkeland further desire to create mutual covenants and restrictions to run with the land, benefitting and burdening their respective real properties and binding upon their successors, assigns and invitees.

NOW THEREFORE, the parties agree as follows:

1. Definitions:

a) Developed Lot: As used in this Agreement, the term "developed lot" shall mean any separate, legally defined lot of record comprised of the real property owned by Shepard and Birkeland, described above, or any portion thereof, the owners of which, at the time any repair, maintenance or improvement is made to the James Shepard Road, are developing or have developed said lot for any use allowed under zoning and land use laws in effect at the time the development is undertaken, including but not limited to residential, agricultural or forestry use, and are using said road for vehicular traffic thereto.

b) Normal Use: As used in this Agreement, the term "normal use" shall mean and include use of the road solely for vehicular traffic and utilities to and from established single-family residences. Said use shall not include, by way of illustration and not by limitation, traffic generated from forest or agricultural practices or heavy equipment or commercial traffic.

c) Extraordinary Use: As used in this Agreement, the term "extraordinary use" shall mean and include any act affecting or use of James Shepard Road by the owner of any developed lot, or by any invitee of the owner of a developed lot, or by the United States or its invitees, which does not constitute "normal use" and which causes damage to the Road over and beyond that generated by "normal use".

d) James Shepard Road: As used in this Agreement, the term "James Shepard Road" shall mean the James Shepard Road private road as shown on Exhibit A hereto.

e) Affected Real Property: As used in this Agreement, the term "affected real property" shall mean and include any developed lot now or hereafter located on Lots 1 or 2 of the Blankenship Short Plat as it now exists or may hereafter be amended and the Birkeland Tract or any portion thereof.

2. Shares of Expenses Based on Distance Traversed in Normal Use for Residential Access to Lots 1 and 2 of Blankenship Short Plat and the Birkeland Tract.

a) Normal Use. Each owner of the affected real property shall be responsible for a fractional share of the costs of maintenance, repair and improvement of the James Shepard Road, which share shall be based upon the distance along said road traversed by the owner for purposes of normal use. Each owner's share shall be computed as set forth in the following:

Hypothetical example:

Assume: TC = Total cost of maintenance, repair or improvement: \$500.00.

X = Total distance of James Shepard Road across Lots 1 and 2 of Blankenship Short Plat: 500 feet.

x1 = distance traversed by Owner 1 for normal use, i.e., to the point at which said owner's private driveway leaves James Shepard Road: 100 feet.

x2 = distance traversed by Owner 2 for normal use: 500 feet.

y1 = total number of Owners using distance x1 for normal use: 2.

y2 = total number of Owners traversing distance x2 for normal use: 1

c1 = total cost to Owner 1.

c2 = total cost to Owner 2.

Computing Owner 1's share: $TC(\$500.00) \times \frac{x1(100'/500')}{y1(2)} = \100.00 divided by $y1(2) = c1$
\$50.00.

Computing Owner 2's share: $TC(\$500.00) \times \frac{x2}{y2} = c2$
 $c1(\$50.00) = c2$ (\$450.00).

Formula

Owner 1's share: $TC(x1/X)/y1 = c1$

Owner 2's share: $TC(x2/X)/y2 = c2$

3. Maintenance, repair and improvement arising from Extraordinary Use.

Each party hereto shall be solely responsible for repair, maintenance or improvement of the James Shepard Road which is proximately caused by, or requisite to that party's use of said road for its intended purposes as allowed under that party's easement(s) across said road, for any extraordinary use.

4. Type and Frequency of Repair, Maintenance or Improvement in Conjunction with Normal Use.

Owners of developed lots on the affected real property shall meet not less frequently than annually, on or before the 30th day of September of each year, to discuss and/or vote upon repairs, maintenance and improvements to be made to James Shepard Road over the succeeding 12-month period.

In addition, any owner of a developed lot may call a special meeting of all of the owners of developed lots, upon such notice and at a time and place designated by the owners of developed lots from time to time, the purpose of which is to discuss and/or vote upon matters not addressed at the annual meeting or arising between annual meetings.

Meetings may be held by telephone conference or any other method whereby each owner has an opportunity to participate in the meeting and to vote upon any matter put to a vote during a meeting.

a) **Mandatory Annual Repairs and Maintenance.**

Mandatory annual repair and maintenance shall address and cure any condition which obstructs the road or poses a danger to the safety of those using the road, including but not limited to filling potholes, ruts, gullies, etc., and clearing brush and trees which either obstruct or might, in the normal course, come to fall upon or otherwise obstruct said road.

b) **Elective Repairs and Maintenance.** Repairs and maintenance which owners of developed lots may elect to undertake annually shall include but not be limited to rocking, graveling and grading of said road and the provision of trenches or ditches along said road to handle surface water runoff. Repairs and maintenance as described in this paragraph shall be made upon a simple majority vote of the owners of developed lots in favor thereof, and such vote shall be binding upon all such owners.

c) **Improvements.** Improvements to James Shepard Road shall be made only after unanimous vote by the owners of developed lots. For purposes of this Agreement, "improvements" shall include but not be limited to paving.

