



**Cochise County**  
**Community Development**  
 Planning, Zoning and Building Safety Division

*Public Programs...Personal Service*  
 www.cochise.az.gov

**COCHISE COUNTY REZONING APPLICATION**

Submit to: Cochise County Community Development Department  
 1415 Melody Lane, Building E, Bisbee, Arizona 85603

1. Applicant's Name:

2. Mailing Address:

City State Zip Code

3. Telephone Number of Applicant:

4. Telephone Number of Contact Person if Different:

5. Email Address:

6. Assessor's Tax Parcel Number:  (Can be obtained from your County property tax statement)

7. Applicant is (check one):

- Sole owner: \_\_\_\_\_
- Joint Owner: \_\_\_\_\_ (See number 8)
- Designated Agent of Owner: \_\_\_\_\_
- If not one of the above, explain interest in rezoning:

7. If applicant is **not** sole owner, attach a list of all owners of property proposed for rezoning by parcel number. Include all real parties in interest, such as beneficiaries of trusts, and specify if owner is an individual, a partnership, or a corporation:

- List attached (if applicable):

8. If applicant is **not** sole owner, indicate which **notarized** proof of agency is attached:

**Planning, Zoning and Building Safety**

1415 Melody Lane, Building E  
 Bisbee, Arizona 85603  
 520-432-9300  
 520-432-9278 fax  
 1-877-777-7958  
 planningandzoning@cochise.az.gov

**Highway and Floodplain**

1415 Melody Lane, Building F  
 Bisbee, Arizona 85603  
 520-432-9300  
 520-432-9337 fax  
 1-800-752-3745  
 highway@cochise.az.gov  
 floodplain@cochise.az.gov

- If corporation, corporate resolution designating applicant to act as agent: \_\_\_\_\_
- If partnership, written authorization from partner: \_\_\_\_\_
- If designated agent, attach a **notarized** letter from the property owner(s) authorizing representation as agent for this application.

9. Attach a proof of ownership for all property proposed for rezoning. Check which proof of ownership is attached:

- Copy of deed of ownership: \_\_\_\_\_
- Copy of title report: Appendix B
- Copy of tax notice: \_\_\_\_\_
- Other, list: \_\_\_\_\_

10. Will approval of the rezoning result in more than one zoning district on any tax parcel?

- Yes \_\_\_\_\_ No X

11. If property is a new split, or the rezoning request results in more than one zoning district on any tax parcel then a copy of a survey and associated legal description stamped by a surveyor or engineer licensed by the State of Arizona must be attached.

12. Is more than one parcel contained within the area to be rezoned? Yes \_\_\_\_\_ No

- If yes and more than one property owner is involved, have all property owners sign the attached consent signature form.

13. Indicate existing Zoning District for Property: Agricultural

14. Indicate proposed Zoning District for Property: Light Industrial

Note: A copy of the criteria used to determine if there is a presumption in favor of or against this rezoning is attached. Review this criteria and supply all information that applies to your rezoning. Feel free to call the Planning Department with questions regarding what information is applicable.

15. Comprehensive Plan Category: NA (A County planner can provide this information.)

16. Comprehensive Plan Designation or Community Plan: NA (A County planner can provide this information.)

**Note: in some instances a Plan Amendment might be required before the rezoning can be processed. Reference the attached rezoning criteria, Section A.**

17. Describe all structures already existing on the property: The site has no structures.

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18. List all proposed uses and structures which would be established if the zoning change is approved. Be complete. Please attach a site plan: See attached Site Plan.

PV solar panel arrays, a switchyard, a small maintenance building, and battery storage.

19. Are there any deed restrictions or private covenants in effect for this property?

- No X Yes \_\_\_\_\_
- If yes, is the proposed zoning district compatible with all applicable deed restrictions/private covenants? Yes \_\_\_\_\_ No \_\_\_\_\_

- Provide a copy of the applicable restrictions (these can be obtained from the Recorder's office using the recordation Docket number)

20. Which streets or easements will be used for traffic entering and exiting the property?  
Benson Road

21. What off-site improvements are proposed for streets or easements used by traffic that will be generated by this rezoning? The proposed facility will employ between one and two employees and is not expected to require off-site street improvements.

22. How many driveway cuts do you propose to the streets or easements used by traffic that will be generated by this rezoning? One

23. Identify how the following services will be provided:

Service	Utility Company/Service Provider	Provisions to be made
Water	Benson	None
Sewer/Septic	Not Applicable	Portable Unit
Electricity	Sulphur Springs Valley Co-Op	None
Natural Gas	Not Applicable	None
Telephone	Century Link	None
Fire Protection	Benson	None

24. This section provides an opportunity for you to explain the reasons why you consider the rezoning to be appropriate at this location. The attached copy of the criteria used to determine if there is a presumption in favor of or against this rezoning is attached for your reference (attach additional pages as needed).

Please see Attachment 1.

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25. AFFIDAVIT

I, the undersigned, do hereby file with the Cochise County Planning Commission this petition for rezoning. I certify that, to the best of my knowledge, all the information submitted herein and in the attachments is correct. I hereby authorize the Cochise County Planning Department staff to enter the property herein described for the purpose of conducting a field visit.

Applicant's Signature: 

Date: 31.5.2018



factors with which to measure and analyze the appropriateness of the proposed rezoning. An analysis of how the Project addresses these evaluation factors is required for staff report to the Commission and Board. The Rezoning application must provide sufficient information for staff to make this analysis.

#### Rezoning Evaluation Factors:

1. Application. The Application Site Plan must provide sufficient information to determine that the proposed size and layout would comply with the applicable uses and standards for the types and intensity of uses permitted in the requested zoning district.
2. Compliance with Site Development Standards. Each parcel must meet the site development standards of the proposed zoning district including minimum lot size, setbacks, lot coverage, driveway width, parking and ADA-access requirements. The rezoning Concept Site Plan should show how these standards would be met.
3. Adjacent Districts Remain Capable of Development. Adjacent parcels should be able to meet minimum lot size and development standards of the remaining zoning district.
4. Limitation on Creation of Nonconforming Uses. The subject property should contain no structures or uses that would not be permitted or would not meet development standards of the new district.
5. Compatibility With Existing Development. The proposed rezoning district should be compatible with existing development in the vicinity.
6. Rezoning To More Intense Districts. The proposed new district should:
  - Be buffered by an intermediate district of sufficient size to provide a reasonable transition of intensity from the existing area (as a guide, a reasonable transition is considered to be a difference of intensity or density of two levels as described in Section 2208.02);
  - Be a reasonable extension of a similar density district within the area; and
  - Provide a transition between an existing less intense district and a more intensive district or an arterial street; or
  - Provide adequate protection to the adjacent less intense development in the form of enhanced screening, landscaping, setbacks, large lot size, building orientation or other design measures.
7. Adequate Services and Infrastructure. The following factors are used to determine if there are adequate services and infrastructure to serve an intensification of zoning:
  - (a) For a rezoning to a more intensive district, the applicant has provided adequate information to evaluate the impacts of the rezoning on roads, other infrastructure, and public facilities. The applicant must demonstrate that there are adequate provisions to address the impacts identified. The applicant shall provide data supporting the estimated traffic volumes as part of the application.
  - (b) If the site accesses on a road where existing demonstrable traffic problems created by incremental development have already been identified, such as a high number of accidents, substandard road design or surface, or the road is near or over capacity, the applicant has proposed a method to address these problems.
  - (c) The proposed development meets or will meet the applicable requirements for street, sewer, or water improvements.
  - (d) The site has access to streets that are adequately designed and constructed to handle the volume and nature of traffic typically generated by the use.
8. Traffic Circulation Criteria.
  - (a) Any rezoning shall be consistent with preservation of the functions of surrounding streets as defined in Section 102.B.3 (a through g) of the Comprehensive Plan. [see page 11 of the Comp Plan]
  - (b) If the rezoning is to GB, LI or HI, the development shall not result in the use of any residential street for through traffic to and from the proposed district.
  - (c) Consideration of future circulation needs in the surrounding area have been taken into account through right-of-way dedication and off-site improvements if warranted.

9. Development Along Major Streets. The rezoning size [the size of the land area to be rezoned] limits the number of access points on major thoroughfares or arterial streets, and County collectors through the use of frontage roads, shared access, no access easements or other safe methods designed to minimize road cuts that create unsafe traffic conflicts, hazardous traffic congestion and obstruct the functioning of arterials.

10. Infill. If rezoning to GB, LI or HI, the site is in an existing Enterprise or Enterprise Redevelopment plan designation area. This factor is designed to encourage infill in areas where commercial and industrial development already exists, thereby discouraging sprawl and locating new non-residential developments where adequate infrastructure may already exist and where they are most likely to be compatible with existing uses.

11. Unique Topographic Features. A rezoning to a more intensive zoning district shall not take place if there are areas of unstable soils, steep slopes, severe washes, floodplains, etc. which are not appropriate for intense development. Rezonings encompassing such areas will be discouraged unless the developer carefully plans development around these areas, such that they are appropriately protected.

12. Water Conservation. Uses proposed with the rezoning involving Master Development Plans shall show compliance with the water conservation policies of Section 102E in the Comprehensive Plan and the approved Master Development Plan. Other rezonings shall show compliance at the time of building permit issuance.

13. Public Input. If there is a major public opposition to a proposed rezoning, this may indicate that the technical evaluation regarding compatibility of the proposed district does not concur with the view of local residents and a recommendation of denial may be appropriate. If public concerns have been raised, it is fair to ask if the applicant has made a reasonable effort to address these concerns through the Citizen Review Process.

14. Hazardous Materials. Adequate data has been submitted to determine that impacts from uses that may involve hazardous or dangerous materials are adequately mitigated.

15. Compliance with Applicable Area Plan, Master Development Plan or Comprehensive Plan Policies. The proposed uses and design are in substantial conformance with adopted area plan, master development plan or comprehensive plan land use designations and policies.

**ATTACHMENT 1**

**COCHISE COUNTY REZONING APPLICATION**

**BENSON SOLAR, LLC (continued)**

**24. This section provides an opportunity for you to explain the reasons why you consider the rezoning to be appropriate at this location. The attached copy of the criteria used to determine if there is a presumptive in favor of or against the rezoning is attached for your reference.**

The Project site has been identified as an optimal location for an electrical generation facility based on the recognized need for local power; the existence of compatible adjacent and nearby land uses; utility corridors (electric and natural gas); and electrical load centers. The rezoning is needed in order to provide power import to assist local utilities and energy-users in meeting their current and projected electrical demand of southeast Arizona. Because the regional grid has been operating at near capacity, additional infrastructure is needed to accommodate future electrical demand.

There are numerous electrical distribution lines, switchyards, and communication cables within the vicinity of the Project site. The Benson Substation is directly north of the site across the I-10 frontage road, while the Sulfur Springs Valley Electric Co-Op Substation is located approximately 1.4 miles northeast of the Project site.

The zoning changes proposed under the requested rezoning are consistent with the existing and planned light industrial zone on and adjacent to the subject parcel.

**Benson Solar Facility**  
**Rezoning Application**  
**to Allow a Photovoltaic Power Generation Facility**

Prepared for  
**Cochise County**

Submitted by  
**BENSON SOLAR, LLC**

Prepared by



**May 31, 2018**

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## **1.0 PROJECT NARRATIVE**

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### **1.1 INTRODUCTION**

Benson Solar, LLC is requesting rezoning to construct and operate the proposed Benson Photovoltaic (PV) Solar Power Generating Facility (Project) on approximately 134.5 acres of undeveloped land located approximately 1.5 miles of Benson, Cochise County, Arizona (Figure 1).

The site is generally level and located on the south side of I-10 and the Union Pacific Railroad. The Benson Substation is directly north of the site across the I-10 frontage road, while the Sulfur Springs Valley Electric Co-Op Substation is located approximately 1.4 miles northeast of the Project site.

Rezoning the Project site from agricultural (R-36) to Light Industrial (LI) would allow for the development and operation of the proposed solar generating facility and provide power import to assist Arizona Electric Power Cooperative, Inc. (AEPCO) in meeting their current and projected electrical demand of southeast Arizona. The regional grid has been operating at near capacity, and additional infrastructure is needed to accommodate future electrical demand.

The proposed Project is expected to include a PV solar field with an expected electrical output of up to 20 MW. The Project will also require a gen-tie transmission line and additional project infrastructure including battery storage (Figure 2).

Both the Project site and the region are well suited for the proposed changes to the current zoning district. The primary criteria for determining the location of the power generation facilities include the existence of compatible adjacent and nearby land uses, minimal topographic variability, and the proximity to existing electrical infrastructure, major transportation corridors, utility corridors, and electrical load centers.

### **1.2 PHYSICAL SETTING, EXISTING USES, AND RELATIONSHIP TO SURROUNDING LAND USES**

The Project site is located in the Sonoran Desert in west-central Cochise County approximately 1.5 miles east of Benson (Figure 1).

The site consists of approximately 134.5 acres of relatively flat, undeveloped private land formerly occupied by the Benson Airport. The Benson Airport was opened, closed, and reopened multiple times throughout its 70-year lifespan starting in either 1930 or 1931. The airport had three dirt runways and offered aircraft repairs, fueling, and hangars (Freeman 2017).

Major features in the site area include the San Pedro River, I-10, the Union Pacific Railroad, and several existing transmission lines (Figure 1).

The Project is bound to the north by the Southern Pacific Rail Road, the Interstate 10 (I-10) frontage road, and I-10, to the south by an ephemeral wash of the San Pedro River, and to the west

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by agricultural land. To the east, the Property is pinched off by the I-10 frontage road and the San Pedro tributary.

