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Seminars

All About Easements/ Escrow/Title



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Noon–1 p.m.

1 Practical Skills credit (ID 92389)

ALL ABOUT EASEMENTS/ESCROW/TITLE

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SCHEDULE

12:00 All About Easements/Escrow/Title

- ◆ Basic easement practice
- ◆ How to avoid litigation over easements
- ◆ Basic escrow/title practice

1:00 Adjourn

FACULTY

William Ness, *McEwen Gisvold LLP, Portland*. Mr. Ness's practice focuses on real estate and business transactions. He previously practiced in Pennsylvania, focusing on energy and natural resources. He has significant experience in legal research and writing, title examinations, and due diligence. He is a cochair of the Oregon New Lawyers Division Continuing Legal Education Committee. Mr. Ness is admitted to practice in Oregon and Pennsylvania (inactive).

Jonathan Radmacher, *McEwen Gisvold LLP, Portland*. Mr. Radmacher is a litigation and appellate attorney; his areas of expertise include real estate, title, and escrow litigation, legal malpractice (repair and defense), and commercial and business law. He is a member of the Oregon State Bar Appellate Practice Section, Business Law Section, Business Litigation Section, and Litigation Section. He regularly presents on easements and other real estate law topics, and he has authored the chapters on "Title Insurance" and "Escrows and Closing" in *1 Oregon Real Estate Deskbook* (OSB Legal Pubs 2015).

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The ownership of real property has been described as holding a "bundle of sticks," with different rights associated with the ownership and use sometimes held in one "bundle," which is also susceptible to parceling out.¹ An easement is typically one of those sticks from the bundle, reflecting a limited right of use of the property. Some easements arise by express agreement, some are implied by the circumstances surrounding the conveyance of property, and some arise as a matter of equity or the common law. These materials are not intended to exhaustively elaborate on all of the elements of easements, but instead are intended to provide some guideposts by which one looking for direction can find the appropriate path(s) of analysis.

1. Express easements.

An express easement arises when the owner of real property grants an easement to another. The grantor/owner owns the "servient estate" that is subject to the easement. The grantee/easement holder owns the "dominant estate" which is served by the easement. Express easements, like any encumbrance on real property, should be signed by the party to be charged, and recorded. ORS 41.580; ORS 93.643.

Oregon law sets forth a particular procedure for interpreting easements, nearly identical to the procedure for interpreting contracts in general: To determine an easement's purpose, "we look first to the words of the easement, viewing them in the context of the entire document." *Kell v. Oppenlander*, 154 Or App 422, 426, 961 P2d 861 (1998). If those terms clearly express the easement's purpose, our analysis ends. *Tipperman v. Tsiastsos*, 327 Or 539, 544-45, 964 P2d 1015 (1998). See *Watson v. Banducci*, 158 Or App 223, 230, 973 P2d 395 (1999) (holding that an easement provided "simple, plain and unambiguous terms" regarding the use of a private right of way).

¹ See *Burke v. State*, 352 Or 428, 444, quoting *Bedortha v. Sunridge Land Co., Inc.*, 312 Or 307, 311, 822 P2d 694 (1991). In *Evans v. Hogue*, 296 Or 745, 757 n6, 681 P2d 1133 (1992), the court opined regarding the number of sticks comprising the bundle:

We pause here to point out that the dissent by Justice Campbell arbitrarily has determined that a bundle of sticks is made up of ten. It also contends, without authority, that when Sampsons conveyed to Luckeys, Sampsons retained 9.5 of those sticks, a figure representing Sampsons' "whole title less the oral rights of possession," and Luckeys, even with rights of possession, gained only 0.5 of the sticks. We have found authority, albeit somewhat out of date and admittedly unshepardized, for a different division of sticks. That authority states: "Possession is eleven points of the law and they say there are but twelve." Ray, *Proverbs* (1678), quoted in McNamara, *2,000 Famous Legal Quotations* 451 (1967). The dissent by Justice Campbell is wrong. Clearly, there are twelve sticks in a bundle; Luckeys had eleven and Sampsons had one."

Only where the terms of an express easement are ambiguous should a court should consider parol evidence to vary those terms. *Andrews v. North Coast Development, Inc.*, 270 Or 24, 30-32, 526 P2d 1009 (1974) (stating general rule, and holding that parol evidence was inadmissible to vary unambiguous meaning of express easement). In other words, the parties' respective intent and any maxims of construction will never be reached by a court where the easement is subject to only one reasonable interpretation. *Brown v. American Prop. Mgt. Corp.*, 167 Or App 53, 61, 1 P3d 1051 (2000) (holding that commission agreement had only one reasonable interpretation).

When evaluating whether there is more than one reasonable interpretation of a particular contractual provision, the court should never insert language into the agreement. ORS 42.230. In *Johnson v. Campbell*, 259 Or 444, 447, 487 P2d 67 (1971), the court held that a provision which limited a property's use to "residential use" unambiguously did not restrict the property's use to single family residential development, and that no such additional limitation would be added to the restriction. See also *Hunnell v. Roseburg Resource Co.*, 183 Or App 228, 51 P3d 680 (2002) (holding that express easement did not terminate with respect to successor); *Olson v. Van Horn*, 182 Or App 264, 48 P3d 360, *rev den*, 334 Or 639 (2002) (holding that unambiguous terms of express easement did not preclude owner of servient estate from building home that encroached on easement).

-- **Examining an express easement to provide a glimpse into escrow.**

In *Gebrayel v. Transamerica Title Ins. Co.*, 132 Or App 271, 888 P2d 83, *rev den* 321 Or 47 (1995), the underlying dispute was over two 1921 deeds that purported to create easement and/or roadway rights over a parcel of property, in favor of the county. The buyer and seller settled their dispute, and the buyer sued his title insurance company, raising a number of claims related to the purported right-of-way. First, he alleged that by not disclosing the existence of a recorded right-of-way across the property, the title company had committed fraud. But a fraud claim would only lie if the title insurance company had a duty to disclose. The Court of Appeals affirmed summary judgment against that claim, because by definition, an escrow company has no special duty to the parties to a transaction – the escrow company's only obligation is to follow the written escrow instructions of the parties:

The duty of an escrow agent is to remain neutral "with no obligation to either party to the transaction except to carry out the terms of the escrow instructions." *Barr v. Pratt*, 105 Or App 220, 224, 804 P2d 496 (1991) (quoting *McDonald v. Title Ins. Co. of Oregon*, 49 Or App 1055, 1059, 621 P2d 654 (1980), *rev den* 290 Or 727 (1981)).

