

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

UNION STATE BANK)
)
Plaintiff,)
)
v.)
)
LACEY'S GROVE PROPERTY)
OWNER'S ASSOCIATION, INC.;)
LACEY'S GROVE HOMEOWNERS')
ASSOCIATION, INC.;)
THREE OAKS, INC.,)
)
Defendants.)

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CIVIL ACTION NO.:
CV-18-900036.00 HLC

LACEY'S GROVE HOMEOWNERS')
ASSOCIATION, INC.;)
)
Cross-Claim Plaintiff,)
)
v.)
)
)
LACEY'S GROVE PROPERTY)
OWNERS ASSOCIATION, INC.;)
MCKAY MANAGEMENT)
CORPORATION;)
THREE OAKS NURSERY, INC.;)
)
Cross-Claim Defendants.)

ORDER

THIS MATTER comes before the Court on May 22, 2018, upon the parties' request to quiet title to certain property ("the Subject Property") which is legally described in Exhibit "A".

Appearing before this Court were Michael R. Lunsford for Union State Bank; William E. Swatek and Patrick Kennedy as counsel for Lacey's Grove Homeowners Association, Inc. ("Lacey's Grove HOA") and Lacey's Grove Property Owners Association, Inc. ("Lacey's Grove POA"); and James C. Gray, III as counsel for Lacey's Grove POA.

This Court received testimony and evidence, *ore tenus*. The Court further considered testimony and evidence from the hearing on March 15, 2018, as well as documentation concerning the ownership of the Subject Property filed with the Probate Court of Shelby County, Alabama. In consideration thereof, the Court hereby **ORDERS, ADJUDGES** and **DECREES** as follows:

1. The Court **FINDS** that service of the Summons and Complaint on Three Oaks Nursery, Inc. has been perfected by Union State Bank and that service of the Crossclaim on Three Oaks Nursery, Inc. has been perfected by Lacey's Grove HOA. Three Oaks Nursery, Inc. has failed to file a timely Answer to either the Complaint or the Crossclaim.

2. The Court **FINDS** that reasonable notice of the hearing on May 22, 2018 was provided to all interested parties.

3. The Subject Property was deeded to the Lacey's Grove POA on December 30, 2010. That deed, filed with the Shelby County Probate Court on January 4, 2011, vested title to the Subject Property with the Lacey's Grove POA.

4. On or about September 21, 2017, another deed was filed with the Shelby County Probate, stamped with Instrument No. 20170921000343300. That deed was signed by P. K. Smartt as the purported President of the Lacey's Grove Property Owners Association, Inc. The deed conveyed the Subject Property to a company identified as Three Oaks, Inc.

5. On or about January 24, 2018, P. K. Smartt drafted a "Scrivener's Affidavit" claiming a typographical error had occurred and that the deed filed on September 21, 2017 should have conveyed the Subject Property to a company known as "Three Oaks Nursery, Inc."

6. This Court received testimony that Lacey's Grove POA never received any payments for an alleged conveyance of the Subject Property in September 2017, as reflected by the deed signed by P. K. Smartt as the President of the Lacey's Grove Property Owners

Association, Inc. Furthermore, the records of the Lacey's Grove POA indicated that Lacey's Grove POA continued to make payments on the maintenance and upkeep of the Subject Property which was allegedly conveyed by P. K. Smartt by the September 2017 deed.

7. This Court further received testimony from Lacey's Grove POA indicating that Lacey's Grove POA failed to have annual meetings as required by both the Covenant of the Lacey's Grove Subdivision and the Articles of Incorporation of the Lacey's Grove POA. The testimony further indicated that Lacey's Grove POA did not have a Board of Directors in the four years preceding the alleged conveyance of the Subject Property by P. K. Smartt in September 2017. Since 2012, the Lacey's Grove POA failed to have annual meetings as was required by the incorporating documents.