The Project site occupies undeveloped, highly degraded desert scrublands suitable for a PV solar generation facility. Adjacent land uses to the Project site primarily include undeveloped rural lands, with some residential properties to the south and some industrial properties to the north across I-10. Active farmland is located directly adjacent to the west side of the Project site. Land use adjacent to the gen-tie route primarily include undeveloped rural lands as well as industrial properties.

### **1.3 NATURAL RESOURCES**

Benson Solar has considered potential impacts of the proposed Project. Construction and operation of the Project will be compliant with all county, state, and federal laws, regulations, and guidelines.

Based on the development history of the Project site, as well as preliminary natural resources desktop reviews, the Project site is located in an area with minimal sensitive resources. Results of the preliminary review of the Project site are described below.

#### **Biological Resources**

##### **Ecoregional Setting**

The Project lies within the Madrean Archipelago Level III Ecoregion. This region of basins and ranges varies from medium to high local relief, typically 3,000 to 5,000 feet. Native vegetation in the region is mostly grama-tobosa shrub-steppe in the basins and oak-juniper woodlands on the ranges, except at higher elevations where ponderosa pine is predominant (Griffith et al. 2014).

Within the Madrean Archipelago, the Project area lies within the Apachian Valleys and Low Hills Level IV Ecoregion (79a), characterized by valley plains, alluvial fans, and some low hills. This region's precipitation is influenced by monsoons, and elevations in the Arizona part of the ecoregion range from about 3,200 to 5,500 feet. A variety of human and natural influences over the past 100-150 years has caused significant landscape changes. Droughts and precipitation events, livestock overgrazing, agricultural clearing and irrigation, fire suppression, road and residential construction, and introduction of exotic plants have altered the ecological patterns in these "desert seas" and their relations to the sky islands of the adjacent mountain ecoregions. Although this region has areas of desert scrub and semi-desert grassland, often in a complex mosaic, shrub and cacti encroachment and exotic species, as well as the proliferation of honey mesquite, have greatly altered historical grassland areas (Griffith et al. 2014).

##### **Project Area Habitat Description**

Currently, the Project area is comprised of undeveloped, highly degraded desert scrublands. According to the GAP Landcover Dataset, land cover at the site is primarily comprised of Apacherian-Chihuahuan Mesquite Upland Scrub, with areas of Apacherian-Chihuahuan Semi-

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Desert Grassland and Steppe (USGS 2018). Due to heavy degradation from its former use as an airport, the Project site is characterized by large unvegetated areas, pockets of weedy grassland, and scattered shrubs. A row of mesquite trees lies along Benson Road located on the west side of the Project, and a riparian area dominated by mesquite and other riparian species lies along the unnamed tributary to the San Pedro River within the southeastern boundary of the Project. These riparian habitats are generally associated with an ephemeral water supply. They are important habitat for migratory birds. Desert scrubland habitat appears less degraded adjacent to the Project area and along the gen-tie route, with the exception of the active farmland adjacent to the west side of the Project area.

### **Federally Listed Species**

Species listed as threatened or endangered by the U.S. Fish and Wildlife Service (USFWS) are provided regulatory protection under the Federal Endangered Species Act. The USFWS Information for Planning and Conservation (IPaC) tool was consulted to determine whether the Project site is within the range of any of the 22 animal or 6 plant species that are listed as occurring in Cochise County, Arizona.

According to the IPaC report for the Project area (USFWS 2018a), there are three mammals, four birds, one reptile, one amphibian, and one flowering plant species that are federally listed as threatened or endangered by the USFWS and should be considered as part of an effect analysis for the Project. There is also USFWS-designated proposed critical habitat for the yellow-billed cuckoo within the Project area (USFWS 2018a).

Table 1 includes a summary of all federal and state listed species and special status species that were evaluated for presence within the Project and the status and the likelihood of occurrence within or near the Project area using range data provided by Arizona Game and Fish Department (AGFD), when available (AGFD, 2018). This list does not include species listed as Species of Greatest Conservation Need (SGCN) by the AGFD. This list also does not include additional species that may warrant protection under the Bald and Golden Eagle Protection Act (BGEPA) or the Migratory Bird Treaty Act (MBTA).

**Table 1.**  
**Species listed under the Federal Endangered Species Act and their likelihood of occurrence within the Benson Solar Project Area.**

Taxonomic Group/ Critical Habitat	Common Name	Scientific Name	Status <sup>1</sup>	Likelihood of Occurrence within the Project Area <sup>2,3</sup>	Discussion/Recommendations <sup>2</sup>
Amphibians	Chiricahua leopard frog	<i>Rana chiricahuensis</i>	FT	Unlikely- Closest mapped habitat is over 2 miles southeast of Project area. Species requires permanent/ semi-permanent pools in river valley cienegas, springs, pools, cattle tanks, lakes, reservoirs, streams, and rivers. No suitable habitat present within Project area.	No anticipated impacts.
Birds	Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	FT	Moderate- Portions of the Project area along the southwestern edge appear to lie within or directly adjacent to proposed critical habitat (see below). Species observations have been made in the portion of the San Pedro River in the regional vicinity of the Project area. Habitat consists of dense understory foliage of riparian cottonwood-willow galleries, saltcedar, and mesquite bosques. The unnamed tributary to San Pedro River, located within and adjacent to the southeast portion of the Project area, appears to contain potentially suitable riparian habitat for the species.	Surveys would be required to determine the presence of the species within the Project area. If present, appropriate siting and avoidance and minimization efforts would likely be required to avoid potential impacts to the species, which would require formal consultation with USFWS under Section 7 or 10 of ESA.
	Northern Aplomado Falcon	<i>Falco septentrionalis</i> femoralis	EXPN	Unlikely- This species is virtually extirpated throughout the state. There are no reintroduced populations in Arizona.	No anticipated impacts.

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	Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE	Moderate- Mapped habitat present within the Project area along the southwestern edge (outside critical habitat range). Species observations have been made in the portion of the San Pedro River in the regional vicinity of the Project area. Habitat consists of dense riparian cottonwood-willow thickets, saltcedar, and Russian olive riparian associations. The unnamed tributary to San Pedro River, located within and adjacent to the southeast portion of the Project area, appears to contain potentially suitable riparian habitat for the species.	Surveys would be required to determine the presence of the species within the Project area. If present, appropriate siting and avoidance and minimization efforts would likely be required to avoid potential impacts to the species, which would require formal consultation with USFWS under Section 7 or 10 of ESA.
	Mexican spotted owl	<i>Strix occidentalis lucida</i>	FT	Unlikely- No mapped habitat within the Project area. Species requires forested mountains for breeding and foraging. The Project site does not contain any suitable habitat for the species.	No anticipated impacts.
Flowering Plants	Wright's marsh thistle	<i>Cirsium wrightii</i>	C	Unlikely- Found in springs, seeps, marshes, and stream banks in alkaline soil. Not known from Arizona except for one historic specimen near San Bernadino Wildlife Refuge. Little to no suitable habitat present within the Project area.	No anticipated impacts.

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**Species listed under the Federal Endangered Species Act and their likelihood of occurrence within the Benson Solar Project Area.**

<b>Taxonomic Group/ Critical Habitat</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>Status<sup>1</sup></b>	<b>Likelihood of Occurrence within the Project Area<sup>2,3</sup></b>	<b>Discussion/Recommendations<sup>2</sup></b>
Mammals	Ocelot	Leopardus (=Felis) pardalis	FE	Unlikely- Extremely rare. Tends to be associated dense cover or vegetation and thornscrub communities. Mapped habitat within Project area, but little to no suitable habitat present within Project area.	No anticipated impacts.
	Lesser long-nosed bat	Leptonycteris curasoae yerbabuenae	FE	Unlikely- Mapped habitat within Project area. Species roosts within caves, mines, and old buildings and forage on succulents in semidesert grasslands. While limited suitable foraging habitat is present within the Project site, there is no suitable roosting habitat.	No anticipated impacts.
	Jaguar	Panthera onca	FE	Unlikely- Extremely rare. Found in a variety of habitat within desert scrub and pine-oak woodland, but most closely associated with rivers and cienegas of southern Arizona. Mapped habitat within Project area, but little to no suitable habitat present within Project area.	No anticipated impacts.

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**Species listed under the Federal Endangered Species Act and their likelihood of occurrence within the Benson Solar Project Area.**

Taxonomic Group/ Critical Habitat	Common Name	Scientific Name	Status <sup>1</sup>	Likelihood of Occurrence within the Project Area <sup>2, 3</sup>	Discussion/Recommendations <sup>2</sup>
Reptiles	Northern Mexican gartersnake	Thamnophis megalops eques	FT	Unlikely- Species found in dense vegetation within source area ponds and cienegas, lowland river riparian forests and woodlands, and upland stream gallery forests. Suitable habitat may be present within tributary drainage to San Pedro River. Currently extant in small fragmented populations in southeastern portion of state. Proposed critical habitat mapped along San Pedro River west of the Project area, but Project area located outside current mapped habitat.	Unlikely species is present within Project area, but surveys may be required within suitable habitat to determine presence due to location of proposed critical habitat just west of Project area.  No anticipated impacts.
Critical Habitat	Yellow-billed cuckoo	Coccyzus americanus	Proposed	High- Portions of the Project area along the southwestern edge appear to lie within or directly adjacent to the "Unit 26: AZ-18 Upper San Pedro River" critical habitat unit currently proposed for the species. This proposed critical habitat lies along the San Pedro River to the west of the Project area and a portion of the confluence of the unnamed tributary drainage that lies within and adjacent to the southeastern boundary of the site.	Consultation with USFWS would be required to determine if portions of the Project site lie within proposed critical habitat. Field surveys would need to be conducted to determine presence of species and habitat quality. Appropriate siting and avoidance and minimization efforts would likely be required to avoid potential impacts to the species' proposed critical habitat.

1 FE = Federally Endangered; FT = Federally Threatened; C = Federal Candidate Species; EXPN = experimental non-essential population; Proposed= Federally Proposed Critical Habitat  
 A field visit has not been conducted for this site. The likelihood of occurrence and discussion/recommendations for a species may be subject to changes based on the results of a site visit. In addition, contact with agencies is recommended to determine if there is any additional information or specific species of concern for the Project site.  
 2  
 3 See References for species citation information.

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## **Cultural Resources**

Tetra Tech, Inc. (Tetra Tech) conducted a site records search to determine if previously recorded cultural resources are present in the Project area. The search was conducted using the AZSITE online GIS database, which includes records of previous archaeological investigations and previously documented cultural resources (prehistoric and historic archaeological sites and historic architectural resources) that have been registered with the Arizona State Museum Archaeological Records Office. In addition to the AZSITE database search, the National Register of Historic Places (NRHP) online database was consulted to determine whether significant historic resources are present in the Project vicinity. The AZSITE database shows that 5 cultural resources are located within one-half mile of the Project area. These include one archaeological site of unknown cultural-temporal affiliation, the historic Pomerene Canal, the historic Benson Airport Road, the historic State Route 86, and the historic Southern Pacific Railroad Mainline - Southern Route. Three historic sites have been determined eligible for inclusion on the NRHP and the remaining two sites have not been evaluated for the NRHP. No NRHP-listed historic properties are located on or within one mile of the Project area.

## **Wetland Resources**

The Project site is located in Federal Emergency Management Agency (FEMA) Zone X, which is determined to be outside the 0.2% annual chance floodplain. The Project site is completely located in an area mapped as Zone C, which are areas of minimal flooding and are outside any designated 100-year floodplain (FEMA 2018).

A large ephemeral/intermittent tributary of the San Pedro River bounds the site to the south. This wash will be avoided during the construction and operation of the proposed Project.