Gebrayel, 132 Or App at 278. While a special duty might be created if the escrow officer makes a negligent misrepresentation, that will only occur where the escrow officer steps outside of its duty of neutrality and makes specific factual representations to a party. See, e.g. *Lindstrand v. Transamerica Title Ins. Co.*, 127 Or App 693, 874 P2d 82 (1994) (holding that escrow officer's voluntarily providing a height restriction to the buyer, which had been superseded by a lower

height restriction, gave rise to a duty of care); and *Peterson v. McCavic*, 249 Or App 343, 277 P3d 572, *rev den* 352 Or 564 (2012) (holding that escrow company's statement that closing documents for purchase of a lot misrepresented that the lot described in the closing documents was not the lot that the buyer had agreed to purchase).

2. Implied easements.

By necessity, real estate lawyers look to written documents to determine parties' rights and liabilities – the statute of frauds requires that transactions related to real property be in writing, ORS 41.580(1)(e); and the doctrine of merger means that terms or conditions that are inconsistent and/or not included in an otherwise fully integrated written agreement are generally precluded by the final written document. *Winn v. Taylor*, 98 Or 556, 576, 194 P 857 (1921); *Frontgate Properties, LLC v. Bennett*, 261 Or App 810, 813, 324 P3d 483, *rev den*, 356 Or 400 (2014). The common law doctrine of implied easements runs somewhat counter to those established doctrines, allowing easement rights to be implied, even though they were not expressed in the transaction(s).

The common law allows access rights to be implied under a narrow set of circumstances, which is a principle sometimes referred to as an implied easement for necessity. The *Restatement of Property*, Sections 474, 475 and 476 lay out the doctrine that creates an easement by implication. See *Cheney v. Mueller*, 259 Or 108, 118-119 485 P2d 1218 (1971) (relying on the Restatement to describe the boundaries of the doctrine).² In *Eagles Five, LLC v. Lawton*, 250 Or App 413, 424, 280 P3d 1017 (2012) (with citations and quotations omitted, and emphasis added) the court set forth the key rationale and inquiries to be made by the court in evaluation an implied easement claim:

An easement may be created by implication in favor of either the grantor or grantee of property. Such an easement arises as an inference of the intention of the parties to a conveyance of land based upon the circumstances existing at the time of the conveyance, and must be established by clear and convincing evidence. Although there are many factors to consider, the essential question is whether a reasonable purchaser would expect the easement under the circumstances in which he or she purchased the land. Among the factors used to evaluate whether an easement by implication has been created are the claimant's need for the easement, the manner in which the land was used before its conveyance, and the extent to which the manner of prior use was or might have been known to the parties. The factors to be

² "When land in one ownership is divided into separately owned parts by a conveyance, an easement may be created, within the limitations set forth in §§475 and 476, in favor of one who has or may have a possessory interest in one part as against one who has or may have a possessory interest in another part by implication from the circumstances under which the conveyance was made alone." *Restatement of Property*, § 474.

considered are variables rather than absolutes and none can be given a fixed value.

See *Van Natta v. Nys*, 203 Or 204, 214, 278 P2d 163 (1955) (holding that access easement would be implied where property did not abut a public road). In *Manusos v. Skeels*, 263 Or App 721, 730, 330 P3d 53 (2014), the court summarized the doctrine as focusing primarily on whether the circumstances indicate that at the time of conveyance, the grantor intended or would have intended to create an easement for the benefit of the buyer.

The most common situation in which an implied easement might arise is where an owner of two lots sells a servient lot, but does not reserve an express easement over the servient lot, in order to serve the dominant lot. In other words, prior to the sale, the seller used an existing roadway to access both the servient and the dominant lot, and then sold the servient lot without expressly reserving a right to use the roadway. The parties impliedly understood that the seller would continue to use the existing roadway.

The factors to be considered in determining whether or not to imply an easement are set forth in the *Restatement of Property*, § 476, and were applied in both *Cheney, supra* and *Thompson v. Schuh*, 286 Or 201, 212, 593 P2d 1138 (1979):

- (1) whether the claimant is the coneyor or the conveyee,
- (2) the terms of the conveyance,
- (3) the consideration given for it,
- (4) whether the claim is made against a simultaneous conveyee,
- (5) the extent of the necessity of the easement to the claimant,
- (6) whether reciprocal benefits result to the conveyor and the conveyee,
- (7) the manner in which the land was used prior to the conveyance, and
- (8) the extent to which the manner of prior use was or might have been known to the parties.

More recently, in the companion cases of *Dayton v. Jordan*, 279 Or App 737, 381 P3d 1031 (2016) ("*Dayton I*") and *Dayton v. Jordan*, 280 Or App 236, 381 P3d 1041 (2016), the court held that the eight "*Cheney* factors" had to be analyzed in their entirety, holding (in *Dayton I*) that reference to an easement on the plat was relevant but not dispositive, regarding an implied easement claim.³ In *Dayton II*, the court held that the absence of evidence of the extent of prior use of the roadway was (likewise) not dispositive by itself – the trial court is required to evaluate all of the eight *Cheney* factors.

³ The court noted that it did not consider the effect of ORS Chapter 92; since ORS 92.150 provides that every mark or note on a plat "shall be considered a general warranty to the donee or grantee," it seems likely that the outcome of the case might have changed if ORS 92.150 had been relied upon by the claimant.

3. Prescriptive Easements.

A prescriptive easement arises in circumstances that are co-extensive with those necessary to acquire title by adverse possession (albeit without the requirement of a good faith belief of ownership).

In order to establish an easement of way by prescription the plaintiffs must establish an open and notorious use of defendants' land adverse to the rights of defendants for a continuous and uninterrupted period of ten years. Although the proof of these elements is sometimes aided by various presumptions plaintiffs, as claimants of a prescriptive right, must make out their case by clear and convincing evidence, that is, that "the truth of the facts was highly probable.

Thompson v. Scott, 270 Or 542, 546-47, 528 P2d 509 (1974). As will be discussed by other authors during this presentation the exclusivity and/or adverse requirements necessary to prove a prescriptive easement claim appear to be getting more difficult to satisfy. *Wells v. Hippe*, 360 Or 569, 385 P3d 1028 (2016) (rejected prescriptive easement claim).