8. Considering the foregoing, the Court hereby **FINDS** that P. K. Smartt was not a properly elected officer or director of the Lacey's Grove POA in September 2017 and, consequently, did not have the authority to convey and vest title of the Subject Property to Three Oaks, Inc. and/or Three Oaks Nursery, Inc. The September 21, 2017 deed filed with the Shelby County Probate, stamped with Instrument No. 20170921000343300, is hereby declared void *ab initio*. The Court further **FINDS** that said Deed was and is without effect and did not at any time convey any interest in or to the real property described therein (i.e. the Subject Property). The Deed described above is hereby set aside and the title to the real property described therein (i.e. the Subject Property) remained at all times in the Lacey's Grove POA. Any party claiming any interest in or to the Subject Property described in the ineffective Deed is hereby divested of any claim in or to said real property, and title in fee simple absolute is hereby vested in the Lacey's Grove Property Owner's Association, Inc.

9. The Court **FINDS** that title to the Subject Property, which is legally described as Exhibit A, is vested in the Lacey's Grove Property Owners Association, Inc. The Court further **FINDS** that Three Oaks, Inc. and/or Three Oaks Nursery, Inc. are divested of any interest, title, or ownership in the Subject Property.

10. This Order constitutes a **FINAL ORDER** granting permanent relief as to the ownership of the Subject Property. All parties at the hearing agree that the Court's ruling on



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these issues should be final as to allow the Lacey's Grove POA and Union State Bank to negotiate and/or resolve the issue concerning an easement across the Subject Property.

11. The Court further **ORDERS** that Three Oaks Nursery, Inc. is dismissed, without prejudice, from this lawsuit since the only remaining issues concern Union State Bank's request to obtain an easement over the Subject Property, which is owned by the Lacey's Grove POA.

12. The Court directs counsel for the Lacey Grove POA to file a copy of this Order in the Probate Court for Shelby County, Alabama.

DONE AND ORDERED on this the 22 day of May, 2018.

Hewitt L. Conwill, Circuit Judge

EXHIBIT A

THE SUBJECT PROPERTY

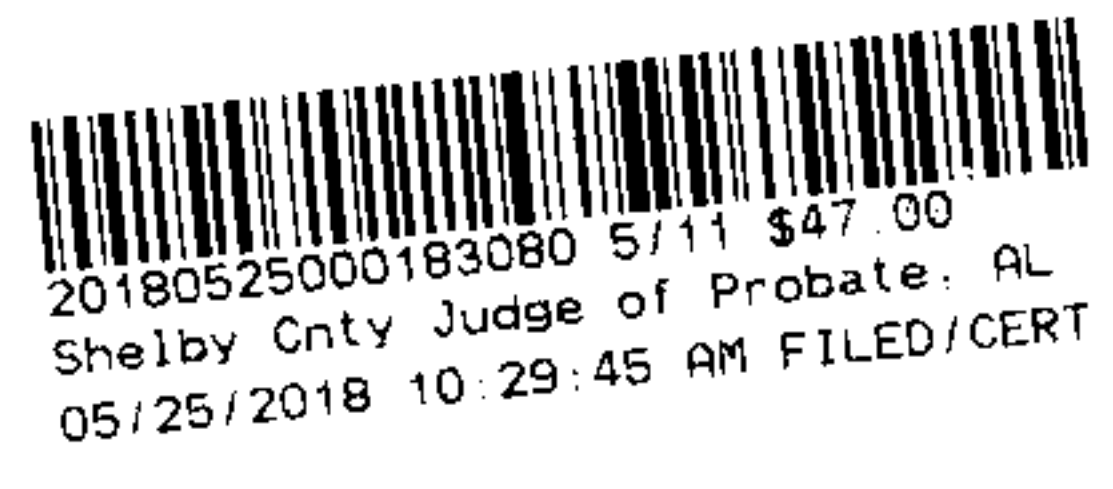


Exhibit A to Court Order

First Parcel of Property

All of the following described property, located in Shelby County, Alabama:

Parcel I

Begin at the Southwest corner of the Southeast quarter of the Northeast quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence N1°08'57"E, along and with the East line of said quarter-quarter section, 1326.59 feet to the Northwest corner of said quarter-quarter section; thence S88°14'04"E, along and with the North line of said quarter-quarter section, 1211.57 feet to a point; thence S1°16'01"W 925.97 feet to a point; thence S86°57'08"E 123.79 feet to a point; thence S89°05'57"E 993.95 feet to the westerly right-of-way margin of Shelby County Highway 17 thence S2°27'06"W 400.31 feet to a point on the South line of the Southwest quarter of the Northwest quarter of Section 9; thence N88°51'54"W, along and with the South line of said quarter-quarter section, 985.08 feet to the southwest corner of said quarter-quarter section; thence N88°18'25"W, along and with the South line of the Southeast quarter of the Northeast quarter of Section 8, 1333.13 feet to the point of beginning, containing 47.01 acres, more or less.

Parcel II

Commence at the Southwest corner of the Southeast quarter of the Northeast quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence N1°08'57"E, along and with the East line of said quarter-quarter section, 1326.32 feet to a point, said point being the Point of Beginning; thence continue N01°08'57"E along the West line of the northeast quarter of the northeast quarter of said Section 8, 1324.48 feet to a point at the northwest corner of said quarter-quarter section; thence S88°15'09"E along the North line of said quarter-quarter section, 1336.32 feet to the Northeast corner of said Section 8; thence S89°08'15"E along and with the North line of the Northwest quarter of the Northwest quarter of Section 9, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama, 808.87 feet to a point in the centerline of Beaver Dam Creek; thence southerly and easterly along the centerline of said Beaver Dam Creek the following 19 calls: S06°18'21"W, 84.48 feet to a point; thence N79°28'30"W, 44.25 feet to a point; thence S75°17'28"W, 51.07 feet to a point; thence S26°41'24"W, 51.48 feet to a point; thence S06°57'58"W, 14.02 feet to a point; thence S73°30'09"E, 26.77 feet to a point; thence S52°33'57"E, 121.10 feet to a point; thence S07°05'54"W, 48.55 feet to a point; thence S60°00'07"E, 33.24 feet to a point; thence S24°37'24"E, 93.31 feet to a point; thence S64°08'32"E, 58.15 feet to a point; thence S27°00'36"E, 39.50 feet to a point; thence S18°03'07"W, 42.69 feet to a point; thence S45°18'54"E, 85.64 feet to a point; thence S40°39'55"E, 135.24 feet to a point; thence S30°02'38"W, 31.16 feet to a point; thence S31°22'04"W, 17.00 feet to a point; thence S73°15'54"W, 115.67 feet to a point; thence S35°42'48"E, 108.55 feet to a point; thence leaving said Beaver Dam Creek centerline, S89°53'10"W, 919.55 feet to a point; thence N88°36'16"W, 125.19 feet to a point; thence

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S01°16'01"W, 503.45 feet to a point on the South line of the Northeast quarter of the Northeast quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence along and with said South quarter-quarter section line N88°14'04"W, 1211.57 feet to the Point of Beginning, said tract containing 55.89 acres, more or less.

Parcel III


Commence at the Southeast corner of the Northeast quarter of the Southwest quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence N1°08'57"E 490.40 feet to the point of beginning; thence N88°18'23"W 1335.41 feet to a point on the West line of said quarter-quarter section; thence N1°03'13"E 2161.97 feet to the Northwest corner of the Northwest quarter of the Northeast quarter; thence S88°15'09"E, along and with the North line of said quarter-quarter section, 1339.03 feet to the Northeast corner of said quarter-quarter section; thence S01°08'57"W, along and with the East line of said quarter-quarter section, 2160.67 feet to the point of beginning, said parcel containing 66.34 acres, more or less.