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## 2.0 REFERENCES

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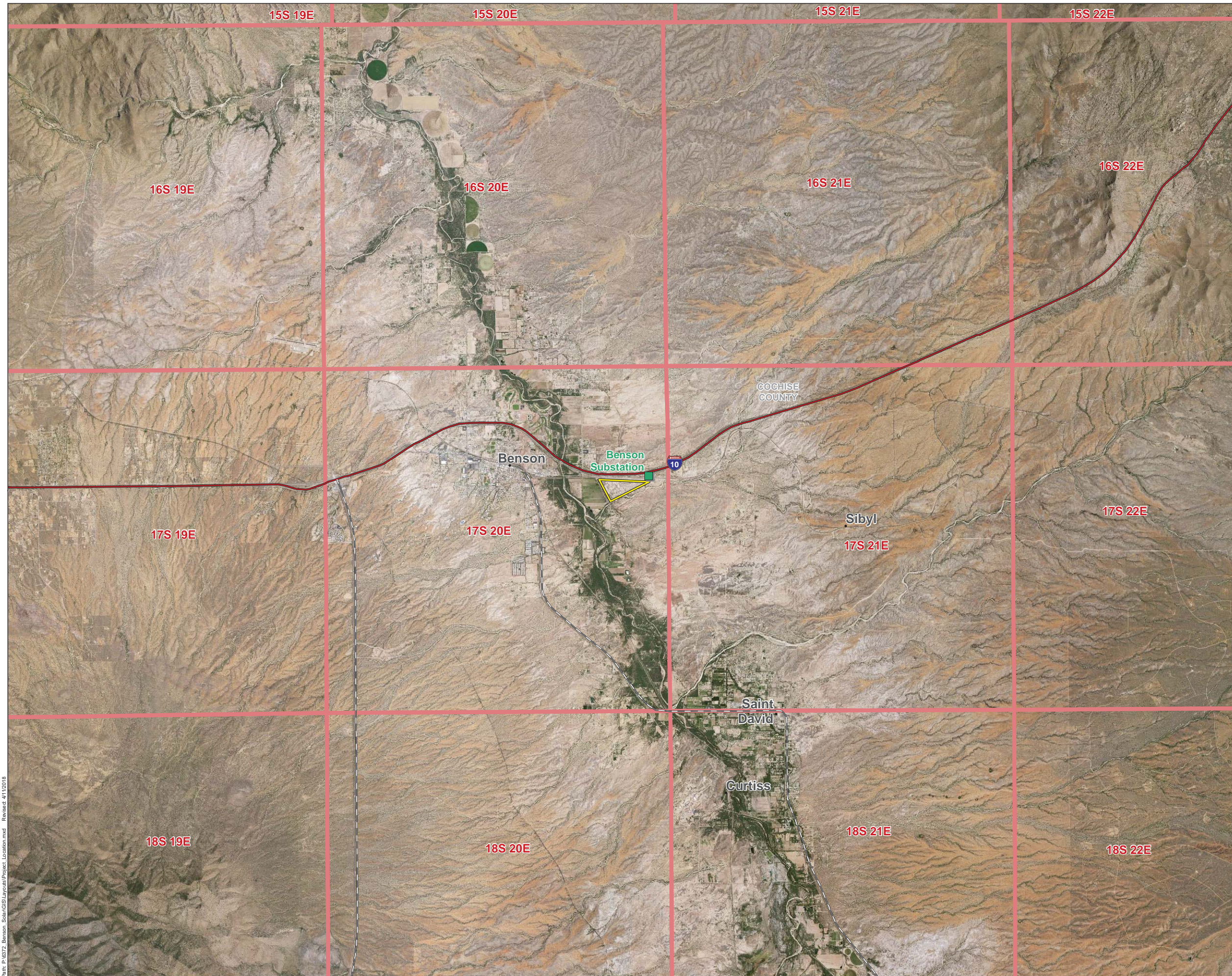
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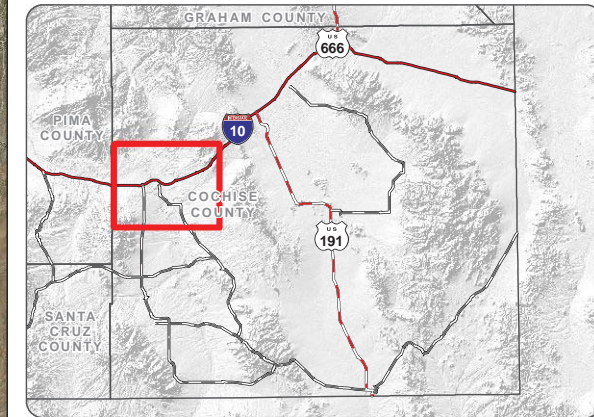
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## FIGURES



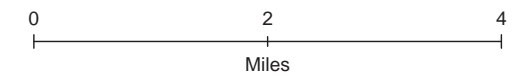
# Benson Solar Site

## Cochise County, AZ



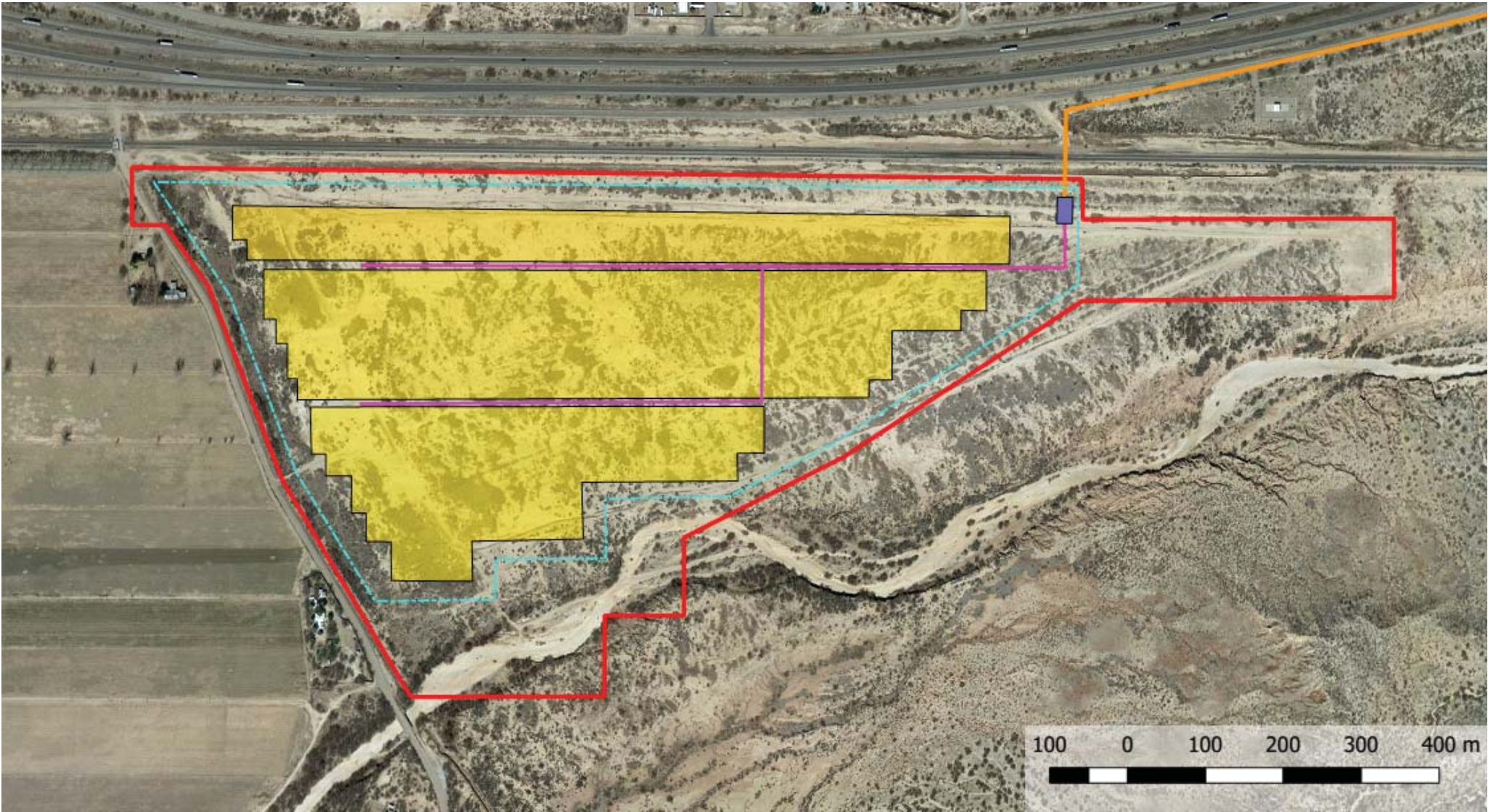
**Figure 1**  
**Project Location**







- Substation
- Project Area



Scale is 1:52,000 when printed at 22 x 34

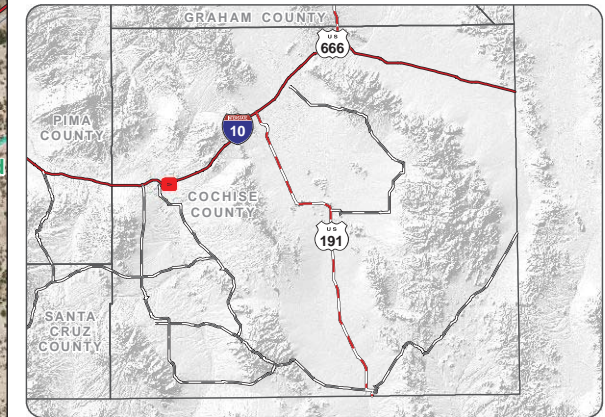
**BENSON SOLAR PROJECT**  
BENSON, ARIZONA



Legend	
 Project Substation Project	 Typical Solar Array
 Proposed 69 kV Overhead Line	 Fenced Project Area
 Typical 34.5 kV Collection Line	 Property Boundaries

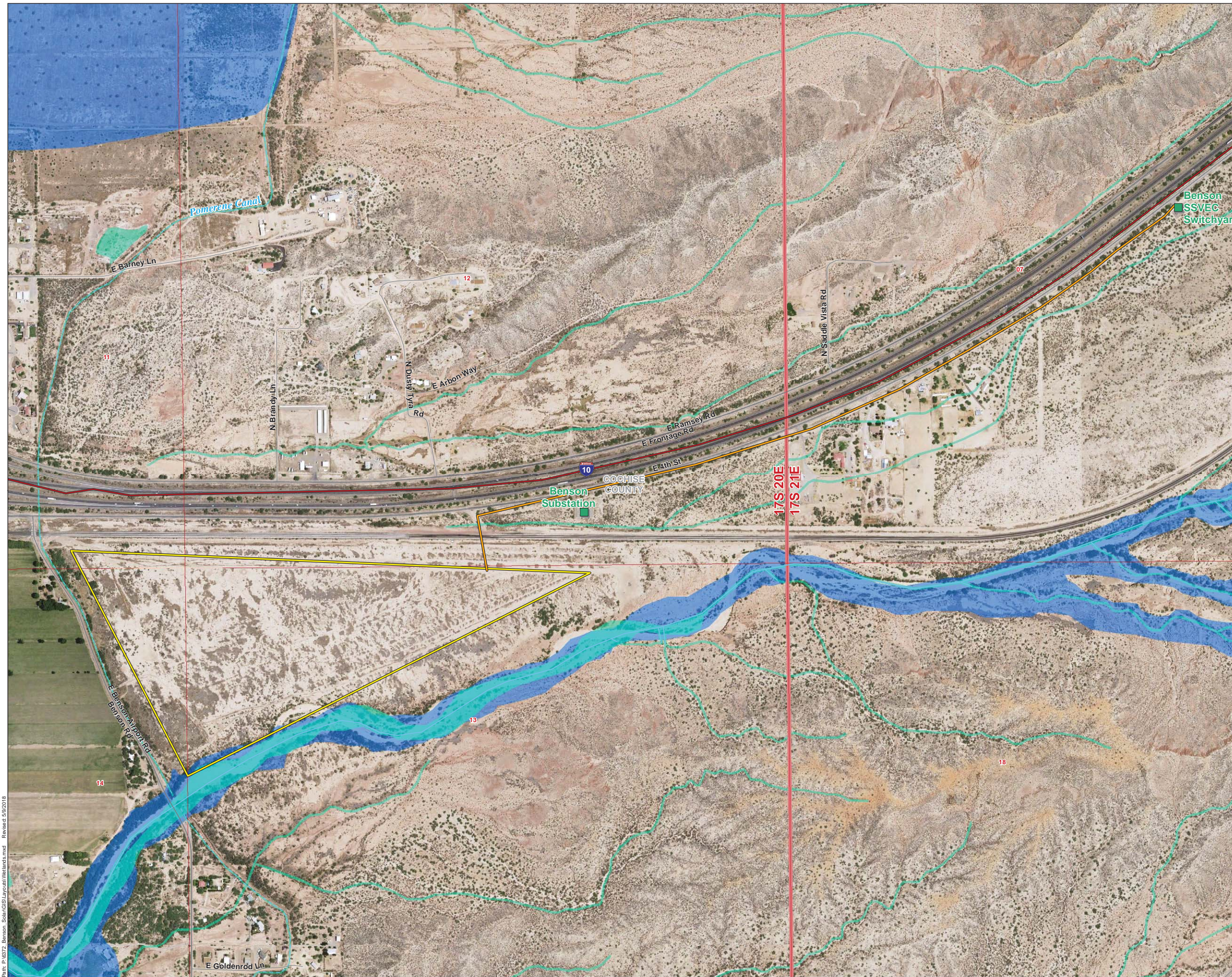
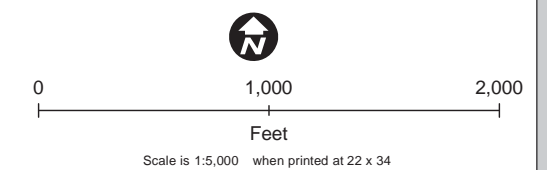
# Benson Solar Site

## Cochise County, AZ



### Figure 3 Wetlands

- Substation / Switchyard
  - Gen-Tie
  - Project Area
- Hydrology
- Perennial Stream
  - - - Canal/Ditch
  - NWI Wetland
  - 100-year FEMA Floodplain



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## **APPENDIX A**

### NEIGHBORHOOD LETTER AND RESPONSES

April 12, 2018

Dear Friends and Neighbors:

My name is Krista Dearing and I represent Benson Solar, LLC (Benson Solar), a wholly owned subsidiary of Soventix USA. Soventix USA is an independent power provider that builds, owns, and operates solar projects throughout the United States and abroad, including Africa, Europe, and South America. Benson Solar strives to provide solar developments in strategic areas of the United States that create jobs, clean energy, and improve communities through tax revenue generation.

I have more than 25 years of professional experience in environmental science and regulatory compliance. I oversee a variety of environmental projects involving the National Environmental Policy Act (NEPA), Endangered Species Act, Clean Water Act, and National Historic Preservation Act.

Benson Solar is requesting rezoning from the Cochise County Community Development Services Department to rezone approximately 135 acres of undeveloped land to allow for the development and operation of the proposed 20 megawatt Benson Solar Photovoltaic (PV) Power Generation and Power Storage Facility (Project).

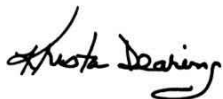
The proposed Project is located on heavily disturbed land approximately one mile east of Benson (Figure 1) that was formerly used as the Benson Airport. The county requires us to go through the zoning process in order to rezone the site from Rural-36 to Light Industrial. Part of that process includes getting feedback from you, our neighbors rezoning is requested

You will also be receiving a letter from the county, with contact information in case of objections to the Project. If you have any concerns, questions, or objections, we ask and encourage you to contact us first. We are happy to address them, and it may be something we haven't thought of that will make the Project that much better. We hope that this will be the start of a very cooperative relationship.