4. Statutory Ways of Necessity.

Where a property is landlocked – there is no other access easement to the property, a landowner can seek to have a statutory way of necessity created pursuant to ORS 376.150, *et seq.* The Petition seeking such a way of necessity must be very detailed, and contain the following:

- (a) The location and legal description of the property to be served by the proposed way of necessity.
- (b) The location of all public roads located in the vicinity of the property to be served by the proposed way of necessity that are capable of being used to provide access to the property. The petition shall include the location of public roads that are not open for public use.
- (c) A specific proposed location for the proposed way of necessity.
- (d) Evidence showing the necessity for the establishment of a way of necessity.
- (e) Evidence that either: (A) The proposed way of necessity does not connect to a public road that has access rights acquired and limited by the state or county; or (B) If the public road proposed for access by way of necessity has the limited access rights, the state or county is willing to grant permission to connect the proposed way of necessity to the public road.
- (f) Evidence that the proposed way of necessity may be connected to the public road safely.
- (g) Evidence that the specific location proposed for the way of necessity is the nearest practicable point for connection to a way of necessity to a public

- road.
- (h) The names and addresses of the persons owning the land across which the way of necessity could be located.
 - (i) The petitioner's proposal for the amount of compensation to persons owning land across which the way of necessity is proposed to be located.
 - (j) Evidence that the petitioner does not have an existing easement or right to an easement to provide access to a public road.
 - (k) Evidence that the petitioner does not have any enforceable access to a public road.

ORS 376.155(2).

In response to the filing of a petition, the County or the Circuit Court (depending on whether the County has passed a resolution vesting the Circuit Court with its authority, ORS 376.200(1)) appoints the County Engineer, County Surveyor, or another person, to investigate and prepare a report with regard to the matters set forth in the petition. After the report is completed and served on necessary landowners, and the parties present their evidence to the court, the court enters an order either granting or denying a way of necessity; the order must contain:

- (a) State whether the way of necessity is granted or denied;
- (b) Declare as established any way of necessity that is granted;
- (c) Describe the exact location and width of any way of necessity established;
- (d) Describe those uses that are permitted on any way of necessity established;
- (e) Direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's action for a way of necessity under ORS 376.150 to 376.200;
- (f) Establish the amount of compensation due to any owner of land across which any way of necessity has been established and direct the petitioner to pay the compensation; and
- (g) Establish the costs incurred by the county in the procedures for the way of necessity under ORS 376.150 to 376.200 and direct the petitioner to reimburse the county for those costs not already paid by petitioner.

ORS 376.175(2). In reaching its decision, the County or the Court must meet the following twelve conditions:

- (1) Be located to cause the least possible damage to land across which it is located;
- (2) Be fenced or gated if required by the county governing body;
- (3) Not be connected to a public road in a location or manner that creates a traffic hazard or decreases the safety on the public road;
- (4) Be established only for uses in connection with the property for which the way of necessity is sought;

- (5) Not be subject to any use that is not described in the order establishing the way of necessity;
- (6) Not exceed 30 feet in width unless authorized by the county governing body for engineering purposes;
- (7) Not be connected to a public road where the rights of access to the road have been acquired by the state or a county unless the state or governing body of the county grants permission for the connection;
- (8) Not be established if the property for which the way of necessity is sought has an existing enforceable access to a public road;
- (9) Not be established if the petitioner for the way of necessity could acquire an easement for access to a public road through other legal action;
- (10) Not be established for land that has been subdivided or partitioned in violation of ORS chapter 92;
- (11) Not be established over land owned by the state or a political subdivision of the state unless permission is granted for the way of necessity under ORS 376.185; and
- (12) Not be established for any land if the owner of the land had knowingly eliminated access to all public roads from the land by the sale of other land owned by the landowner.

ORS 376.180.

A. Petitioner has the burden to prove no alternative access.

Under ORS 376.180(8), a way of necessity will not be allowed where there is an alternative legal access to the property. While the existence of an alternative route might seem to be appropriate as an affirmative defense, there is actually an affirmative burden on the plaintiff to prove the absence of any other legal access. In *Tyska v. Prest*, 163 Or App 219, 988 P2d 392 (1999), the trial court had granted a way of necessity, finding that there was insufficient evidence that the plaintiff had a valid implied easement. On appeal the court reversed, holding that the plaintiff had the burden to prove that no such implied easement existed. *Tyska*, 163 Or App at 224. In effect, the burden is on the plaintiff to prove the negative – there is no other viable easement claim.

B. Any way of necessity must be the most practicable route.

In establishing a way of necessity, the access route must be "the nearest practicable point for connection to a way of necessity to a public road." ORS 376.155(2)(g). In *Petroff v. Williams*, 240 Or App 201, 246 P3d 39 (2010), the trial court had allowed a way of necessity over an old roadway that would not be adequate to move the farming equipment that was presently used on the agricultural property, which roadway also was only passable during a portion of the year, and so would not be practicable once the plaintiff completed intended development of the property into residences. The appellate court reversed, holding that an access route is practicable only if it can "be maintained sufficiently to allow motor vehicle access consistent with the intended use of the benefitted property," and that because the access route

would not suffice for neither the present agricultural uses nor future residential purposes, it was "entirely speculative" whether the approve route would ever be practicable.

C. Way of necessity over State land requires the consent of the state, which cannot be unreasonably withheld.

Pursuant to ORS 376.180(11), the State of Oregon cannot be required to allow a way of necessity without its consent, which consent cannot be unreasonably withheld. In *Bradley v. State of Oregon*, 262 Or App 78, 95, 324 P3d 504 (2014), the court held that the standard of "unreasonably withheld" should not be interpreted under a basic reasonableness standard, but should instead be judged under an "arbitrary and capricious" standard. In effect, the court found that as long as the state examined the relevant data and articulated an explanation for refusing access that was rationally connected to the data, the State's refusal to consent would preclude the access.

D. The Petitioner must pay the other landowners' reasonable attorney fees, regardless of whether the petition is granted or denied.

Pursuant to 376.175(2)(e), regardless of whether the petitioner's request for a way of necessity is granted or denied, the order must award all of the landowners over whose property the petitioner sought access, their reasonable costs and attorney fees. That imposition of an obligation to pay attorney fees to adverse landowners, whether the petitioner wins or loses, withstood a constitutional challenge under Oregon's constitutional "access to courts" provision, Oregon Constitution, Article I, Section 10, in *Bradley v. State of Oregon*, 262 Or App 78, 104-105, 324 P3d 504 (2014), where the court held that the legislature had meted out the costs and burdens of bringing a way of necessity claim in a constitutionally defensible manner. In *Morgan v. Hart*, 325 Or 348, 937 P2d 1024 (1997), the court held that the party that petitioner for a way of necessity had to pay the attorney fees of a burdened landowner, even though the petition had not sought the way of necessity against the "prevailing" party's property – the court imposed the way of necessity across land not requested by the petitioner, but the petitioner still had to pay those attorney fees. In short, a party seeking a statutory way of necessity needs to plan on paying the other side's attorney fees, period.

