

Marsha Spiers
1770 HWY. 201
Adrian, OR 97901

FOR THE PLANNING & ZONNING DEPARTMENT,
OF THE GREAT STATE OF OREGON, IN & FOR THE COUNTY OF MALHEUR.

JEFFREY B. DOWNIE
Petitioner,

AFFIDAVIT OF MARSHA SPIERS
IN SUPPORT OF EASTMAN
HOMESTEAD SITE AT 1764 HWY. 201
ADRIAN, OR 97901

STATE OF OREGON)
 :ss
County of Malheur)

MARSHA SPIERS, after being first duly sworn on oath, deposes and states as follows:

1. I am not related to Jeffrey B. Downie, the petitioner; I am not being compensated by Jeffrey B. Downie, the petitioner, or anyone else on his behalf for my testimony.
2. I am currently residing on the property located immediately north (1770 HWY. 201, Adrian, OR) of Jeffrey B. Downie, the petitioner, and have lived at this property for over 20 years.
3. I interacted with James Eastman more than several times since I moved to Adrian, during which time we had a couple conversations about his homesteading days and life on the property in question (1764 HWY. 201, Adrian, OR) currently owned by Jeffrey B. Downie, the petitioner.
4. James Eastman and his parents lived in a house they constructed on the property in question (1764 HWY. 201, Adrian, OR), which is currently owned by Jeffrey B. Downie, the petitioner. The house the Eastman Family constructed is not the same house where Jeffrey B. Downie, the petitioner, currently resides- which was erected in the late 1970's. The Eastman Family House was a much older

Affidavit of Marsha Spiers in Support of Eastman Homestead Site at 1764 Hwy. 201

EXHIBIT #

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second dwelling, that was located in a different location than the newer and existing house on the property in question (1764 HWY. 201, Adrian, OR).

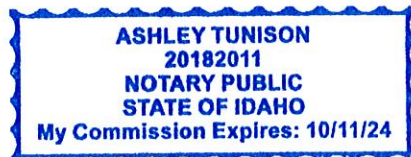
5. I have read the Affidavit of Jeffrey B. Downie in Support {Please see **Exhibit #1**} of Eastman Homestead Site at 1764 HWY. 201, Adrian, OR; and I concur with the sworn statement he provided. Jeffrey B. Downie's, the petitioner's accounts of his conversations with James Eastman, regarding the homestead that James Eastman lived in as a child and young adult, are congruent with my own independent conversations with James Eastman regarding his life growing up in a Snake River Homestead.
6. I support the Planning & Zoning Department of Malheur County providing Jeffrey B. Downie, the petitioner with a second building permit for his property based on the simple and undeniable fact there was a second home there in the form of the Eastman Family Homesteading Site.
7. I am willing to testify with reasonable certainty on the facts stated herein.

Further your affiant sayeth naught.

Dated this 21 day of February, 2020.


MARSHA SPIERS

SUBSCRIBED & SWORN TO before me this 21 day of February, 2020.




Notary Public for Oregon Idaho

Residing at Caldwell, ID

Commission Expires 10-11-24

*Exhibit #1: For the Affidavit
of Marsha Spiets.*

Jeffrey B. Downie
1764 HWY. 201
PO BOX #246
Adrian, OR 97901

FOR THE PLANNING & ZONING DEPARTMENT,
OF THE GREAT STATE OF OREGON, IN & FOR THE COUNTY OF MALHEUR.

JEFFREY B. DOWNIE
Petitioner,

AFFIDAVIT OF JEFFREY B. DOWNIE
IN SUPPORT OF EASTMAN
HOMESTEAD SITE AT 1764 HWY. 201
ADRIAN, OR 97901

STATE OF OREGON)
 :SS
County of Malheur)

JEFFREY B. DOWNIE, after being first duly sworn on oath, deposes and states as follows:

1. In 10/2004, I purchased the property: 1764 HWY. 201, Adrian, OR.
2. I met with James Eastman multiple times on the property in question (1764 HWY. 201, Adrian, OR); we had numerous conversations about his homesteading days and life on the property in question (1764 HWY. 201, Adrian, OR) which I, Jeffrey B. Downie, the petitioner currently own.
3. During my meetings with James Eastman, he referenced time as pre and post war. My reiteration of stories from my interactions with James Eastman will thus often lack a specific year with regards to the property in question (1764 HWY. 201, Adrian, OR).
4. This affidavit is based on three prolonged meetings and conversations I had with James Eastman, where we physically walked the property in question (1764 HWY. 201, Adrian, OR) while discussing: relics we found, the homesteading house, life for the Eastman Family while living in the homesteading house, and irrigation/water usage rights & water drainage rights issues pertaining to the property in question (1764 HWY. 201, Adrian, OR). The time frame for these three extended visits were as follows: Winter of 2004 (James Eastman came by to welcome me to the community, shortly after the property was purchased.), Fall of 2008 (James Eastman was the quintessential piece of evidence that helped me preserve a 1957 water right associated with my property.), and Spring of 2012 (James Eastman gave me a ride home from Adrian, after I was stranded; he also helped stop illegal water drainage across my property by South Board).