Thank you for your time and consideration. Please find my contact information below:

Sincerely,

TETRA TECH, INCORPORATED



Krista Dearing, RG  
Senior Project Manager  
2435 E. Taxidea Way  
Phoenix, AZ 85048  
Krista.Dearing@tetrattech.com  
623.910.6898

Attachment

## Dearing, Krista

---

**From:** alain hartmann <alain@hcreinc.com>  
**Sent:** Monday, April 16, 2018 3:43 PM  
**To:** Dearing, Krista  
**Subject:** Benson solar  
**Attachments:** Fenner Package v1.pdf; Fenner Aerial & Airport.pdf

Hi Krista,

I am glad to hear from you. My neighbor told me something was going on with the airport. I own a small property adjoining the old airport on the west side of Airport road, just north of the wash (1449 E Airport Rd). There is a berm on the east side of Airport road which is a natural screen for my property. I would very much like to see that remain in place. My parents bought the property in 1956 when I was born and I have been able to keep the homestead after they passed. In theory, I would think a solar farm would be a great neighbor - quiet I would assume. I would like to know a bit more of what the "operations" would entail but otherwise I think I would be in support of it for the rezoning. Will this require a heavy water usage? I know there are a couple of different approaches to solar.

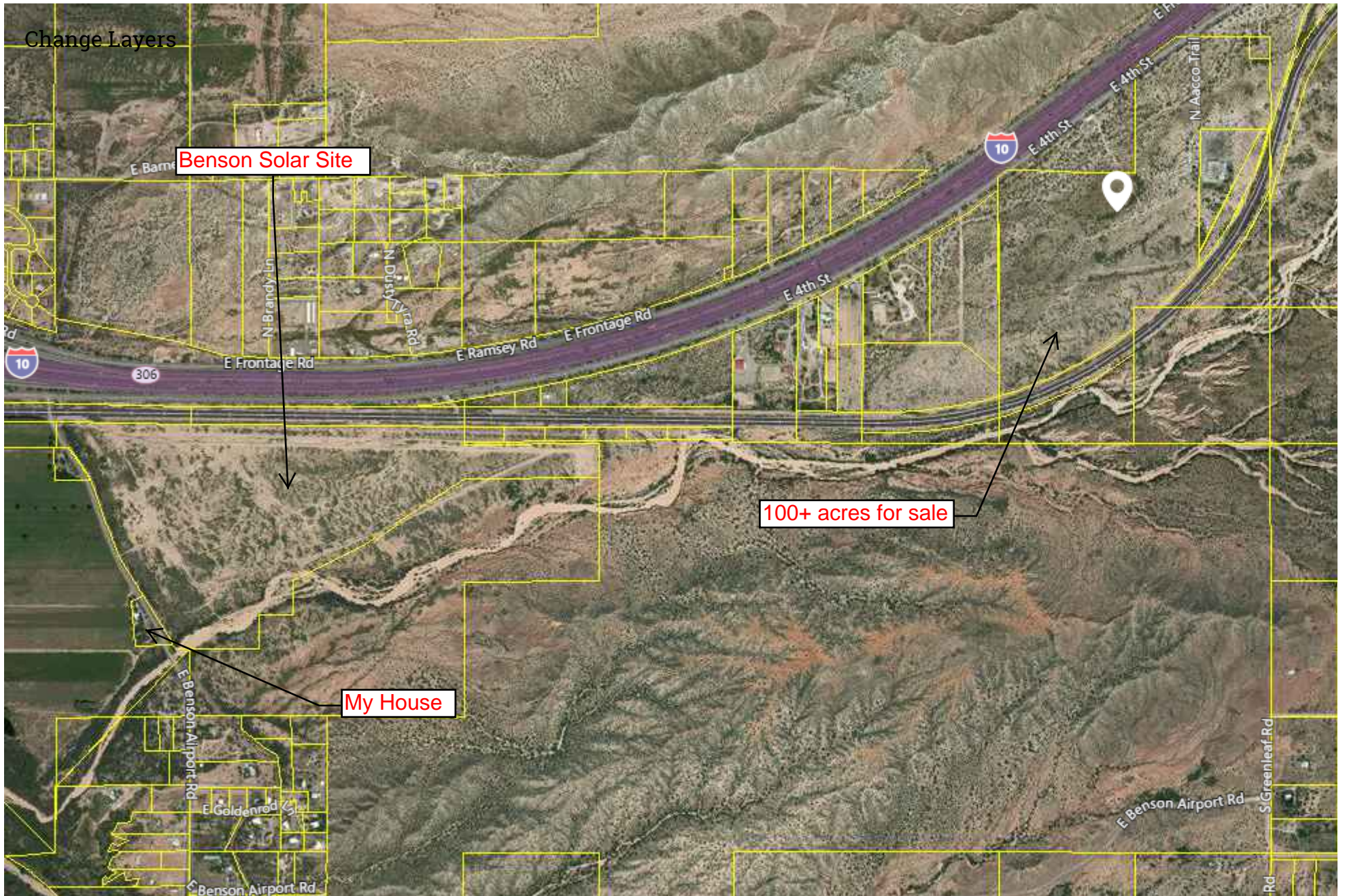
On another note, I represent a 100 + acres property about 1/2 mile east of the airport which I have long thought would make a great solar farm. It abuts an electrical substation. Years ago a portion of the property was split off for a foundry and that split was successfully rezoned to I-1. It has a great well. I have attached a package and a map showing the relative locations. If there was someone you could forward this information to, I would greatly appreciate it.

Best regards,

Alain Hartmann



7459 E Broadway Blvd  
Tucson, AZ 85710  
Tel: 520-332-6000  
Fax: 520-290-5757  
Cel: 520-870-1030  
[alain@hcreinc.com](mailto:alain@hcreinc.com)





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**HARTMANN**  
COMMERCIAL REAL ESTATE

**FOR SALE**

**VACANT COMMERCIAL LAND**

**103 + Acres**

**Benson, Arizona**

- Parcels :** 120-02-003A
- Zoning:** RU-4 (Cochise County)
- Price:** \$566,500 (\$5,500 / Acre)
- Utilities:** Electric to lot line; deep well with strong capacity (100+ gpm) on site, install septic.
- Terms:** Cash;
- Comments:** Flat land on I-10 paved frontage road adjacent to electric transmission station. Ideal for **solar farm, grape production** or **large lot housing** project.

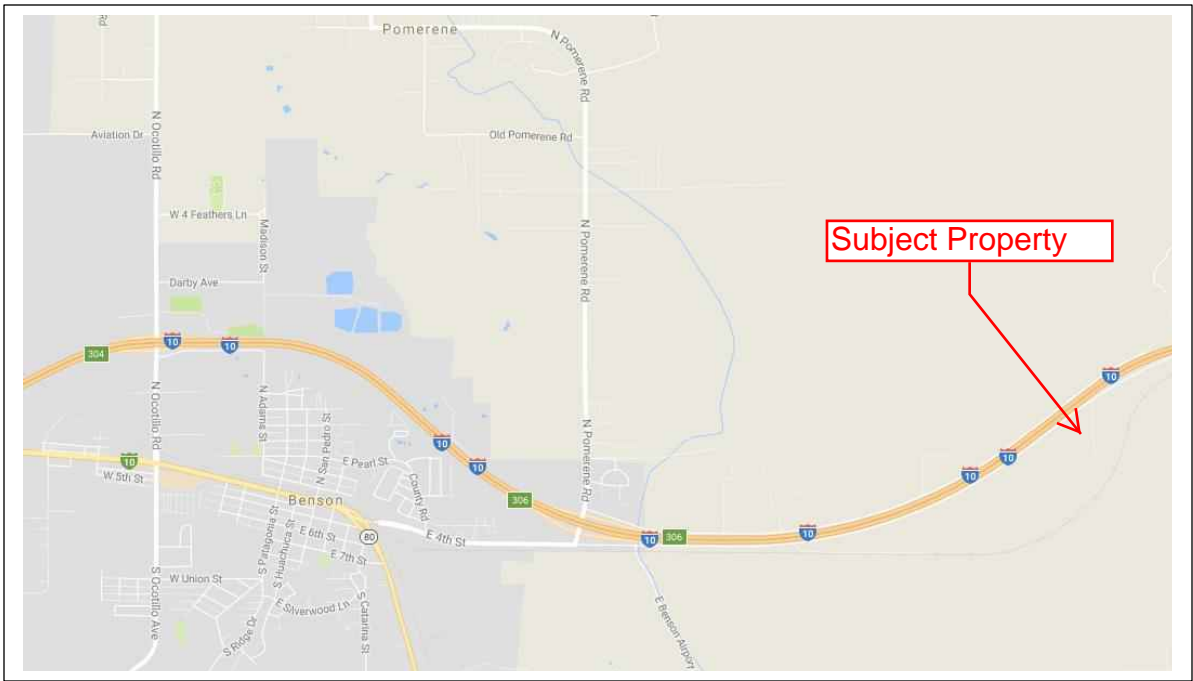
**FOR MORE  
INFORMATION  
PLEASE CONTACT:**

**Alain Hartmann**  
Designated Broker  
520.870-1030  
[alain@hcreinc.com](mailto:alain@hcreinc.com)



7459 E. Broadway • Tucson, Arizona 85710

W: 520.332.6000 • C: 520.870.1030 • F: 520.290.5757





Director  
Thomas Buschatzke

**ADWR**

Arizona Department of Water Resources

eGovernment



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## Well Registry Information

Registration Number **55-909771**

General	Construction	Status	Owner	Driller	Pump Data
Well Construction Information					
Well Depth (ft)	700	Water Level (ft bsl)	136		
Casing Depth (ft)	700	Casing Diameter (in)	7	Casing Type	P - STEEL - PERFORATED OR SLOTTED CASING
Well Data					
No. of Holes	1	Irrigated Acres		Acre Ft Annum	Intended Capacity (GPM)
Pump Completion Report					
Tested Capacity(GPM)		Pump Capacity(GPM)		Draw Down (ft)	
Pump Type		Power Type		Method of Discharge	
Place of Use					
Township	N/S	1/2 T	Range	E/W	1/2 R
					Section
					160 Acre
					40 Acre
					10 Acre
					Cadastral
No records to display.					

Well Registry is ADWR's well database containing reported information on well status, location and construction.



## Telephone Log

**Date:** April 27, 2018  
**Caller:** Mark Frapp, Owner AZ Storage 4U, LLC  
**Person Called:** Krista Dearing, Tetra Tech, Inc.  
**Project:** Benson Solar  
**Subject:** Input on proposed Benson Solar Project

---

Mr. Mark Frapp, owner of AZ Storage 4U, LLC located at 1628 E. Ramsey Road, Benson, AZ called Krista Dearing, Tetra Tech project manager in response to the TBD neighborhood letter he received regarding the announcement of the proposed Benson Solar facility located at the former Benson airport site.

Mr. Frapp indicated that he was very supportive of the project as he would like to see the area produce more renewable energy.

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**APPENDIX B**

LEASE AGREEMENT AND TITLE REPORT

OPTION TO PURCHASE AGREEMENT  
-AND-  
PURCHASE AND SALE AGREEMENT

THIS OPTION AGREEMENT (the "Option Agreement") is made and entered into effective as of this 28th day of October, 2016 ("Execution Date"), by and between **SOUTH ALVERNON WAY, LLC**, an Arizona limited liability company (the "Seller"), and **SOVENTIX-BENSON LLC**, a Delaware Limited Liability Company, and/or its successor or assigns (the "Purchaser") (Seller and Purchaser, collectively, the "Parties").

WITNESSETH:

WHEREAS, Seller is the owner of that certain property located in Benson, County of Cochise, State of Arizona, which is described on Exhibit "A" attached hereto (the "Seller Owned Tract"); and

WHEREAS, Seller has agreed to grant to Purchaser an option to purchase the Seller Owned Tract consisting of 135.4 acres pursuant to the terms of this Option Agreement.

WHEREAS, Purchaser and Seller desire to be bound by the terms of this Purchase and Sale Agreement in the event that Purchaser exercises Purchaser's Option as set forth in the Option Agreement between the Parties executed on the date herewith.

NOW THEREFORE, Subject to the terms and conditions of this Agreement, and for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. OPTION TO PURCHASE AGREEMENT

1. Grant of Option. Seller does hereby give, grant and convey unto Purchaser the sole and exclusive right, privilege and option (hereinafter called the "Option") of purchasing, in its entirety, the Seller Owned Tract from Seller for the purchase price and on the terms and conditions hereinafter set forth.

2. Pre-Option Period and Option Earnest Money. Simultaneously with the execution of this Option Agreement, Purchaser will pay to Seller the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "Pre-Option Period Payment"), to pay for a Pre-Option period of six months commencing on the Execution Date (the "Pre-Option Period"), which payment must be made at the time of execution of this Option Agreement. The Pre-Option Period Payment is to be retained by Seller and shall be non-refundable to Purchaser for any reason. Purchaser shall have the absolute right to terminate this Option Agreement on or before the expiration of the Pre-Option Period for any or no reason in Purchaser's sole discretion by providing written notice of such election to Seller 24 hours before the expiration of the Pre-Option Period. In the event that Purchaser fails to terminate this Option Agreement 24 hours before the expiration of the Pre-Option Period, then the Option Term (as defined below) will be deemed to have commenced at 12:00 AM on the day following the expiration of the Pre-Option Period (the "Option Period Commencement Date").