E. Prior easement litigation does not preclude statutory way of necessity action.

One means of making sure that a petitioner has met the burden to prove no alternative access is to join one or more claims for easement rights (express easement, implied easement and/or easement by prescription) with an alternative claim for a statutory way of necessity. In *R&C Ranch, LLC v. Kunde*, 177 Or App 304, 33 P3d 1011 (2001), *mod'd on reconsideration*, 180 Or App 314, 44 P3d 607 (2002), the trial court had denied the plaintiff's claim for a prescriptive easement, granted the plaintiff's claim for a statutory way of necessity, and awarded attorney fees to the defendants. On appeal, the court reversed the trial court's denial of a prescriptive easement, and thus reversed the trial court's grant of a statutory way of necessity. That outcome on appeal meant that the plaintiff had succeeded on a prescriptive easement claim,

but had to pay attorney fees to bring the alternative claim for a statutory way of necessity. That risk of attorney fees could have been avoided by first bringing the prescriptive easement claim. Splitting the claims in that fashion does not create an issue preclusion if the plaintiff later has to bring a claim for a statutory way of necessity. *Nice v. Friday*, 149 Or App 667, 945 P2d 559 (1997).

5. Appurtenant Easements.

Every easement falls into one of two categories: it is either appurtenant, or in gross. If it is appurtenant, it passes with the dominant estate even if the deed or other means of conveyance does not identify the easement. If it is in gross, the easement can be transferred separately from the dominant estate.

In *Fischer v. Walker*, 246 Or App 586, 597-98, 266 P3d 178 (2011), the court generally described appurtenant easements as rights of access that attach to – and become part of – ownership interests in real property. Appurtenant easements are distinguished from easements "in gross," in that rights in an appurtenant easement pass with a conveyance of title, even if the easement is not expressly called out. Indeed, an appurtenant easement's connection to the benefitted property is so strong that an owner's effort to expressly sever the appurtenant easement right(s) will be rejected: "The use of an easement appurtenant for any purpose unconnected with the dominant tenement is improper, and the attempted severance of the easement must fail." 4 Powell on Real Property, Chap 34 *Easements and Licenses*, at 34-215 (2000). In *Hall v. Meyer*, 270 Or. 335, 338-39 527 P.2d 722 (1974), the court held that the court should construe easements to be appurtenant instead of gross, and that an appurtenant easement could not be claimed by an adverse party. See also 3 Principles of Oregon Real Estate Law, Chap. 3 *Easements*, § 3.8 at 3-7 (2003) (citing *Hall v. Meyer* for the proposition that "[a]n appurtenant easement cannot be conveyed separately from the land to which it is appurtenant.")

6. Abandonment of Easements.

Easement rights can be eliminated by abandonment, but only where the conduct associated with abandonment is equivalent to the servient estate owner's adverse possession of the easement rights. *Faulconer v. Williams*, 327 Or 381, 388, 964 P2d 246 (1998); *Simpson v. Fowles*, 272 Or 342, 344, 536 P2d 499 (1975). Or to put it another way, to cut off an easement, the dominant owner's actions must be "inconsistent with the existence of the easement." *Faulconer*, 327 Or at 389.

While a claim of adverse possession of ownership of real property requires that the party claiming adverse possession demonstrate that they had a good faith belief of their ownership, ORS 105.620(1)(b), in *Uhl v. Krupsky*, 254 Or App 736, 744-45, 294 P3d 559 (2013), the court held that the fee title owner of the servient estate was not required to demonstrate a good faith belief in the right to cut off the easement. But see *Stiles v. Godsey*, 258 Or App 145, 310 P3d 682 (2013) (reciting need for an honest belief, in a post-*Uhl* decision).

Another potential “abandonment” arises in the form of a court of equity’s power to declare that an easement is unenforceable (though not technically abandoned). In *Stone v. CCXL, LLC*, 318 Or App 107, 506 P3d 1167 (2022), the court affirmed a trial court’s decision declaring that a view easement was unenforceable (though not abandoned) because cutting down the trees that the terms of the easement would allow would not accomplish obtaining the view that was the subject of the easement, because trees outside of the easement had grown to the extent that they would independently block any view.

7. Licenses.

A "license" is an owner's permission for another to use his/her property (borrowing one of the sticks in the bundle). But that license, which is temporary and can be revoked, because irrevocable if the licensor induces the licensee to make significant investments in permanent improvements, and the licensee makes those improvements in reasonable reliance upon the licensor's promise; in those circumstances the licensor is estopped from revoking the license. *Brown v. Eoff*, 271 Or 7, 11, 530 P2d 49 (1975). However, silence by the dominant estate in the face of significant improvements will not suffice to create an irrevocable license. *Pfaendler v. Bruce*, 195 Or App 561, 569, 98 P3d 1146 (2004).

8. A completely different kind of merger – easements.

When is an easement not an easement? When you own the underlying property. Or to put it another way, an easement that a landowner had an interest in disappears if that landowner acquires fee title to the servient property.

In *Fischer v. Walker*, 246 Or App 589, 266 P3d 178 (2011), the predecessor owners (in common) of both the plaintiffs' and defendant's property – the Thayers – had conveyed an easement to a neighbor, reserving unto themselves a purported interest in that easement. When the plaintiffs bought one parcel from the creator of the easement, they assumed they retained a right to use the easement across the defendants' property (who had also acquired their property from the original grantor of the easement). They were wrong. The court held that the "reservation" of the easement by the Thayers simply denoted that the easement being conveyed was not exclusive to the dominant estate – the Thayers reserved only a right to use their own property but did not create an independent appurtenant easement that survived after their property was sold to the plaintiff and defendant. Or to put it another way, the Thayers already owned property, and so would never need to "reserve" an easement, except in conjunction with them making sure that the easement they granted to a third party was not construed as being exclusive. Once the Thayers sold their property, the buyers of the two parcels did not have easements across each other's property.

EXHIBIT "A"

Parcel 2 of Partition Plat 1992-67, Furnes Minor Partition filed October 27, 1992 as Instrument No. 92-9060, Official Records of Curry County, Oregon.