Parcel IV

From the Northwest corner of Section 9, Township 21 South, Range 3 West, run thence East along an accepted segment of the North boundary of said Section 9 for a distance of 1152.20 feet to a point; thence turn 110 degrees 02 minutes 53 seconds right and run 391.70 feet to a point; thence turn 90 degrees 00 minutes 00 seconds left and run 290.00 feet to a point on the Westerly boundary of Shelby County Road #17 (80 foot R.O.W.); thence turn 90 degrees 00 minutes 00 seconds right and run 230.00 feet along said road boundary to a 1/2 inch rebar, being the point of beginning of herein described parcel of land; thence turn 71 degrees 11 minutes 20 seconds right and run 103.86 feet along an accepted property line to a 1/2 inch rebar on the bank of Beaverdam Creek; thence turn 108 degrees 01 minutes 08 seconds left and run 46.65 feet along an accepted property line to a 5/8 inch rebar; thence turn 73 degrees 06 minutes 55 seconds left and run 79.24 feet along an accepted property line to a 5/8 inch rebar on the Westerly boundary of aforementioned Shelby County road #17; thence turn 75 degrees 27 minutes 33 seconds left and run 44.00 feet along said road boundary to the point of beginning of herein described parcel of land, situated in the Northwest 1/4 of the Northwest 1/4 of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama.

Less and Except the following described parcel:

From the Northwest corner of Section 9, Township 21 South, Range 3 West, run thence East along an accepted segment of the North boundary of said Section 9 for a distance of 1152.20 feet to a point; thence turn 110 degrees 02 minutes 53 seconds right and run 391.70 feet to a point; thence turn 90 degrees 00 minutes 00 seconds left and run 290.00 feet to a point on the Westerly boundary of Shelby County Road #17 (80 foot R.O.W.); thence turn 90 degrees 00 minutes 00 seconds right and run 230.00 feet along said road boundary to a 1/2 inch rebar, being the point of beginning of herein described parcel of land; thence turn 71 degrees 11 minutes 20 seconds right and run 50 feet along an accepted property line to a point; thence turn 90 degrees 00 minutes 00 seconds left and run 10 feet to a point; thence turn 90 degrees 00 minutes 00 seconds left and run 47.61 feet to a point on the Westerly boundary of


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said road; thence turn 103 degrees 26 minutes 04 seconds left and run 10.28 feet along Westerly boundary of said road to the point of beginning of herein described parcel of land containing 0.011 acres, more or less, situated in the Northwest ¼ of the Northwest ¼ of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama.

ALL OF THE ABOVE DESCRIBED PROPERTY,

Less and Except the following:

Lots 1-57, Lot 58A, Lot 58B, and Lots 59-81, as recorded in Map Book 35, Page 137, Shelby County Office of the Judge of Probate.

Lots 82-220, as recorded in Map Book 38, Page 19, Shelby County Office of the Judge of Probate.


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Second Parcel of Property

PARCEL A

A parcel of land situated in the NW ¼ of the NW ¼ of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: Commence at a 3" capped pipe at the NW corner of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama; thence S 89°07'55" E along the north line of the NW ¼ of the NW ¼ of said section a distance of 20.50 feet to a rebar capped RCFA, said point also being the POINT OF BEGINNING; thence S 89°07'55" E along the north line of said 1/4-1/4 section a distance of 385.36 feet to the centerline of a stream that is a tributary to Beaverdam Creek; thence S 48°04'59" W along said centerline and leaving said 1/4-1/4 section a distance of 15.07 feet; thence S 02°45'12" E along said centerline a distance of 43.86 feet; thence S 04°22'37" E along said centerline a distance of 53.36 feet; thence S 00°48'03" E along said centerline a distance of 41.70 feet; thence S 61°41'59" W along said centerline a distance of 25.07 feet; thence S 82°35'08" W along said centerline a distance of 29.81 feet; thence S 47°51'28" W along said centerline a distance of 54.39 feet; thence S 02°51'49" E along said centerline a distance of 44.93 feet; thence N 75°10'33" E along said centerline a distance of 22.09 feet; thence N 80°59'41" E along said centerline a distance of 53.58 feet; thence S 47°40'41" W along said centerline a distance of 70.88 feet; thence S 12°46'44" E along said centerline a distance of 17.30 feet; thence S 52°55'36" E along said centerline a distance of 54.87 feet; thence S 18°07'40" E along said centerline a distance of 46.05 feet; thence S 39°09'58" W along said centerline a distance of 64.27 feet to the northerly line of a future road extension of Crider Road; thence N 67°27'24" W along said future extension and leaving said centerline a distance of 49.18 feet to a rebar capped EDG, said point also being a point of curve to the right having a central angle of 14°17'57" and a radius of 470.00 feet, said curve subtended by a chord bearing N 60°18'25" W and a chord distance of 116.99 feet; thence along the arc of said curve and along said future road extension a distance of 117.30 feet to a rebar capped EDG; thence N 53°09'27" W along said future road extension and along the northerly right-of-way of Crider Road a distance of 119.45 feet to a rebar capped EDG at the SE corner of a parcel labeled future lot future phase on record map of Lacey's Grove Phase 2 as recorded in Map Book 38 Page 19 in the Office of the Judge of Probate in Shelby County, Alabama; thence N 36°50'31" E along the east line of said parcel and leaving said right-of-way a distance of 160.00 feet to a rebar capped EDG at the NE corner of said parcel; thence N 62°13'26" W along the northern line of said parcel and Lots 103 and 104 a distance of 227.83 feet to a rebar capped EDG at the NW corner of Lot 104; thence N 16°45'10" E along the eastern line of Lot 105 a distance of 48.34 feet to the POINT OF BEGINNING. Said parcel of land contains 2.14 acres, more or less.