3V

ABG  
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11/15/16

3. Option Payments. Except in the event of a prior termination of this Agreement by Purchaser pursuant to its rights under Section 4(a) below, on or before five (5) business days following the Option Period Commencement Date and on each anniversary of the Option Period Commencement Date, Purchaser shall pay to Seller an Option and Access fee ("Option Fee") on an annual basis as follows:

- a. Year One Option Fee: \$30,000.00 payable in advance for the twelve (12) months commencing from the end of the Pre-Option Period as set forth in paragraph 2 of this Agreement.
- b. Year Two Option Fee: \$30,000.00 payable in advance for the twelve (12) months commencing from the end of Year One of the Option Period.
- c. Year Three Option Fee: \$40,000.00 payable in advance for the twelve (12) months commencing from the end of Year Two of the Option Period.
- d. Year Four Option Fee: \$50,000.00 payable in advance for the twelve (12) months commencing from the end of Year Three of the Option Period.
- e. Year Five Option Fee: \$60,000.00 payable in advance for the twelve (12) months commencing from the end of Year Four of the Option Period.

The annual Option Fees will be due on or before five (5) business days following each option expiration date. In the event payment of any Option Fee is not made when due, a late fee of One Hundred Dollars (\$100.00) per day will be charged for any payment made on or after six (6) business days following each option expiration date.

4. Option Term. The Option shall remain open and in full force and effect until five (5) years following the Option Period Commencement Date (said date, the "Expiration Date"; said period of time running from the Option Period Commencement Date to the Expiration Date being referred to herein as the "Option Term").

a. Notice of Termination of Option Term: If the Purchaser wishes to terminate the Option Agreement during the Option Term, Purchaser must provide written notice written mail in accordance with Section II paragraph 17 "Notices" to Seller of at least one hundred and twenty (120) days' notice before the next annual Option Fee is due.

b. Extension of Option Term: Upon written notice 120 days prior to the Expiration Date, Purchaser shall have at its sole and absolute discretion the right to extend the Option Term for two additional years and subject to the same terms provided in this Option Agreement. In the event that Purchaser elects to extend the Option Term, the Option Fee shall be as follows:

- i. Year Six Option Fee: \$70,000.00 payable in advance for the twelve (12) months commencing from the end of Year Five of the Option Period.
- ii. Year Seven Option Fee: \$80,000.00 payable in advance for the twelve (12) months commencing from the end of Year Six of the Option Period.

5. Exercise of Option. Purchaser may exercise the Option to purchase at any time during the Option Term, which Option shall be exercised by Purchaser delivering to Seller a written notice of its intention to exercise its Option granted hereunder. In the event Purchaser shall have exercised its Option granted hereunder, the purchase and sale of the Property contemplated by this Option Agreement shall be consummated in accordance with and subject to the other terms and conditions of this Option Agreement and the Purchase and Sale Agreement ("Agreement") below. In the event Purchaser shall fail to exercise this Option prior to the Expiration Date or earlier termination of the Option Term, the Initial Option Payment and any Yearly Option Payments already paid to Seller shall be the sole property of Seller and non-refundable to

Purchaser.

6. Access and Development Activities. Purchaser or its representatives may enter upon the Property at any time commencing with the Execution Date and terminating upon the Option Expiration Date, if the Purchaser does not sooner exercise the Option, for the purposes of conducting any tests, inspections, or examinations that Purchaser desires in regard to the Property, including (but not by way of limitation) such tests, inspections, or examinations as Purchaser may request including, but not limited to, the environmental conditions of the Property, the physical condition of any improvements and mechanical and electrical systems, and any other activities that Purchaser may, in its sole and absolute discretion, determine are reasonably necessary, required, or related to its effort to obtain regulatory approvals, permits, studies, amendments, or public consultations required to achieve approval for its Project, with the exception of any permanent construction on the Property, and shall have the right to keep and maintain and store any vehicle(s) or equipment or other items Purchaser deems necessary or incidental to any of the above. Purchaser shall indemnify and hold Seller harmless from any claims, actions, losses, costs, liabilities, expenses or damages resulting directly or indirectly from any tests, inspections, examinations, or any actions on the Property by Purchaser, the representatives of Purchaser. Purchaser must show proof of insurance of a value of two (2) million dollars before the execution of the Option Agreement.

7. Sale and Purchase. In the event that Purchaser shall have exercised the Option granted hereunder, then, subject to and upon the terms and conditions of this Agreement, Seller shall sell the Property to Purchaser and Purchaser shall purchase the Property from Seller in accordance with the terms of the Purchase and Sale Agreement ("PSA") as set forth in Section II of this Agreement, which PSA shall be and become effective without any further act or signature on behalf of either party upon the exercise of the Option by Purchaser in accordance herewith. In the event Purchaser shall not exercise the Option on or before the Expiration Date or Purchaser fails to deposit any required Yearly Option Payment (on or before 5 days following written notice from Seller of such failure to deposit the Yearly Option Payment), this Agreement shall be deemed terminated and of no further force and effect and the annual Option Fee then due and owing must be paid to Seller for failure to give written notice of termination as specified above in Section 4(a), provided however that in no event shall Purchaser be obligated or required to pay to Seller any amount in excess of the Annual Option fee due and owing by reason of Purchaser's failure to terminate the Option Term in accordance with Section I, paragraph 4(a).

8. Representations. Notwithstanding the fact that Purchaser has not yet exercised the Option, Seller hereby represents and warrants to Purchaser that the covenants, representations and warranties set forth in Section II paragraph 4 of the Agreement are true, correct and complete as of the date hereof with respect to the whole of the Seller Owned Tract (i.e., for the purpose of this representation and warranty, the term "Seller Owned Tract" shall be substituted for the term "Property" in such representations and warranties as contained in Section II paragraph 4 of the Agreement).

9. Recording of Memorandum. Upon Purchaser's request the Parties shall execute a memorandum of Option Agreement sufficient to provide record notice of Purchaser's Option rights as to the Property in the public records in substantially the form as Exhibit 1, attached hereto and made a part hereof. Purchaser shall pay the costs and expense of recording of such memorandum. At such time, Purchaser and Seller shall also execute a Release of the Memorandum of Option Agreement which shall be held by Seller in escrow and which shall not be released/recorded unless and until the expiration or earlier termination of this Option Agreement.

10. Due Diligence. Purchaser shall have the right and privilege during the Pre-Option Period and, if applicable, the Option Period to enter upon the Seller Owned Tract for the purposes of conducting such reasonable due diligence as Purchaser elects.

11. Prior Agreement. The parties hereto acknowledge and agree that this Option Agreement supersedes and replaces all prior agreements between the parties. Accordingly, all signatories hereto acknowledge and agree that all prior signed option agreements shall be deemed void and of no further force or effect upon the full execution of this Option Agreement.

12. Municipal Property Taxes. Effective as of commencement of the Pre-Option Period, Purchaser shall reimburse Seller the total amount of municipal property tax due as determined by the county of Property paid by Seller during the Option Term within thirty (30) days of receipt from Seller of (a) a copy of the municipal property tax bill and (b) proof of payment of the same.

## II. PURCHASE AND SALE AGREEMENT

1. PURCHASER'S OPTION. Upon the exercise by Purchaser of Purchaser's Option, this Agreement shall be and become effective without any further act on behalf of Seller or Purchaser. The effective date of this Agreement (the "Effective Date") shall be the date of Purchaser's delivery of notice to Seller of Purchaser's exercise of the Option, and each of the time periods set forth in this Agreement shall proceed from the Effective Date.

2. PURCHASE AND SALE. Subject to the terms and conditions of this Agreement, and for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it in hand paid, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller all of the following (collectively, the "Property"):

That certain real property located in the City Benson, County of Cochise, State of Arizona, as more particularly described on Exhibit "A" attached hereto and made a part hereof, including all right, title and interest of Seller, if any, in and to all adjacent streets, alleys, waterways, rightsofway, buildings, improvements, and structures, any strips or gores between the Property and adjacent properties, including all water and mineral rights, and all plants, shrubbery, trees, timber and all tenements, hereditaments, easements, access rights, and parking rights benefitting the Property.

3. PURCHASE PRICE. Subject to credits, adjustments and prorations for which provisions are hereinafter made in this Agreement, the total purchase price to be paid by Purchaser for the Property, and received and accepted by Seller, is ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$1,350,000.00). The Purchase Price shall be payable at Closing by wire transfer of immediately available funds to an account designated by the Escrow Agent, where the Escrow Company will be determined by the Seller.

4. COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby covenants, represents and warrants to Purchaser that the following facts are, as of the date hereof, and will be, as of the date of Closing, true and correct:

a. To Seller's knowledge, there are no violations of any governmental laws, ordinances, rules, regulations or orders relating to pollution, safety, health, building, fire or zoning in connection with the Property.

b. There are no arrangements or contractual obligations or assessments of any kind, including service or operating contracts or commitments to any third party or governmental agency that would affect or impose any obligation on the Purchaser or the Property subsequent to the Closing Date.

c. Seller is the owner of fee simple title to the Property and has full right, power and authority to execute, deliver and carry out the terms and conditions of this Agreement and all other documents to be executed and delivered by Seller pursuant to or in connection with this Agreement. All requisite resolutions, corporation or partnership, and any other consents, necessary for the consummation by Seller of the transaction herein described, have been or will before Closing be duly adopted and obtained.

d. No person or entity has any right of first refusal or option to acquire the Property. There are no parties in possession or with any possessory rights, including licenses, in respect to the Property.

e. Seller shall not, without the prior written consent of Purchaser: (i) place any encumbrance on all or any portion of the Property; (ii) terminate, modify, alter or supplement any appurtenant easement or any of the Permitted Title Exceptions; (iii) engage in any transaction out of the ordinary course of business with respect to the Property or any portion thereof; (iv) transfer, assign, convey or sell all or any portion of the Property or any interest therein; (v) enter into any agreement (or amend any existing agreement) granting to any person any rights with respect to the Property, any portion thereof or any interest therein, other than Purchaser; or (vi) enter into any tenant leases without obtaining Purchaser's written consent.

f. There is no action or proceeding pending against Seller, or, to Seller's knowledge, any part of the Property, which, if determined adversely as to the Seller, Purchaser or the Property, would have a material adverse effect on the Property, and to the best of Seller's knowledge and belief, no such action is contemplated or threatened by any party.

g. Seller has not received any written notice of and has no knowledge of the issuance of any notice in respect to a requirement by any agency of any governmental agency or by any other person or entity that the Property requires any actions, including cleanup or removal regarding any hazardous waste, hazardous material or any other substance regulated by any state or Federal environmental laws. To the best knowledge and belief of Seller, the issuance of such a notice is not threatened or contemplated by any such agency or other person or entity. To Seller's knowledge, there are no buried materials on the Property and the Property has not been used for the purposes of storing, manufacturing or dumping and does not contain any hazardous waste or hazardous substances as defined in Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended or any other environmental protection laws.

h. To Seller's knowledge, there is no existing, proposed or contemplated plan to widen, modify or realign any street or highway adjoining the Property which would affect access

thereto, or any existing proposed or contemplated eminent domain proceeding that would affect the Property in any way whatsoever.

i. Seller has no knowledge of any non-monetary restrictions or encumbrances affecting the Property which would hinder or preclude the development of the Property as a solar energy facility.

j. Except as otherwise disclosed in this Agreement, Seller has not received notice of any actions, suits or proceedings at law or in equity, or before any governmental or administrative agency, which affect or concern the Property or its ability to transfer the Property.

k. Seller is duly organized, validly existing, and in good standing under the laws of the State of Arizona, where it was formed, and is duly qualified to transact business in the State of Arizona.

l. Seller has full power and authority to execute, deliver and perform its obligations under this Agreement.

m. The individual(s) executing this Agreement on behalf of Seller has full authority to do so.

Except as set forth in this Section II paragraph 4 and otherwise in this Agreement, the Property is being sold "As-Is", "where-is".

5. ADDITIONAL DOCUMENTS AND INFORMATION. Within five (5) business days after the Effective Date of this Agreement, Seller shall deliver to Purchaser the following documents and items (the "Additional Documents and Information") to the extent in Seller's possession:

a. Copies of all surveys (including any existing survey), site plans, title reports, title insurance policies, including copies of exceptions in the title policies, environmental reports or studies, wetlands studies, engineering or similar types of reports, and architectural and engineering drawings relating to the Property, as well as copies of all information in Seller's possession addressing survey, soil, geological or environmental condition of the Property.

b. Copies of all contracts, permits, pleadings or other documents related to litigation, if any, or other agreements in Seller's possession affecting or otherwise related to the Property; copies of all real estate tax bills for the three (3) years preceding the Effective Date of this Agreement, if available; and evidence of any development entitlements and approvals applicable to the Property from the appropriate governmental authorities.

6. SELLER'S OBLIGATIONS. Between the date hereof and Closing, Seller shall have the following obligations:

a. Seller shall cooperate, at no out of pocket monetary cost to Seller, with Purchaser in obtaining any consents or other similar approvals necessary or appropriate to allow Purchaser to consummate this transaction.

b. Seller agrees to and shall execute all documents and undertake all reasonable actions, at no out of pocket monetary cost to Seller, in connection with any permitting or

authorizations related to Property, including appearing at any public meetings, if necessary, or hearings in relation thereto. Seller specifically acknowledges that local governmental authorities may require certain documents or applications related to Purchaser's development of the Property be submitted in Seller's name and Seller hereby concurs and agrees to reasonably cooperate by signing and submitting such documents as required.

7. CONDITIONS PRECEDENT TO PURCHASER'S PERFORMANCE. Purchaser shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

a. Seller shall have timely performed its obligations under this Agreement in all material respects.

b. As of the Closing Date, Seller's representations and warranties shall be true, correct and complete in all material respects.