RESERVING unto the grantors herein an easement for the purposes of ingress, egress and maintenance of vegetation height within area shown as "View Easement 1" on Exhibit "A" attached.

TOGETHER WITH the right to enter upon the land and maintain the vegetation height within the area shown as "View Easement 2" on Exhibit "A" attached.

TOGETHER WITH AND RESERVING THEREFROM the use and passage rights over the existing logging road which crosses Parcels 1 and 2 of Partition Plat No. 1992-67.

RESERVING THEREFROM the right to enter upon the land and maintain the vegetation height within the area shown as "View Easement 1" on Exhibit "A".

TOGETHER WITH the right to enter upon the land and maintain the vegetation height within the area shown as "View Easement 2" on Exhibit "A".

TOGETHER WITH AND RESERVING THEREFROM an easement for ingress, egress and utilities over and across the following described parcel of land; Beginning at a point common to Parcels 1 and 2 of Partition Plat No. 1992-67, said point also being on the Easterly right-of-way of Cape Ferello Road; thence along the line common to said Parcels 1 and 2 and extending South 23° 03' 19" East 310.96 feet; thence South 68° 05' 23" West 40.21 feet to a point on the Northeasterly boundary of Parcel 3 of said Partition Plat; thence along said boundary of Parcel 3, North 21° 54' 36" West 286.87 feet to a point on the right-of-way of Cape Ferello Road; thence along said right-of-way on the arc of a 05° 36' 52" curve to the left, having a radius of 425.00 feet, a length of 41.65 feet, the long chord of which bears North 32° 50' 04" East 41.63 feet to the Point of Beginning.

RESERVING THEREFROM that portion of a 10.0 foot wide easement for installation, maintenance and repair of a waterline and appurtenances, as it pertains to Parcel 2, the centerline being described as follows: Beginning at a point lying on the Southwesterly boundary of Parcel 3 as described in Partition Plat 1992-67, said point being South 15° 44' 00" East 73.06 feet from the Northwest corner of said Parcel 3; thence leaving said boundary and running North 25° 49' 55" East 33.40 feet; thence North 13° 09' 30" East 42.84 feet; thence North 22° 43' 20" East 72.44 feet; thence North 34° 26' 29" East 51.81 feet; thence North 43° 33' 00" East 97.92 feet, leaving said Parcel 3 and entering Parcel 2 of the above described Partition Plat; thence continuing across Parcel 2 and onto Parcel 1 of said Partition Plat, North 65° 36' 40" East 19.56 feet; thence North 16° 28' 10" West 37.77 feet to a point on the Easterly right-of-way of Cape Ferello Road, being the corner common to Parcels 1 and 2, also being the terminus point of this easement.



(Continued)

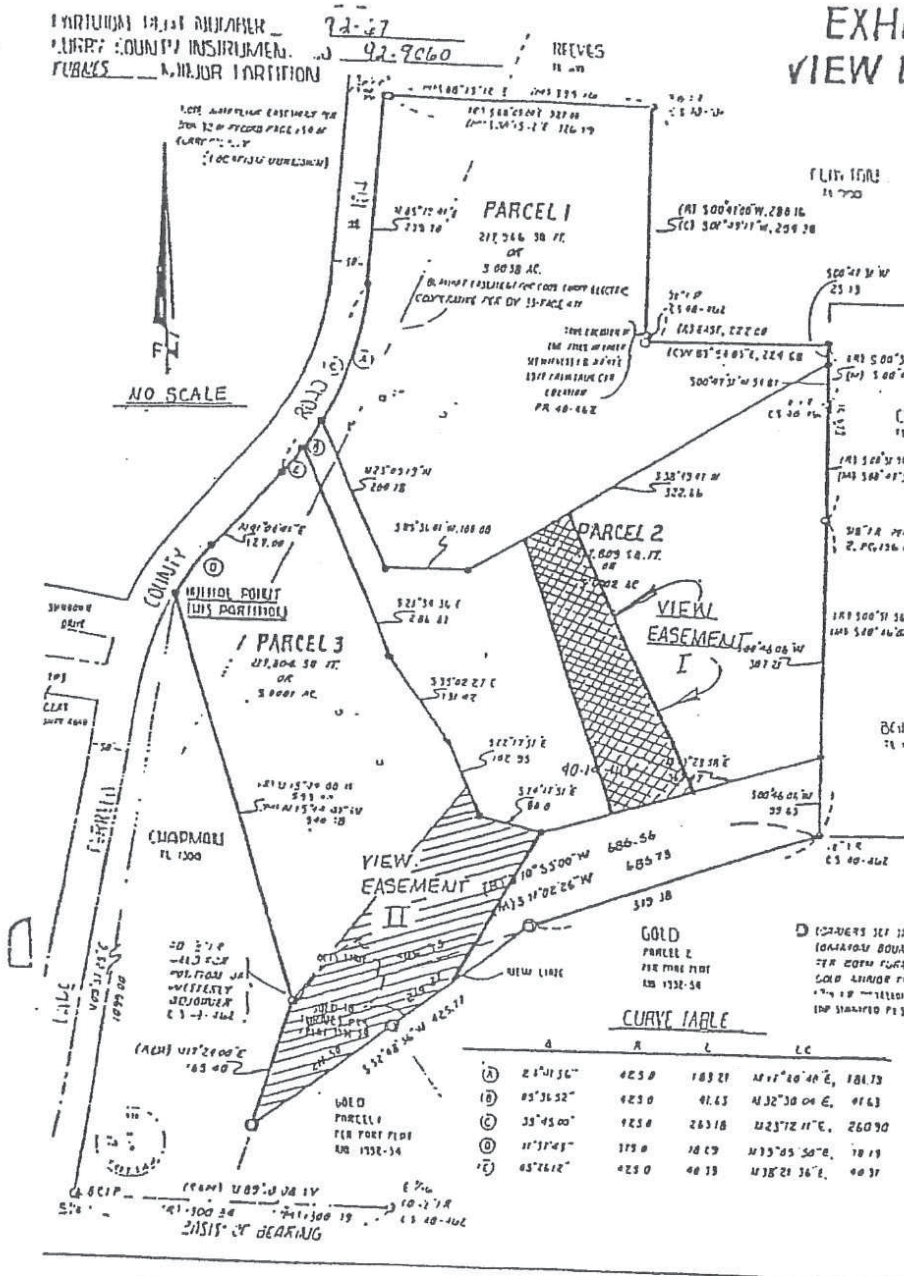


EXHIBIT
VIEW EASEMENTS

1994 INSTRUMENT 94 04362

STATE OF OREGON
COUNTY OF CURRY

I RENEÉ KOLEN, COUNTY CLERK, CERTIFY
THAT THE WITHIN DOCUMENT WAS
RECEIVED AND DULY RECORDED IN THE
OFFICIAL RECORDS OF CURRY COUNTY AT