PARCEL B

A parcel of land situated in the NE ¼ of the NE ¼ of Section 8, and the NW ¼ of the NW ¼ of Section 9, all in Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: Commence at a rebar capped RCFA at the SE corner of Lot 82 of Lacey's Grove Phase 2 as recorded in Map Book 38 Page 19 in the Office of the Judge of Probate in Shelby County, Alabama; thence N 3°57'35" E along the eastern line of Lots 82 and 83 a distance of 102.11 feet to a rebar capped EDG on the south line of NE ¼ of the NE ¼ of Section 8, said point also being the POINT OF BEGINNING; thence N 03°57'35" E along the eastern line of Lot 83 a distance of 52.52 feet to a rebar capped RCFA; thence N 24°52'37" E along the eastern line of Lot 84 a distance of 50.96 feet to a rebar capped RCFA at the SE corner of Lot 85; thence N 27°02'05" E along the eastern line of Lots 85 through 90 for a distance of 360.17 feet a rebar capped RCFA at the NE corner of Lot 90; thence N 22°02'13" E along the eastern line of Lot 91 for a distance of 76.29 feet to a rebar capped Arrington at the SE corner of Lot 92; thence N 12°52'30" E along the eastern line of Lot 92 for a distance of 77.88 feet to a Rebar capped Arrington at the SE corner of Lot 93; thence N 05°03'54" E along the eastern line of Lot 93 a distance of 72.73 feet to a rebar capped EDG at the NE corner of Lot 93; thence N 79°48'28" E along the southern line of Lot 95 a distance of 37.05 feet to a rebar capped Arrington at the SW corner of Lot 96; thence N 72°38'42" E along the southern line of Lot 96 a distance of 85.31 feet to a rebar capped Arrington at the SW corner of Lot 97; thence N 58°49'04" E along the southeastern line of Lot 97 a distance of 84.80 feet