Affidavit of Jeffrey B. Downie in Support of Eastman Homestead Site at 1764 Hwy. 201

5. James Eastman lived in a house that his parents constructed on the southern part of the property in question (1764 HWY. 201, Adrian, OR) from the pre WWII era through the post WWII era. This house was located roughly 100' east from the concrete bridge still currently in existence that was constructed by the Oregon Shortline Railroad.
6. The Eastman Family Homestead had walls and a roof, as required to be considered a second dwelling on the property **{See Exhibit #1}**.
7. The Eastman Family Homestead had plumbing, as required to be considered a second dwelling on the property **{See Exhibit #1}**. Like all early homesteading families, however, originally primitive running water and an outhouse were standard operating procedure for the Eastman Family Homestead. But the relics present in the homestead, and my conversations with James Eastman confirm that eventually the Eastman Homestead had plumbing that serviced a sink, bathing area, and waste disposal system too. On one occasion, James Eastman was able to find remnants of the early water delivery system which pumped Snake River Water into a small concrete cistern located slightly above the house. On that same visit, James Eastman informed me that a primitive well was later created near the current well I installed in 2009. The location of my well, which is permitted for irrigation and domestic usage, **{See Exhibit #2}** was in fact due to the recommendation of James Eastman, who informed me: "That is where his family had a primitive well, because the water was shallow and easy to get at, along with being fresh because of the springs it created slightly closer to the river's edge" on the property in question (1764 HWY. 201, Adrian, OR).
8. The Eastman Family Homestead eventually had electricity as required to be considered a second dwelling on the property **{See Exhibit #1}**, but originally, like all early homesteads, there was no electricity. At some point prior to WWII, James Eastman recalled to me that: "Electricity arrived to the homestead and the house which changed everything!" James Eastman also informed me that the original electrical service to the house was not very good, reliable, or safe. But around the end of the Korean War, the electrical service was upgraded and became far superior, which allowed the Eastman Family to reliably water their crops from the Snake River. This is also substantiated by James Eastman's dad application for water rights from the Snake River **{See Exhibit #3}** in 1957.
9. The Eastman Family Homestead used a wood burning stove for heat and cooking purposes, as required to be considered a second dwelling on the property **{See Exhibit #1}**. An interesting side note James Eastman told me regarding the wood stove, was that although the Eastman Family would have to use it in the heat of summer for cooking, and the extra heat was indeed unbearable, James Eastman recalled to me with a laugh: "The smoke from the fire was a god send, as it kept the mosquitos away!"

10. The Eastman Family Homestead house itself was slowly abandoned starting around the time the Snake River Water right was obtained {See Exhibit #3} as the family moved further to the west, across the highway and up the hill. This abandonment of the homestead house, explains why Malheur County has no record of the homestead house itself listed as an improvement on the property {See Exhibit #4}. Because the dwelling was abandoned, there would be no documentation of any improvements in the 1966 Malheur County Assessment Records- which is how far documentation of improvements for assessment purposes goes back on the property in question (1764 HWY. 201, Adrian, OR).
11. The Eastman Family Homestead was demolished by me, Jeffrey B. Downie, the petitioner in the summer of 2011. I rented an excavator to clean up: the boat ramp, point of diversion for the irrigation/water right, water drainage ditches, and the homesteading dikes/roads around the edge of the Snake River. The homesteading house itself was becoming unsafe because the integrity of the structure had deteriorated massively over its approximately 100-year life span. The visual blight or a lack of aesthetic appeal of the homestead house was another reason I demolished it. But to this day, artifacts or relics and original walls or pieces of the house are still everywhere around the homestead house site on the property in question (1764 HWY. 201, Adrian, OR).
12. It is correct for the Planning & Zoning Department of Malheur County to provide me, Jeffrey B. Downie, the petitioner with a second building permit for the property in question (1764 Hwy 201, Adrian, OR) based on the fact there was a second home there in the form of the Eastman Family Homesteading Site.
13. I am willing to testify with reasonable certainty on the facts stated herein.