8. DUE DILIGENCE.

a. Examination of the Property. Purchaser shall have the privilege, during the existence of this Agreement, of going upon the Property to inspect, examine, survey and make engineering, environmental, or landscaping tests or such other studies or surveys which it may deem necessary in its sole discretion regarding the Property and the development thereof. Should anyone attempt to file a lien against the Property by reason of the Purchaser's activities, the Purchaser shall have the same canceled and discharged of record within thirty (30) days after Purchaser receives notice thereof. In the event Purchaser shall fail or refuse to cancel or discharge such lien, Seller may do so at Purchaser's cost and expense. Purchaser hereby indemnifies and agrees to hold Seller harmless from and against any and all liens, liabilities, claims, actions, damages, costs, and expenses and against any and all claims for death or injury to persons or damage to properties arising out of or as a result of Purchaser's or its agents or contractors or other representatives or their employees going upon the Property pursuant to the provisions of this Paragraph or otherwise. This obligation to indemnify and hold Seller harmless shall survive the Closing and any termination of this Agreement. Purchaser shall promptly restore the Property to its condition on the date hereof to the extent practicable after all such tests or surveys, with Purchaser's obligation so to restore to survive any termination of this Agreement. Purchaser shall also be permitted to examine all records, real estate tax assessment information and all other information pertaining to the Property which is in the possession or control of Seller.

Financing Contingency. Purchaser and Seller each acknowledge and understand that Purchaser's obligations to proceed with this transaction is contingent upon Purchaser's receipt of a final, approved and firm commitment from a lender of Purchaser's choosing at rates and terms acceptable to Purchaser in Purchaser's sole discretion (said commitment, "Loan Approval"). Purchaser agrees to diligently pursue Loan Approval. If Purchaser is unable to obtain a written Loan Approval within 60 days after Purchaser exercises the Option, and if Purchaser so notifies Seller, or Seller's attorney, in writing on said date, this this Agreement shall be null and void.

b. Utility Availability. Notwithstanding anything contained herein to the contrary, if at or prior to Closing, any utility company or governmental entity takes any action, including any moratorium, that results in the non-availability (including the lack of sufficient pressures or capacities) to the Property at Closing of any utility necessary for the development thereof, then Purchaser may terminate this Agreement, whereupon this Agreement shall be of no further force and effect.

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9. TITLE AND SURVEY.

a. Title Commitment. Within ninety (90) days after the Effective Date hereof, Purchaser shall obtain and provide to Seller an ALTA standard form of Commitment for Owner's Title Insurance listing Purchaser as the named insured (the "Title Commitment") issued by a title company of Purchaser's choosing ("Title Insurer"), setting forth the state of title to the Property and all exceptions, including easements, deed restrictions, other restrictions, rightsofway, covenants, reservations, and other conditions, if any, affecting the Property which would appear in an Owner's Title Policy, if issued, and a certificate from the Title Insurer, indicating the amount, if any (or if none, so stating), of any real estate taxes attributable to the Property including, without limitation, taxes arising by virtue of any special use valuations affecting the Property.

b. Survey. Purchaser may, in Purchaser's discretion and at Purchaser's cost, obtain an ALTA survey of the Property (the "Survey").

c. Title Objections and Permitted Exceptions. In the event any exceptions appear in such Title Commitment or title documents or in the Survey that are unacceptable to Purchaser ("Purchaser's Objections"), then Purchaser shall notify Seller in writing of such fact on or before the expiration of the Inspection Period. Seller shall use its best efforts to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Purchaser. In addition, Seller shall be obligated to remove at or prior to Closing, all mortgages, deeds of trust or other liens or encumbrances which encumber the Property. Seller covenants and agrees that it shall not, without the prior written consent of Purchaser, permit any encumbrances to be filed against the Property following the Effective Date hereof. Purchaser reserves the right to object, on or before the Closing Date, to any new matter shown in an updated title commitment, revised survey, updated title search, or any other new matter (hereinafter, "New Matter") of title not included in the Title Commitment or not shown on the Survey at the time Purchaser delivers Purchaser's Objections to Seller. In the event that such New Matter is not cured by Seller for any or no reason, Purchaser shall be entitled to terminate this Agreement. Any exceptions to title to which Purchaser does not object on or before Closing and any matter objected to but not cured by Seller and which Purchaser elects to accept shall be deemed to be "Permitted Exceptions."

10. CLOSING. The Closing shall take place at the offices of Title Insurer, or such other location as may be determined by Seller, on a date selected by Purchaser by written notice to Seller, which date shall be on or before thirty (30) days following the date upon which Purchaser receives Loan Approval (the "Closing Date"). To the extent possible, the parties agree to cooperate to close the transaction by mail through the Title Insurer. Seller shall deliver possession of the Property to Purchaser at Closing.

a. At Closing, Seller shall deliver to Purchaser the following items, which items shall be in form and substance reasonably satisfactory to Purchaser:

i. A Warranty Deed in recordable form conveying good and marketable fee simple title to the Property, subject only to the Permitted Title Exceptions;

ii. an affidavit duly executed on behalf of Seller to the effect that Seller is not a foreign person under Section 1445(b) of the United States Internal Revenue Code;

iii. an owner's title affidavit duly executed on behalf of Seller with respect to the Property in form and substance sufficient to permit the issuance of an owner's title insurance

policy insuring Purchaser's title to the Property without exception for mechanics' liens, materialmen's liens, broker's liens or any other liens, restrictions or title exceptions other than the Permitted Title Exceptions

iv. all other documents (if any) required pursuant to other provisions of this Agreement to be executed and delivered by Seller;

v. documentation acknowledging that the individual executing this Agreement and other agreements on behalf of Seller is authorized to do so;

vi. All pro-rations shall be based on the Close of Escrow date. Closing costs shall be divided between Buyer and Seller as deemed customary in Pima County, Arizona.

vii. such other instruments and documents as may be reasonably necessary in order to carry out the Closing of the purchase and sale of the Property and to comply with the tax and other laws of the State of Connecticut and the United States of America; and

viii. Any other items or documents affecting the conveyance and sale of the Property which may be reasonably requested by the Purchaser or the Title Insurer to satisfy the Seller's requirements and the "standard exceptions" as set forth in the Title Commitment.

b. Purchaser shall deliver to Seller:

i. The Purchase Price provided for in Section II paragraph 3 herein.

ii. Any other items or documents affecting the conveyance and sale of the Property which may be reasonably requested by Seller or the Title Insurer.

**11. COSTS PAID AT CLOSING.** Seller shall pay the cost of Seller's counsel, the cost of preparing the deed, transfer tax (if any), document taxes, all charges for the preparation and recordation of any releases or instruments required to clear Seller's title for conveyance in accordance with the provisions of this Agreement, and one-half (1/2) of any Closing escrow fee charged by the Title Insurer. Purchaser will pay the cost of Purchaser's counsel, the cost of any survey or survey update, recording fees, all charges for the recordation of the instruments conveying title to the Property, and one-half (1/2) of any Closing escrow fee charged by the Title Insurer. All other costs, including the cost of an Owner's policy of title insurance shall be paid according to the custom of the locality where the Property is located.

**12. PRORATIONS.** All items of income and expense attributable to the Property, including all ad valorem taxes for the then current year, and other proratable items of income or expense shall be prorated at the Closing, effective as of 11:59 p.m. of the day of the Closing Date. Seller shall pay any taxes and subsequent assessments, if any, for prior years due to changes in land usage or ownership, including any rollback taxes. If the Closing Date occurs before the ad valorem tax rate is fixed for the then current year, the apportionment of taxes shall be on the basis of the tax rate for the preceding year applied to the latest assessed valuation, such proration to be adjusted following Closing upon determination of the final tax amount (after appeal if appealed).

**13. CONDEMNATION.** If, prior to Closing, the Property or part thereof is subject to an eminent domain or condemnation proceeding, Seller, immediately upon learning thereof, shall give written notice to Purchaser. Thereafter, Purchaser shall have a period of thirty (30) days

within which to elect, by written notice to Seller, to terminate the Agreement. In the event of such termination on or before Closing the Agreement shall become null and void. If no such election is timely made, Purchaser shall be deemed to have waived its rights under this paragraph, except that, if the transaction contemplated hereby closes, Purchaser shall be entitled to the proceeds or the right to negotiate, settle and collect the proceeds of such condemnation award, and Seller shall execute and deliver all documents reasonably requested of Seller in order to effectuate this section.

14. RISK OF LOSS. Seller assumes all risks and liability for loss, damage, destruction or injury by fire, storm, accident or any other casualty to the Property from all causes until the Closing has been consummated. In the event of any material damage or destruction prior to Closing, Purchaser shall have the option exercisable by written notice to Seller within thirty (30) days after Purchaser is notified of such casualty, to terminate this Agreement by notice thereof to Seller, in which case the parties shall have no further rights or obligations under the Agreement and, in the event of such termination on or before Closing; or Purchaser may elect to close this transaction and, in such event Purchaser shall be entitled to receive the full amount of any proceeds of such insurance payable on account of loss, damage or destruction after the date hereof and Seller shall be liable for the payment to Purchaser of all deductibles under applicable insurance policies. Seller covenants to execute such assignments, drafts and other instruments as may be required to effectuate this section.

15. REMEDIES UPON DEFAULT.

a. Seller Default. If the purchase and sale hereunder are not closed by reason of Seller's default hereunder, Purchaser shall have all rights at law or in equity, including, but not limited to, the right to (i) specific performance of this Agreement or (ii) terminate this Agreement.

16. BROKERAGE. The parties hereto acknowledge that Volk Company represents the Seller solely in this transaction. Seller agrees to pay a commission to Volk Company as follows:

(a) upon receipt by Seller of any Option Payment(s) from Purchaser, Seller shall pay a commission in an amount equal to six percent (6%) of said Option Payment(s); and

(b) if but only if, the transaction contemplated herein is closed, Seller shall expressly provide in the escrow instructions for payment of a commission to Volk Company in cash as a condition to close of escrow in an amount equal to six percent (6%) of the accepted gross sales price received by Seller from Purchaser.

Although Volk Company may perform certain ministerial acts for the Purchaser, such as showing property, preparing and conveying offers and contracts, providing information and administrative assistance, Volk Company represents the Seller only and not the Purchaser in this transaction. Purchaser hereby expressly acknowledges and agrees that (i) Volk Company shall, for all purposes hereunder or at law or in equity, be acting as the sole agent of Seller and (ii) no dual agency shall be deemed to exist or to have been created by any of Volk Company's actions, statements, warranties or representations (whether verbal or written), or by any omission thereof, so that under no circumstances shall Volk Company ever be deemed in any way to be the agent of Purchaser in connection with the sale of the Property to Purchaser pursuant to the terms and provisions of this Purchase and Sale Agreement.

17. MISCELLANEOUS.

Assignment. Purchaser shall obtain Seller's consent, which such consent shall not be unreasonably withheld, prior to assigning Purchaser's rights in this Agreement; provided, however, Purchaser may assign Purchaser's rights in this Agreement to an affiliated entity of Purchaser without the consent of Seller.

Notices. Any notice, consent, approval, waiver, and election which any party shall be required or permitted to make or give under this contract shall be in writing and shall be deemed to have been sufficiently made or given if delivered by hand, courier, telecopier, certified mail, or overnight delivery service (such as Federal Express or United Parcel Service), addressed to the respective parties at the addresses below:

TO SELLER: South Alvernon Way, LLC  
C/O Mahmoud M. Vossough  
6139 N. Pinchot Road  
Tucson, AZ 85750  
[EMAIL]

With a copy to: Volk Company  
Attn: Jeramy Price  
2730 East Broadway Blvd., Suite 200  
Tucson, AZ 85716  
pricejeramy@gmail.com

TO PURCHASER: Soventix USA, Inc.  
Attn: Michael Kendon  
2375 E. Camelback Road, Suite 600  
Phoenix, Arizona 85016  
m.kendon@soventix.ca

With a copy to: Richard Lewis  
Urban Thier & Federer, P.A.  
595 Summer Street  
Stamford, CT 06901  
lewis@urbanthier.com

Such notices shall be deemed received upon delivery when written and delivered by hand, by courier or by overnight delivery service. Refusal to accept, or inability to deliver because of changed address of which no written notice was given, shall be deemed receipt on the date of such refusal of delivery or inability to deliver.

Either party may, from time to time, change the address to which written notices shall be sent by like written notice given to the other party hereto, except that no party may change its

address to other than a street address. Any notice given that does *not* conform to this paragraph shall be effective only upon receipt and by the party receiving's consent to such notice constituting a valid notice.

Entire Agreement. This Agreement, with the exhibits attached hereto, constitutes the entire agreement between Seller and Purchaser, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Property other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon Seller or Purchaser unless in writing and signed by both Seller and Purchaser.

Headings. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered at interpreting the provisions of the Agreement.

Assignment. Unless otherwise provided in this Agreement, Purchaser shall have the right to assign its interest in this Agreement to any person or entity and who assumes all of Purchaser's obligations and liabilities under this Agreement with approval by Seller; provided, however, that no such assignment shall be effective as to Seller until an executed counterpart of the instrument of assignment has been delivered to Seller.

Binding Effect. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of all parties hereto.

Time of Essence. Time is of the essence of this Agreement.