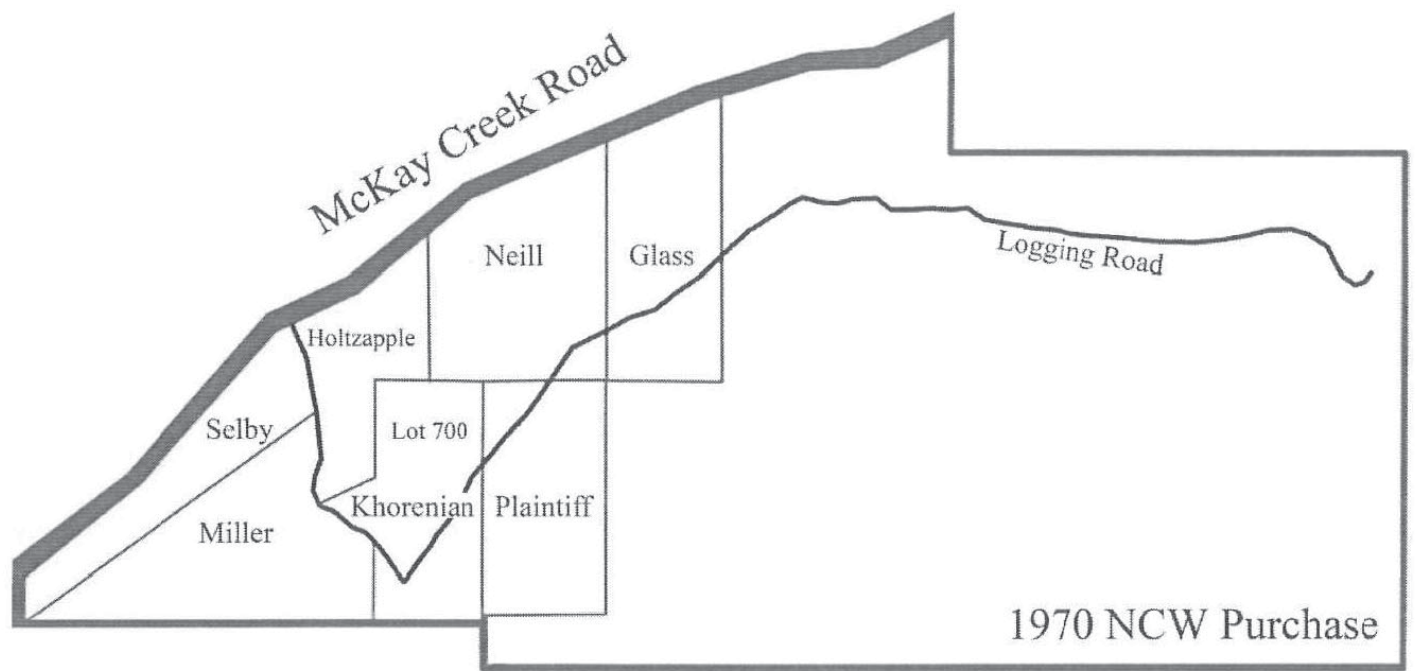
10:25 ON 07-27-74

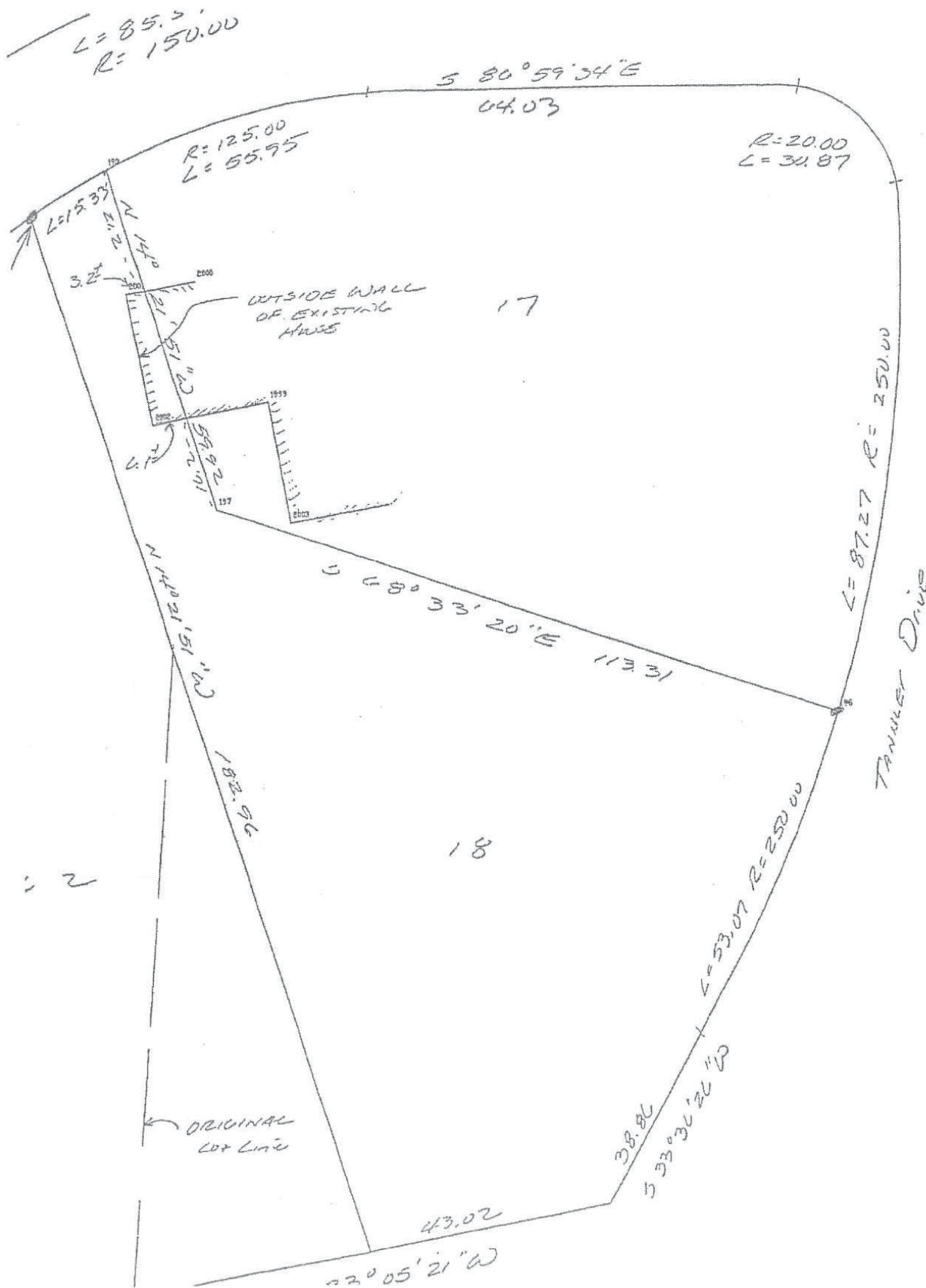
BY: MW DEPUTY

FEE \$	50.00
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PAGES:







3580

KNOW ALL MEN BY THESE PRESENTS, That W.D. Carnley and Rosa Carnley, husband and wife

grantors, in consideration of Ten and no/100 Dollars, and other valuable considerations to them paid by H. W. Currin and Laura E. Currin, husband and wife, grantees, do hereby grant, bargain, sell and convey unto the said grantees, as tenants by the entirety and not as tenants in community property, their heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Washington and State of Oregon, bounded and described as follows, to-wit: The N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 22, T3N-R3W., W.M.

Also for road purposes:

A permanent 30 foot easement beginning at the NW corner of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 22, T3N-R3W., W.M. running thence northerly along the most feasible route to that certain roadway running easterly and westerly. Said easterly-westerly road is the present traveled road connecting County roads #589 and #162. Said easement also includes the use of said connecting road from its intersection with County road #589 and running thence easterly to County road #162. Said easement is for ingress and egress through the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 21 and the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 22 all in T3N-R3W., W.M.

To Have and to Hold the above described and granted premises unto the said grantees as tenants by the entirety, their heirs and assigns forever.

And the grantors do covenant that they are lawfully seized in fee simple of the above granted premises free from all incumbrances,

and that they will and their heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

Witness our hands and seals this 21st day of April, 1950.

STATE OF OREGON,

County of Washington, On this 21st day of April, 1950, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named W. D. Carnley and Rosa Carnley, husband and wife

who are known to me to be the identical individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

Edwin L. Jenkins
Notary Public for Oregon.
My commission expires Dec. 29, 1951.



WARRANTY DEED

(Form No. 716)

W.D. Carnley, et ux

TO

H. W. Currin, et ux

STATE OF OREGON
County of Washington
I, W. A. Tupper, County Clerk - Records
do hereby certify that the within instrument was recorded in book 306 on page 20 of 1950 and recorded in book 306 on page 20 of 1950.
Record of said County.

WITNESS my hand and seal of County of said County.

W. A. Tupper

County Clerk - Records

Segeborg Hansen

Deputy

WITNESS my hand and seal of County of said County.