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to a rebar capped Arrington at the SW corner of Lot 98; thence N 44°57'24" E along the southeastern line of Lot 98 a distance of 85.46 feet to a rebar capped RCFA at the SE corner of Lot 99; thence N 31°08'14" E along the southeastern line of Lot 99 a distance of 85.16 feet to a rebar capped EDG at the SE corner of Lot 100; thence N 17°26'54" E along the eastern line of Lot 100 a distance of 85.20 feet to a rebar capped EDG at the SE corner of Lot 101; thence N 04°02'10" E along the eastern line of Lot 101 a distance of 112.25 feet to a rebar capped RCFA at the NE corner of Lot 101, said point being a point on the southerly right-of-way of Crider Road, and also being a point on a curve to the right having a central angle of 14°22'33" and a radius of 370.00 feet, said curve subtended by a chord bearing S 60°20'37" E and a chord distance of 92.59 feet; thence along the arc of said curve and along said right-of-way a distance of 92.84 feet to a Rebar capped EDG; thence S 53°09'27" E along said right-of-way and southerly line of future road extension a distance of 141.76 feet to a rebar capped EDG at a point of curve to the left having a central angle of 14°17'57" and a radius of 530.00 feet, said curve subtended by a chord bearing S 60°18'25" E and a chord distance of 131.93 feet; thence along the arc of said curve and along said future road extension a distance of 132.27 to a rebar capped EDG; thence S 67°42'24" E along the future road extension a distance of 76.62 feet to the centerline of a stream that is a tributary to Beaverdam Creek; thence S 68°34'46" W along said centerline and leaving said future right-of-way a distance of 73.43 feet; thence S 50°32'51" W along said centerline a distance of 76.84 feet; thence N 81°09'21" W along said centerline a distance of 30.03 feet; thence S 51°22'49" W along said centerline a distance of 96.33 feet; thence N 51°11'13" W along said centerline a distance of 74.50 feet; thence N 75°19'22" W along said centerline a distance of 67.63 feet; thence S 62°33'05" W along said centerline a distance of 21.10 feet; thence S 32°32'06" W along said centerline a distance of 49.89 feet; thence S 22°32'22" E along said centerline a distance of 22.50 feet; thence S 38°27'54" W along said centerline a distance of 67.61 feet; thence S 30°11'04" E along said centerline a distance of 52.95 feet; thence S 83°19'30" W along said centerline a distance of 52.66 feet; thence S 47°12'54" W along said centerline a distance of 55.25 feet; thence S 08°51'37" W along said centerline a distance of 42.03 feet; thence N 87°47'46" E and leaving said centerline a distance of 13.91 feet to a 5/8" rebar; thence S 00°55'38" W a distance of 503.45 feet to a rebar capped EDG on the south line of NE ¼ of the NE ¼ of Section 8; thence N 88°34'27" W along the south line of said 1/4-1/4 section a distance of 446.86 feet to the POINT OF BEGINNING. Said parcel of land contains 7.01 acres, more or less.

LESS AND EXCEPT THE FOLLOWING REAL PROPERTY:


a gravel road situated in the NW ¼ of the NW ¼ of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 3" capped pipe at the NW corner of Section 9, Township 21 South, Range 3 West, Shelby County, Alabama; thence S 89°07'55" E along the north line of the NW ¼ of the NW ¼ of said section a distance of 20.50 feet to a rebar capped RCFA; thence S 89°07'55" E along the north line of said 1/4-1/4 section a distance of 385.36 feet to the centerline of a stream that is a tributary to Beaverdam Creek; thence S 48°04'59" W along said centerline and leaving said 1/4-1/4 section a distance of 15.07 feet; thence S 02°45'12" E along said centerline a distance of 43.86 feet; thence S 04°22'37" E along said centerline a distance of 53.36 feet; thence S 00°48'03" E along said centerline a distance of 41.70 feet; thence S 61°41'59" W along said centerline a distance of 25.07 feet; thence S 82°35'08" W along said centerline a distance of 29.81 feet; thence S 47°51'28" W along said centerline a distance of 54.39 feet; thence S 02°51'49" E along said centerline a distance of 44.93 feet; thence N 75°10'33" E along said centerline a distance of 22.09 feet; thence N 80°59'41" E along said centerline a distance of 53.58 feet; thence S 47°40'41" W along said centerline a distance of 70.88 feet; thence S 12°46'44" E along said centerline a distance of 17.30 feet; thence S 52°55'36" E along said centerline a distance of 54.87 feet; thence S 18°07'40" E along said centerline a distance of 46.05 feet; thence S 39°09'58" W along said centerline a distance of 46.33 feet to the POINT OF BEGINNING of the centerline of a 20' ingress and egress easement lying 10 feet either side of and parallel to the following described centerline, said centerline also



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being the centerline of an existing dirt road; thence N 64°47'45" W along the centerline of said easement and dirt road, leaving the centerline of said stream for a distance of 221.23 feet to the northerly line of a future road extension of a 60 foot wide right of way recorded as Crider Road and the END of said easement.


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