Unenforceable or Inapplicable Provisions. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

Counterparts and Facsimile and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, and all of which together shall constitute a single agreement. All references herein to any Attachment, Exhibit, Schedule, or other agreement, instrument or other document are to be deemed references to such Attachment, Schedule, or other agreement, instrument, or document as the same may be amended, modified, restated, supplemented, or replaced from time to time. Each party agrees that the execution and delivery of this Agreement and any documents required for Closing by facsimile or electronically shall have the same force and effect as delivery of original signatures and that each party may use such facsimile or electronic signatures as evidence of the execution and delivery of this Agreement and any documents required for Closing by the parties to the same extent that an original signature could be used.

Further Assurances. From and after the date of this Agreement, each of the parties shall, from time to time, at the request of the other party and without further consideration, do, execute and deliver, cause to be done, executed and delivered, all such further acts, things, documents and instruments as may be reasonably requested or required by either party to evidence and to give full force and effect to this Agreement and the sale and transfer of the Property contemplated hereby.

Joint Preparation. The parties acknowledge that each party and its counsel have participated in the negotiation and preparation of this Agreement. This Agreement shall be

construed without regard to any presumption or other rule requiring construction against the party causing the Agreement to be drafted.

Gender. All words and phrases used in this Agreement, including, without limitation, all defined words and phrases, regardless of the number or gender in which used, shall be deemed to include any other number or gender as may be reasonably required by the context. If Seller is designated in this Agreement to be more than one person, then, in such event, each person so designated shall be jointly and severally liable for all duties, obligations and liabilities of Seller.

Attorneys' Fees. In the event of any default or failure by a party to perform hereunder, and if the same is referred to an attorney for enforcement or if suit is brought hereon, the non-prevailing party shall pay the prevailing party's reasonable expenses and costs incurred, including, but not limited to, reasonable attorneys' fees.

Applicable Law, Place of Performance. This Agreement shall be construed under and in accordance with the laws of the state in which the Property is located.

Survival Clause. The representations, warranties and covenants contained herein shall not merge in the deed or any other document and shall survive the Closing.

Construction. The parties acknowledge that each party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

Business Days. If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Purchaser and Seller have hereunto set their hands and seals as of the dates indicated below.

SELLER:

SOUTH ALVERNON WAY, LLC

By:  (L.S.)

Name: MATTHEW J. CASSOUGH

Its: member

Date of Execution: 11/11/2016

PURCHASER:

SOVENTIX-BENSON LLC, Inc., a Delaware Limited Liability Company

By:  (L.S.)

Name: MICHAEL KENDON

Its: AUTHORIZED SIGNATORY

Date of Execution: 28 OCTOBER 2016

BROKER:

The undersigned is executing this document with regard to the provisions of Paragraph 16.

Volk Company

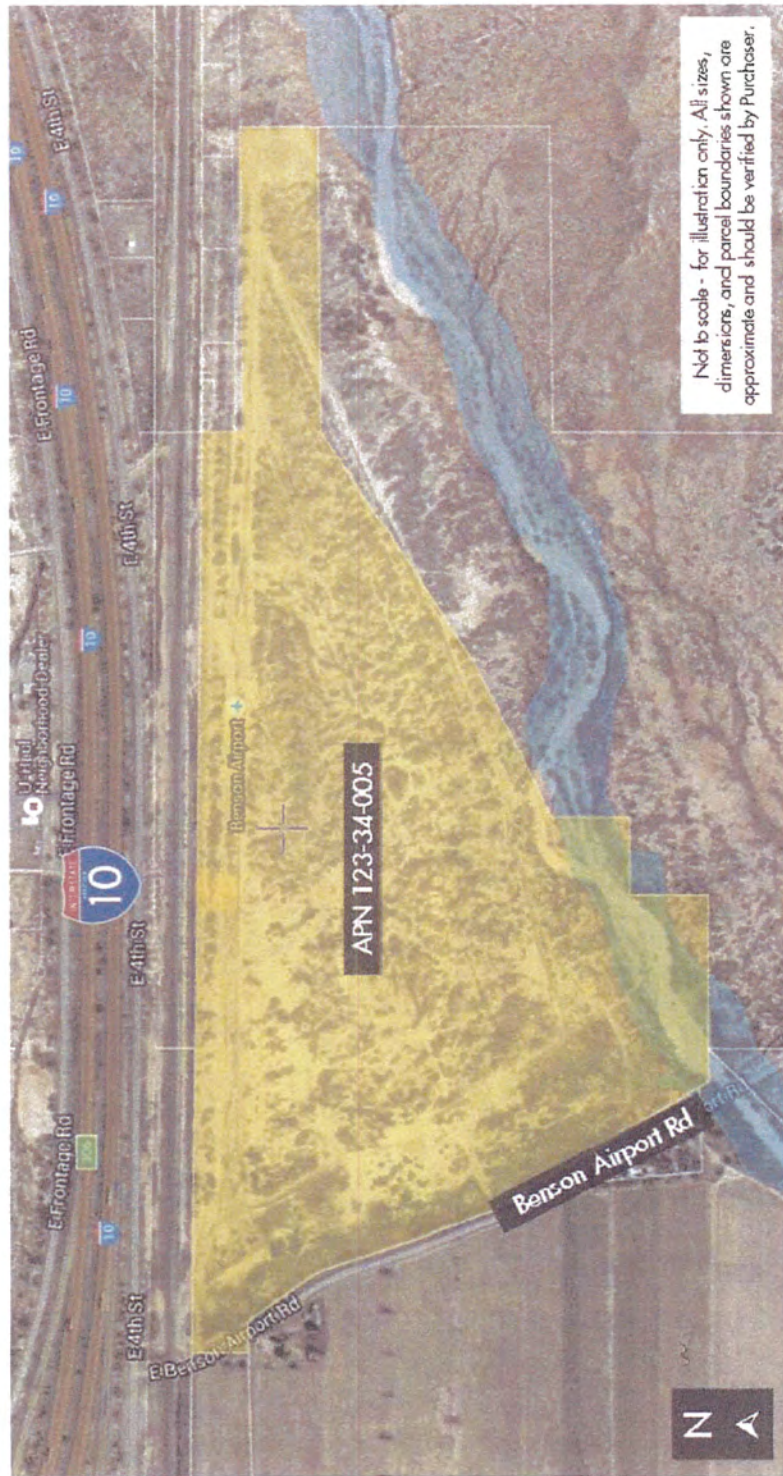
By: 

Name: RICHARD VOLK

Date: 11/15/16

  
11/15/16

Exhibit A



*Milan* 7 NOV. 2016

11/14/16



**Fidelity National Title Insurance Company**

# COMMITMENT FOR TITLE INSURANCE

*Issued by*

**Fidelity National Title Insurance Company**

Fidelity National Title Insurance Company, a California corporation (“Company”), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned by:

*Natalie Bombardieri*

Authorized Signature



By:

*Randy Quirk*

Randy Quirk, President

Attest:

*Michael Gravelle*

Michael Gravelle, Secretary

**Fidelity National Title Agency, Inc.**

6245 E. Broadway Blvd Suite 180  
Tucson, AZ 85711

**SCHEDULE A**

Title Officer: **Sean Barragan**  
Escrow Officer: **Cochise Title Only**

Order No.: **52001346-052-52**  
Reference No.: **Benson Airport**

1. Effective Date: **September 13, 2016** at 7:30 a.m.
2. Policy or Policies to be issued: Amount of Insurance:  
**ALTA Extended Owners Policy (6-17-06)** **\$0.00**  
  
Proposed Insured:  
**TO BE DETERMINED**  
  
**None** **\$0.00**  
  
Proposed Insured:  
  
**None** **\$0.00**  
  
Proposed Insured:
3. The estate or interest in the land described or referred to in this Commitment and covered herein is:  
**A FEE**
4. Title to said estate or interest in said land is at the effective date hereof [vested in:](#)  
**South Alvernon Way L.L.C., an Arizona limited liability company**
5. The land referred to in this commitment is described as follows:  
**See Exhibit A attached hereto and by reference made a part hereof.**



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

**Parcel I:**

**That portion of Section 14, Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, lying Easterly of the Pomerene Water Users Association Irrigation Canal as said Canal existed on July 15, 1946, more particularly described as follows:**

**BEGINNING at the Northeast corner of the Northeast quarter of the Northeast quarter of said Section 14;**

**Thence running West along the North section line of said Section 14, to the East side of said Pomerene Water Users Irrigation Canal as said canal existed on July 15, 1946;**

**Thence in a Southeasterly direction following the East side of said Canal to a point on the East section line of said Section 14 where the Canal crosses what is known as the Big Wash as said wash existed on July 15, 1946, which crosses the Southeast end of the Southeast quarter of the Northeast quarter of said Section 14;**

**Thence running North along the East section line of said Section 14, to the Point of Beginning.**

**Parcel II:**

**Those portions of Sections 11, 12 and 13 in Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:**

**BEGINNING at the Southwest corner of the Southeast quarter of the Southeast quarter of said Section 11;**

**Thence East along the South line of said Section 11 to the Southeast corner of said section;**

**Thence South along the West line of Section 13 to the Southwest corner of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 13;**

**Thence East along the South line of said Northwest quarter of the Southwest Quarter of the Northwest quarter of Section 13 to the Southeast corner of said Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 13;**

**Thence North along the East line of said Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 13 to the Southwest corner of the North half of the Northeast quarter of the Southwest quarter of the Northwest quarter of said Section 13;**

**Thence East along the South line of said North Half of the Northeast quarter of the Southwest Quarter of the Northwest quarter of said Section 13 to the Southeast corner of the Northwest quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter of said Section 13;**

**Thence North along the East line of said Northwest quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter of said Section 13 to the Northeast corner of said Northwest quarter of the Northeast Quarter of the Southwest Quarter of the Northwest quarter of said Section 13;**

**Thence in a Northeasterly direction to the Northeast corner of the Southwest quarter of the Southwest quarter of the Northeast quarter of the Northwest quarter of said Section 13;**

**EXHIBIT A**  
**(Continued)**

**Thence Northeasterly to the Southwest corner of the North half of the North half of the Northwest quarter of the Northeast quarter of said Section 13;**

**Thence East along the South line of said North half of the North Half of the Northwest quarter of the Northeast quarter of Section 13 to the Southeast corner of said North half of the North half of the Northwest quarter of the Northeast quarter of said Section 13;**

**Thence North along the East line of said Northwest quarter of the Northeast quarter of said Section 13 to the Northeast corner of said Northwest quarter of the Northeast quarter of said Section 13;**

**Thence West along the North line of said Section 13 to the Northwest corner of said Northwest quarter of the Northeast quarter of said Section 13;**

**Thence North along the East line of the Southwest quarter of Section 12, to a point in the South boundary line of the Southern Pacific Company right-of-way, as said right-of-way existed on January 20, 1948;**

**Thence Westerly along the South boundary line of said Southern Pacific Company right-of-way to a point on the West boundary line of the Southeast quarter of the Southeast quarter of said Section 11;**

**Thence South along the West line of said Southeast quarter of the Southeast quarter of said Section 11 to the Place of Beginning;**

**EXCEPT all oil, gas and minerals as reserved in Deed recorded in [Docket 2, page 152](#), records of Cochise County, Arizona.**

**NOTE: A NEW LEGAL DESCRIPTION TO BE PROVIDED PURSUANT TO REQUIREMENT NO. 5.**



**SCHEDULE B – Section I  
(Continued)**

10. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below:

Limited Liability Company: South Alvernon Way L.L.C., an Arizona limited liability company

- a) A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member
- b) If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendments thereto with the appropriate filing stamps
- c) If the Limited Liability Company is member-managed, a full and complete current list of members certified by the appropriate manager or member
- d) If the Limited Liability Company was formed in a foreign jurisdiction, evidence, satisfactory to the Company, that it was validly formed, is in good standing and authorized to do business in the state of origin
- e) If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

11. Note: The name(s) of the proposed insured(s) furnished with this application for title insurance is/are:

No names were furnished with the application. Please provide the name(s) of the buyers as soon as possible.

12. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company an owner's Affidavit of no open Deed of Trust(s).

13. Furnish for recordation a document to correct the following:

Document to be corrected: Special Warranty Deed  
Recording Date: April 03, 2009  
Recording No: [09-7718](#)  
Matter(s) to be corrected: A new legal description is necessary to correct any Deed overlap(s) with adjoining property owner(s).

The Company reserves the right to make additional requirements or add additional items or exceptions after review of the requested documentation.

**SCHEDULE B – Section I  
(Continued)**

14. Furnish for recordation a deed as set forth below:

Type of deed:                   Warranty  
Grantor(s):                    South Alvernon Way L.L.C., an Arizona limited liability company  
Grantee(s):                    TO BE DETERMINED

Note: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

Tax Note:

Year:                               2015  
Tax Parcel No:                123-34-005  
Total Tax:                        \$5,612.38  
First Installment Amount:     \$PAID  
Second Installment Amount:   \$PAID

**END OF SCHEDULE B – SECTION I**

**SCHEDULE B – SECTION II**  
**EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- B. Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Attachment One attached.
  - 1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2016.
  - 2. Water rights, claims or title to water, whether or not disclosed by the public records.
  - 3. Reservations, exceptions and provisions contained in the patent and in the acts authorizing the issuance thereof.
  - 4. The right of entry to prospect for, mine and remove the minerals excepted from the description of said Land in Schedule A.
  - 5. Liabilities and obligations imposed upon said Land by its inclusion within any district formed pursuant to Title 48, Arizona Revised Statutes.
  - 6. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:  
  
Purpose: electric transmission facilities  
Recording No: [Book 111 of Deeds, Page 313](#)  
  
(Parcel II)
  - 7. Matters shown on record of survey:  
  
Recording No.: [Book 15, Page 28](#) (Surveys)  
  
(Parcels I and II)
  - 8. Any facts, rights, interests, or claims which may exist or arise by reason of the following facts disclosed by survey, Job No. 05056-01, dated July 15, 2005 prepared by Stephen W. McLain.
    - a) utility pole in NW corner and along the north line of Parcel I
    - b) well, historical ruins and tank located in the NW corner of Parcel I
    - c) historical ruins located in the middle of Parcel II
    - d) old barbed wired fence located in the far west portion of Parcel II
    - e) dirt roads throughout Parcels I and II
    - f) deed overlap noted by surveyor in southerly most corner of subject property  
(Parcels I and II)

**SCHEDULE B – Section II  
(Continued)**

9. The effect of the document set forth below, which states that the Land is located within territory in the vicinity of a military airport and may be subject to increased noise and accident potential.