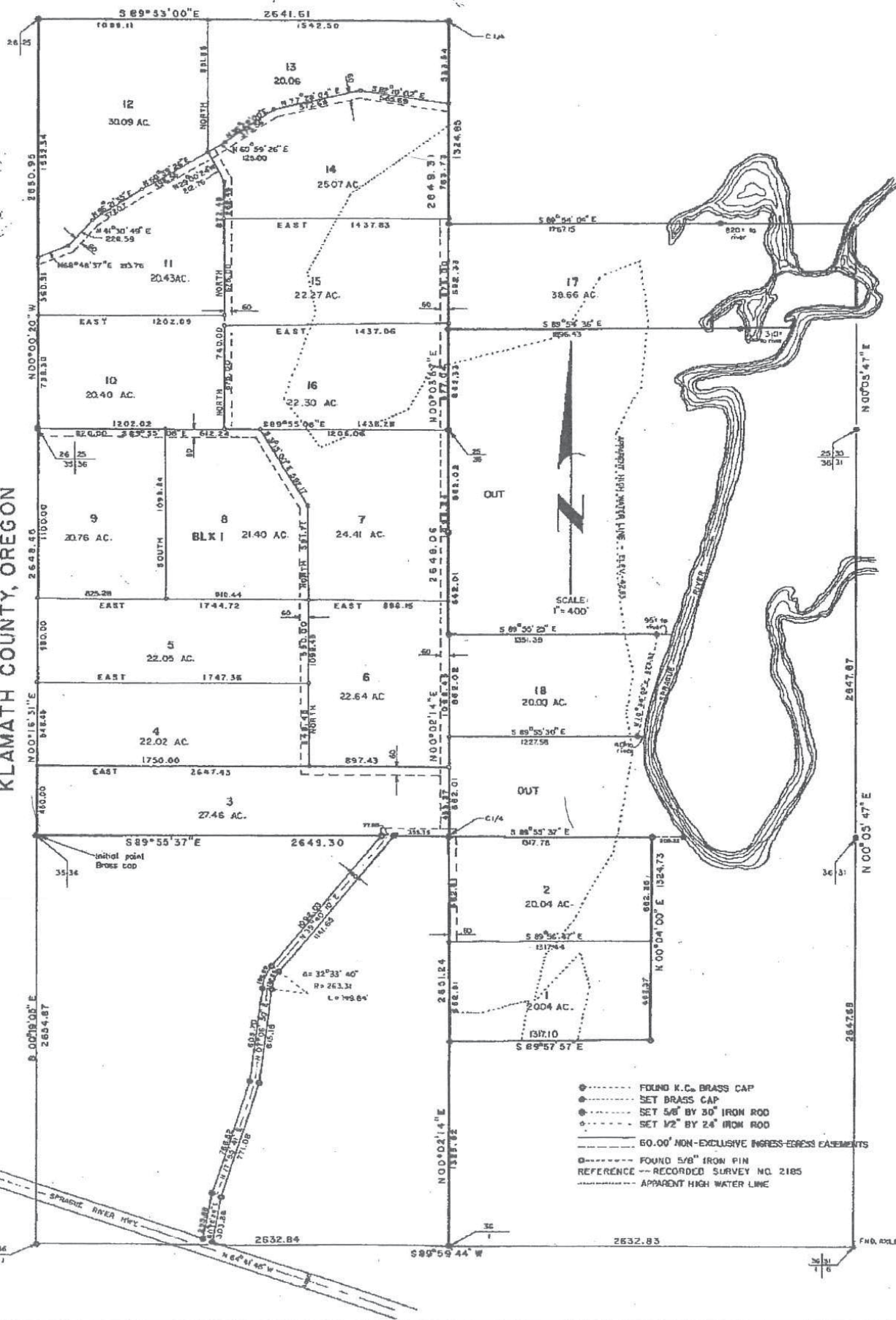
H. W. Currin

134 C. Man.

TRACT 1118

SITUATED IN SECTION 36 & THE S 1/2 OF SECTION 25, T34S, R8EWM
KLAMATH COUNTY, OREGON

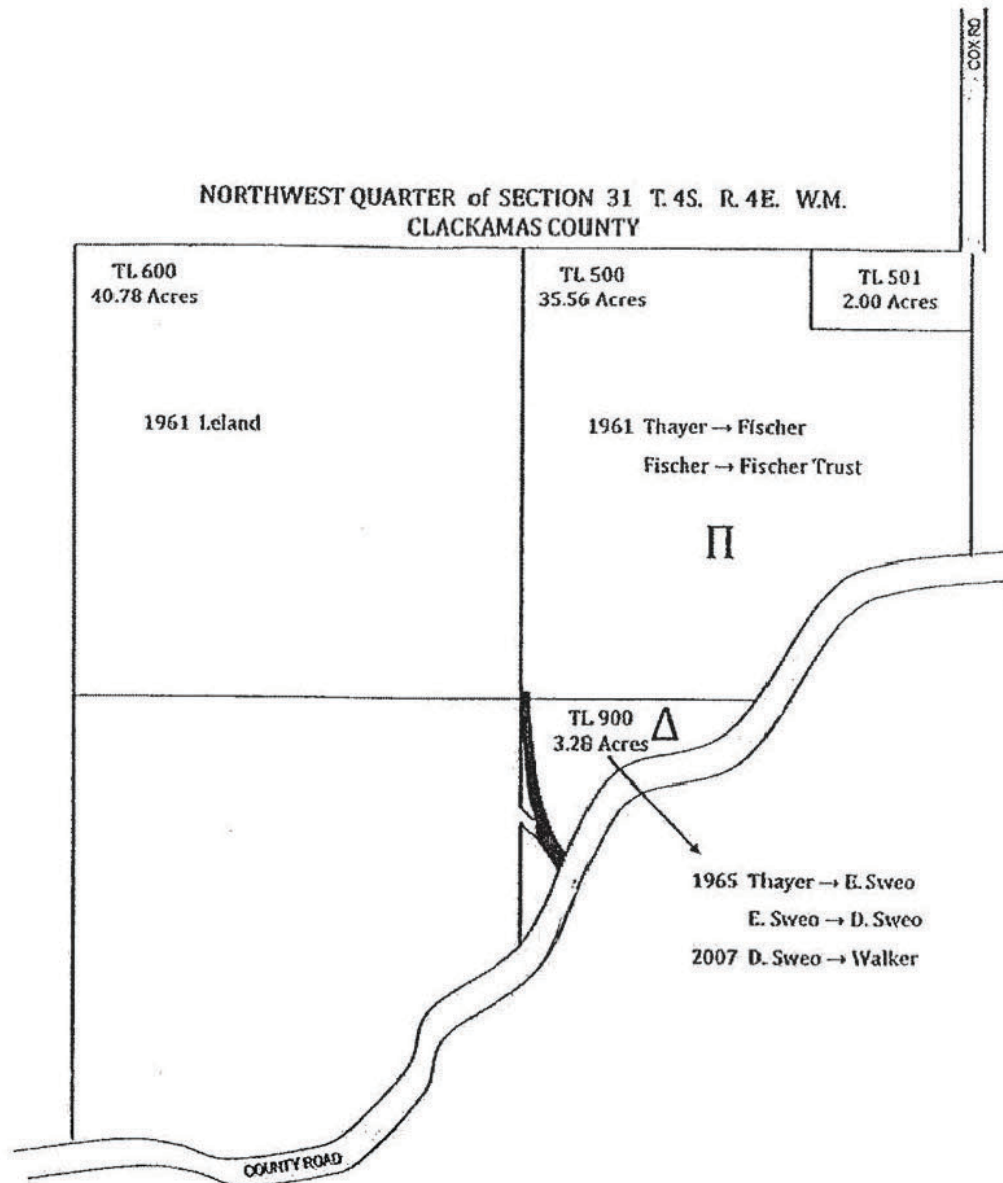
RECORDED
JUL 10 1902
JUL 10 1902







1 road, ran roughly along the western boundary of Tax Lot 900, continued through the
2 southwest corner of Tax Lot 500, and ended at Tax Lot 600. The following diagram is an
3 approximate illustration of the relevant parcels and roads:



4

5

6 The instrument conveying the easement to the Lelands provided, in part:

7 "The Grantors, [the Thayers], * * * hereby grant unto [the Lelands],
8 * * * their heirs, successors and assigns, an easement and right-of-way

DAVIS
INST:91-1796
TAX LOT 500
APM: 40-13-23