Nothing in this Agreement shall preclude a single owner or group of owners from repairing or maintaining James Shepard Road, or any portion thereof, consistent with his or her easement rights and with good road maintenance and repair practices and engineering standards, if said owner(s) bear the entire cost thereof, whether or not agreed to by other owners of developed lots.

5. Method of Collection of Funds for Repair, Maintenance or Improvement; Time of Disbursement.

a) Method and Time of Collection of Funds. Owners of developed lots shall establish an account at a reputable bank or financial institution, which account shall be designated as "James Shepard Road Maintenance Account". The owner of each developed lot shall deposit into said account, on or before the date agreed upon by all owners of developed lots, an amount sufficient to cover that owner's share of all costs for repair, maintenance or improvement of said road agreed upon at the annual meeting of owners or a special meeting called as permitted in Paragraph 4, above. The landowners may designate not less than two signatories upon said account.

b) Disbursement of Funds. Funds for the repair, maintenance or improvement of James Shepard Road shall be disbursed from the James Shepard Road Maintenance Account within 30 days from the date the funds are due, unless otherwise agreed to by the owners of developed lots.

c) Late Payments. The owner of any developed lot who is delinquent in payment of assessments levied pursuant to this Agreement shall be charged and liable for a late fee as may be established from time to time by majority vote of all the owners of developed lots, but not less than \$1.00 per day.

6. Attorneys' Fees and Costs. Any owner of a developed lot shall have a cause of action against any other owner of a developed lot for costs incurred consistent with this Agreement which are not paid within the time and in the manner set forth above. In the event that any owner of a developed lot prevails in a lawsuit or other proceeding, including mediation and arbitration, wherein he has incurred attorneys' fees or costs in enforcing this Agreement, or any term or condition hereof, that owner shall be entitled to all attorneys' fees and costs reasonably incurred by him in said proceeding.

7. Binding Upon Successors and Assigns. This Agreement shall be binding upon the owners of the affected property or any portion thereof, their heirs, successors and assigns. This Agreement shall be recorded in the real property records of Skamania County, Washington, and shall constitute positive covenants appurtenant to the affected real property and any portion thereof.

8. Severability. If any provision of this Agreement is held by a court to be invalid under the laws of the United States or the State of Washington, the remainder of this agreement shall remain in full force and effect.

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Dated the day and year first above written.

Tony Birkeland
TONY BIRKELAND

Faye I. Shepard
FAYE I. SHEPARD

Evelyn Birkeland
EVELYN BIRKELAND

The United States of America

By: _____

STATE OF WASHINGTON)
County of CLARK) ss.

On this day personally appeared before me
lawful representative of the United States of America with
authority to execute the above and foregoing instrument on behalf
of the United States of America and who executed the within and
foregoing instrument, and acknowledged that she signed the same as
her free and voluntary act and deed, for the uses and purposes
therein mentioned.

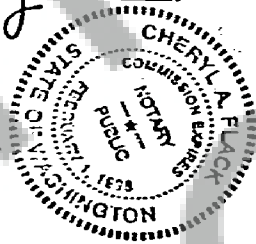
Given under my hand and official seal this day of
1997.

Name
Notary Public in and for the
State of Washington, residing at
My commission expires

STATE OF WASHINGTON)
County of CLARK) ss.

On this day personally appeared before me FAYE I. SHEPARD, a
single woman, to me known to be the individual described in and who
executed the within and foregoing instrument, and acknowledged that
she signed the same as her free and voluntary act and deed, for the
uses and purposes therein mentioned.

Given under my hand and official seal this day of
February 1997.



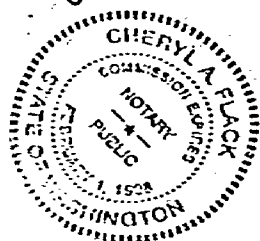
Cheryl A. Flack
Name Cheryl A. Flack
Notary Public in and for the
State of Washington, residing at
Battle Ground
My commission expires 2/1/98

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STATE OF WASHINGTON)
County of CLARK) ss.

On this day personally appeared before me TONY BIRKELAND and EVELYN BIRKELAND, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 6th day of February, 1997.



Cheryl A. Flack
Name CHERYL A. FLACK
Notary Public in and for the
State of Washington, residing at
Belle Fourche
My commission expires 2/1/98

EXHIBIT "A"