Recording Date: December 24, 2008

Recording No: [2008-32809](#)

(Parcels I and II)

10. Matters shown on record of survey:

Recording No.: [Book 44, Page 58](#) (Surveys)

Affects: as set forth therein

11. Matters which may be disclosed by an inspection and/or by an updated and correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

12. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.

**END OF SCHEDULE B – SECTION II**

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*



**Fidelity National Title Agency, Inc.**

**DISCLOSURE NOTICES**

**Good Funds Law**

Arizona Revised Statutes Section 6-843 regulates the disbursement of escrow funds by an escrow agent. The law requires that funds be deposited in the escrow agent's escrow account and available for withdrawal prior to disbursement. Funds deposited with the Company by wire transfer may be disbursed upon receipt. Funds deposited with the Company in the form of cashier's checks, certified checks or teller's checks, or checks which are made by an affiliate of a state or federally regulated depository institution when the check is drawn on that institution, may be disbursed the same day as deposited. If funds are deposited with the Company by other methods, recording and/or disbursement may be delayed.

**PURCHASER DWELLING ACTIONS NOTICE**

Pursuant to Arizona Revised Statutes Section 12-1363.N, notice is hereby provided to the purchaser of a dwelling of the provisions of Arizona Revised Statutes Sections 12-1361, 1362 and 1363. These statutory sections set forth the requirements to be met by a purchaser prior to bringing an action against the seller of a dwelling arising out of or related to the design, construction, condition or sale of the dwelling. "Dwelling" means a single or multifamily unit designed for residential use and common areas and improvements owned or maintained by an association or its members. "Seller" means any person, firm, partnership, corporation, association or other organization engaged in the business of designing, constructing or selling dwellings. The complete statutory sections can be viewed on the Arizona State Legislature's web site: [www.azleg.state.az.us/ars/ars.htm](http://www.azleg.state.az.us/ars/ars.htm).

**NOTICE:**

Pursuant to Arizona Revised Statutes 11-480, effective January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

1. Print must be ten-point type (pica) or larger.
2. Margins of at least one-half inch along the left and right sides one-half inch across the bottom and at least two inches on top for recording and return address information.
3. Each instrument shall be no larger than 8½ inches in width and 14 inches in length.

**NOTICE:**

Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.

## FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

At Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF”, “our” or “we”), we value the privacy of our customers. This Privacy Notice explains how we collect, use, and protect your information and explains the choices you have regarding that information. A summary of our privacy practices is below. We also encourage you to read the complete Privacy Notice following the summary.

<p><b>Types of Information Collected.</b> You may provide us with certain personal information, like your contact information, social security number (SSN), driver’s license, other government ID numbers, and/or financial information. We may also receive information from your Internet browser, computer and/or mobile device.</p>	<p><b>How Information is Collected.</b> We may collect personal information directly from you from applications, forms, or communications we receive from you, or from other sources on your behalf, in connection with our provision of products or services to you. We may also collect browsing information from your Internet browser, computer, mobile device or similar equipment. This browsing information is generic and reveals nothing personal about the user.</p>
<p><b>Use of Your Information.</b> We may use your information to provide products and services to you (or someone on your behalf), to improve our products and services, and to communicate with you about our products and services. We do not give or sell your personal information to parties outside of FNF for their use to market their products or services to you.</p>	<p><b>Security Of Your Information.</b> We utilize a combination of security technologies, procedures and safeguards to help protect your information from unauthorized access, use and/or disclosure. We communicate to our employees about the need to protect personal information.</p>
<p><b>Choices With Your Information.</b> Your decision to submit personal information is entirely up to you. You can opt-out of certain disclosures or use of your information or choose to not provide any personal information to us.</p>	<p><b>When We Share Information.</b> We may disclose your information to third parties providing you products and services on our behalf, law enforcement agencies or governmental authorities, as required by law, and to parties with whom you authorize us to share your information.</p>
<p><b>Information From Children.</b> We do not knowingly collect information from children under the age of 13, and our websites are not intended to attract children.</p>	<p><b>Privacy Outside the Website.</b> We are not responsible for the privacy practices of third parties, even if our website links to those parties’ websites.</p>
<p><b>Access and Correction.</b> If you desire to see the information collected about you and/or correct any inaccuracies, please contact us in the manner specified in this Privacy Notice.</p>	<p><b>Do Not Track Disclosures.</b> We do not recognize “do not track” requests from Internet browsers and similar devices.</p>
<p><b>The California Online Privacy Protection Act.</b> Certain FNF websites collect information on behalf of mortgage loan servicers. The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through those websites.</p>	<p><b>International Use.</b> By providing us with your information, you consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.</p>
<p><b>Your Consent To This Privacy Notice.</b> By submitting information to us and using our websites, you are accepting and agreeing to the terms of this Privacy Notice.</p>	<p><b>Contact FNF.</b> If you have questions or wish to contact us regarding this Privacy Notice, please use the contact information provided at the end of this Privacy Notice.</p>

# FIDELITY NATIONAL FINANCIAL, INC.

## PRIVACY NOTICE

FNF respects and is committed to protecting your privacy. We pledge to take reasonable steps to protect your Personal Information (as defined herein) and to ensure your information is used in compliance with this Privacy Notice.

This Privacy Notice is only in effect for information collected and/or owned by or on behalf of FNF, including collection through any FNF website or online services offered by FNF (collectively, the “Website”), as well as any information collected offline (e.g., paper documents). The provision of this Privacy Notice to you does not create any express or implied relationship, nor create any express or implied duty or other obligation, between FNF and you.

### **Types of Information Collected**

We may collect two types of information: Personal Information and Browsing Information.

**Personal Information.** The types of personal information FNF collects may include, but are not limited to:

- contact information (e.g., name, address, phone number, email address);
- social security number (SSN), driver’s license, and other government ID numbers; and
- financial account or loan information.

**Browsing Information.** The types of browsing information FNF collects may include, but are not limited to:

- Internet Protocol (or IP) address or device ID/UDID, protocol and sequence information;
- browser language;
- browser type;
- domain name system requests;
- browsing history;
- number of clicks;
- hypertext transfer protocol headers; and
- application client and server banners.

### **How Information is Collected**

In the course of our business, we may collect *Personal Information* about you from the following sources:

- applications or other forms we receive from you or your authorized representative, whether electronic or paper;
- communications to us from you or others;
- information about your transactions with, or services performed by, us, our affiliates or others; and
- information from consumer or other reporting agencies and public records that we either obtain directly from those entities, or from our affiliates or others.

We may collect *Browsing Information* from you as follows:

- **Browser Log Files.** Our servers automatically log, collect and record certain Browsing Information about each visitor to the Website. The Browsing Information includes only generic information and reveals nothing personal about the user.
- **Cookies.** From time to time, FNF may send a “cookie” to your computer when you visit the Website. A cookie is a

small piece of data that is sent to your Internet browser from a web server and stored on your computer’s hard drive. When you visit the Website again, the cookie allows the Website to recognize your computer, with the goal of providing an optimized user experience. Cookies may store user preferences and other information. You can choose not to accept cookies by changing the settings of your Internet browser. If you choose not to accept cookies, then some functions of the Website may not work as intended.

### **Use of Collected Information**

Information collected by FNF is used for three main purposes:

- To provide products and services to you, or to one or more third party service providers who are performing services on your behalf or in connection with a transaction involving you;
- To improve our products and services; and
- To communicate with you and to inform you about FNF’s products and services.

### **When We Share Information**

We may share your Personal Information (excluding information we receive from consumer or other credit reporting agencies) and Browsing Information with certain individuals and companies, as permitted by law, without first obtaining your authorization. Such disclosures may include, without limitation, the following:

- to agents, representatives, or others to provide you with services or products you have requested, and to enable us to detect or prevent criminal activity, fraud, or material misrepresentation or nondisclosure;
- to third-party contractors or service providers who provide services or perform other functions on our behalf;
- to law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders; and/or
- to other parties authorized to receive the information in connection with services provided to you or a transaction involving you.

We may disclose Personal Information and/or Browsing Information when required by law or in the good-faith belief that such disclosure is necessary to:

- comply with a legal process or applicable laws;
- enforce this Privacy Notice;
- investigate or respond to claims that any information provided by you violates the rights of a third party; or
- protect the rights, property or personal safety of FNF, its users or the public.

We make efforts to ensure third party contractors and service providers who provide services or perform functions on our behalf protect your information. We limit use of your information to the purposes for which the information was provided. We do not give or sell your information to third parties for their own direct marketing use.

We reserve the right to transfer your Personal Information, Browsing Information, as well as any other information, in connection with the sale or other disposition of all or part of the

FNF business and/or assets, or in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors. You expressly agree and consent to the use and/or transfer of this information in connection with any of the above-described proceedings. We cannot and will not be responsible for any breach of security by any third party or for any actions of any third party that receives any of the information that is disclosed to us.

### **Choices With Your Information**

Whether you submit your information to FNF is entirely up to you. If you decide not to submit your information, FNF may not be able to provide certain products or services to you. You may choose to prevent FNF from using your information under certain circumstances (“opt out”). You may opt out of receiving communications from us about our products and/or services.

### **Security And Retention Of Information**

FNF is committed to protecting the information you share with us and utilizes a combination of security technologies, procedures and safeguards to help protect it from unauthorized access, use and/or disclosure. FNF trains its employees on privacy practices and on FNF’s privacy and information security policies. FNF works hard to retain information related to you only as long as reasonably necessary for business and/or legal purposes.

### **Information From Children**

The Website is meant for adults. The Website is not intended or designed to attract children under the age of thirteen (13). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

### **Privacy Outside the Website**

The Website may contain links to other websites, including links to websites of third party service providers. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites.

### **International Users**

Because FNF’s headquarters is located in the United States, we may transfer your Personal Information and/or Browsing Information to the United States. By using our website and providing us with your Personal Information and/or Browsing Information, you understand and consent to the transfer, processing and storage of such information outside your country of residence, as well as the fact that we will handle such information consistent with this Privacy Notice.

### **Do Not Track Disclosures**

Currently, our policy is that we do not recognize “do not track” requests from Internet browsers and similar devices.

### **The California Online Privacy Protection Act**

For some websites which FNF or one of its companies owns, such as the Customer CareNet (“CCN”), FNF is acting as a third party service provider to a mortgage loan servicer. In those

instances, we may collect certain information on behalf of that mortgage loan servicer, including:

- first and last name;
- property address;
- user name and password;
- loan number;
- social security number - masked upon entry;
- email address;
- security questions and answers; and
- IP address.

The information you submit is then transferred to your mortgage loan servicer by way of CCN. **The mortgage loan servicer is responsible for taking action or making changes to any consumer information submitted through this website. For example, if you believe that your payment or user information is incorrect, you must contact your mortgage loan servicer.**

CCN does not share consumer information with third parties, other than those with which the mortgage loan servicer has contracted to interface with the CCN application. All sections of this Privacy Notice apply to your interaction with CCN, except for the sections titled Choices with Your Information, and Access and Correction. If you have questions regarding the choices you have with regard to your personal information or how to access or correct your personal information, contact your mortgage loan servicer.

### **Access and Correction**

To access your Personal Information in the possession of FNF and correct any inaccuracies, please contact us by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

### **Your Consent To This Privacy Notice**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of information by FNF in compliance with this Privacy Notice. We reserve the right to make changes to this Privacy Notice. If we change this Privacy Notice, we will post the revised version on the Website.

### **Contact FNF**

Please send questions and/or comments related to this Privacy Notice by email at [privacy@fnf.com](mailto:privacy@fnf.com) or by mail at:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

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EFFECTIVE AS OF APRIL 1, 2016

**ATTACHMENT ONE (01-01-08)**

**AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date—unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date—this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A  
OR
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured

mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine or equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy

which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on Land
  - e. land division
  - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

3. The right to take the Land by condemning it, unless:

- a. notice of exercising the right appears in the Public Records at the Policy Date; or

- b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

4. Risks:

- a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records.

- b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;

- c. that result in no loss to You; or

- d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.d., 22, 23, 24 or 25.

5. Failure to pay value for Your Title.

6. Lack of a right:

- a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

- b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16, and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 15:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01-01-08)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- |  |   |
|--|---|
| <p>1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:</p> <ul style="list-style-type: none"> <li>a. building;</li> <li>b. zoning;</li> <li>c. land use;</li> <li>d. improvements on the Land;</li> <li>e. land division; and</li> <li>f. environmental protection.</li> </ul> <p>This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.</p> <p>2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.</p> | <p>3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.</p> <p>4. Risks:</p> <ul style="list-style-type: none"> <li>a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;</li> <li>b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;</li> <li>c. that result in no loss to You; or</li> <li>d. that first occur after the Policy Date—this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.</li> </ul> <p>5. Failure to pay value for Your Title.</p> <p>6. Lack of a right:</p> <ul style="list-style-type: none"> <li>a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and</li> <li>b. in streets, alleys, or waterways that touch the Land.</li> </ul> |
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This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$5,000.00

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth-in-lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.