THE CAPS OF THESE MONUMENTS
SHOW EVIDENCE OF HAVING BEEN
MOVED AND RESET. THEY ARE
NOT ACCEPTED BY THIS SURVEY
AS REPRESENTING THE
LINES DESCRIBED IN THE
SUBDIVISION GUARANTEE.

FOUND 5/8" IRON ROD WITH
YELLOW PLASTIC CAP STAMPED
"LS 1797". IT IS ACCEPTED BY
THIS SURVEY AS BEING IN THE
POSITION AS SET IN CS 40-553

(TIE LINE ONLY)
N00°13'05"E 33.87'

(M)N85°13'00"E 95.63'

(C&R1) EAST 96.75'

(C)N00°52'28"W 90.01'
(R1)N00°52'28"W 90.01'

(M)N04°30'00"W 92.89'
(R1)N04°36'35"W 93.06'

(M)N00°07'26"W 247.52'
(R1)N00°13'02"W 247.72'

(M)S89°54'24"E 119.24'
(R1) EAST 119.24'

APPROX. SEPTIC LINES
(BASED ON COUNTY SANITARIAN
FIELD NOTES)

SEPTIC TANK

WIRE FENCE
6.5' NLY

POTENTIAL ADVERSE
BY ADJOINER TO THE
SOUTH OF EXISTING

(C)S87°
(M)S87°
(R1)S87°

EXHIBIT