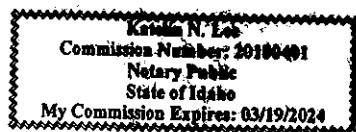
Further your affiant sayeth naught.


Dated this 18th day of February, 2020.



JEFFREY B. DOWNIE

SUBSCRIBED & SWORN TO before me this 18th day of February, 2020.




Notary Public for Idaho

Residing at SW Cleveland Blvd.
8e 140

Commission Expires 3-19-24

Affidavit of Jeffrey B. Downie in Support of Eastman Homestead Site at 1764 Hwy. 201

CHAPTER 440

AN ACT

HB 3024

Relating to replacement dwellings in lands zoned for exclusive farm use; creating new provisions; amending ORS 215.213, 215.283 and 215.780 and sections 2, 10 and 11, chapter 462, Oregon Laws 2013.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2, chapter 462, Oregon Laws 2013, is amended to read:

Sec. 2. (1) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213 (1)(q) or 215.283 (1)(p) [in the manner provided by either subsection (2) or (3) of this section.] if the county determines that:

(a) The dwelling to be altered, restored or replaced has, or formerly had:

(A) Intact exterior walls and roof structure;
(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Interior wiring for interior lights; and
(D) A heating system; and

(b)(A) If the dwelling was removed, destroyed or demolished:

(i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

(ii) Any removal, destruction or demolition occurred on or after January 1, 1973;

(B) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

(C) A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:

(i) For the previous five property tax years; or

(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

[(2) The dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the permitting authority:]

[(a) Finds to the satisfaction of the permitting authority that the dwelling to be altered, restored or replaced has, or formerly had:]

[(A) Intact exterior walls and roof structure;]

[(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;]

[(C) Interior wiring for interior lights; and]

[(D) A heating system; and]

[(b) Finds that the dwelling was assessed as a dwelling for purposes of ad valorem taxation for the lesser of:]

[(A) The previous five property tax years unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling; or]

[(B) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010 unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling.]

[(3) The dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the dwelling meets the requirements of subsection (2)(a) of this section, the dwelling does not meet the requirement of subsection (2)(b) of this section, and the applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner.]

[(4)] (2) For replacement of a lawfully established dwelling under [ORS 215.213 (1)(q) or 215.283 (1)(p)] **this section:**

(a) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

(A) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

[(B) If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued.]

(B) If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued.

(b) The replacement dwelling:

(A) May be sited on any part of the same lot or parcel.

(B) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(c) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of this section and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

Exhibit 2

STATE OF OREGON

COUNTY OF MALHEUR

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

JEFFREY DOWNIE
1764 HWY 201
ADRIAN, OR 97901

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-17012

SOURCE OF WATER: WELL 1 AND WELL 2 IN SNAKE RIVER BASIN

PURPOSE OR USE: IRRIGATION USE ON 8.0 ACRES

MAXIMUM RATE: 0.1 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH APRIL 14 AND OCTOBER 1 THROUGH OCTOBER 31

DATE OF PRIORITY: FEBRUARY 27, 2008

WELL LOCATIONS:

WELL 1: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 3, T22S, R46E, W.M.; 1510 FEET SOUTH AND 1320 FEET EAST FROM NW CORNER, SECTION 3

WELL 2: SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 3, T22S, R46E, W.M.; 2515 FEET SOUTH AND 1550 FEET EAST FROM NW CORNER, SECTION 3

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 2.0 ACRES

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 6.0 ACRES

SECTION 3

TOWNSHIP 22 SOUTH, RANGE 46 EAST, W.M.

Measurement, recording and reporting conditions:

- A. The Director may require the permittee to install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. If the Director notifies the permittee to install a totalizing flow meter of

Application G-17012

Water Resources Department

PERMIT G-16374

STATE OF OREGON
COUNTY OF Malheur
CERTIFICATE OF WATER RIGHT

This Is to Certify, That E. E. Eastman

of P. O. Box 104, Adrian, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Snake River, a tributary of _____, for the purpose of supplemental irrigation of 25.0 acres.

under Permit No. 25147 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from August 26, 1957

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.60 cubic foot per second.

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the Lot 5 (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Section 3, Township 22 South, Range 46 East, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-fourtieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4 acre feet per acre for each acre irrigated during the irrigation season of each year.

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

22.8 acres SE $\frac{1}{4}$ NW $\frac{1}{4}$
2.2 acres Lot 5 (SE $\frac{1}{4}$ NW $\frac{1}{4}$)
Section 3
Township 22 South, Range 46 East, W.M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

F-2

[illegible]

3RM VD.C.9 (9.62)

VALUATION SUMMARY OF REAL PROPERTY

[illegible]