

## **RESOLUTION 3235**

### **ROAD LEGALIZATION ORDER: NEFF ROAD**

#### **Findings**

- A. On June 17, 2020, the City Council initiated the road legalization proceeding for NE Neff Road between NE Parkridge Drive and NE Leehaven Lane.
- B. A portion of the roadway as traveled and used for 10 years or more does not conform to the location of the road described in City records.
- C. A notice of the Public Hearing was mailed to owners of abutting land on December 1, 2020.
- D. An engineer's report, including a survey of the road section, was filed with the City Council.
- E. The City Council held a duly-noticed public hearing on December 16, 2020, to consider the engineer's report and survey and to decide whether the legalization is in the public interest.
- F. The City followed all required procedures for the road legalization under ORS 223.935 to 223.950.
- G. Legalization of the road is in the public interest because the road as traveled has been in existence for more than ten years.
- H. One abutting property owner filed a request for compensation for encroaching structures before the end of the public hearing. The surveyor identified two concrete retaining walls that are partially in the right-of-way as established by this order. Due to the uncertainty of the location of the property line and the limits of the right-of-way, Council finds that no exception applies and the owner is due compensation for removal of the portions of these retaining walls in the adjusted right-of-way, pursuant to ORS 223.945. Council finds the appropriate compensation is \$2656.00.

Based on these findings, the City Council of the City of Bend resolves as follows:


- 1. The City Council accepts the engineer's report and survey attached as Exhibits A and B. NE Neff Road between NE Parkridge Drive and NE Leehaven Lane is hereby legalized as shown in the attached exhibits.
- 2. Staff shall take all measures necessary to complete the legalization of the road, including filing the survey map and narrative with the County Surveyor and causing the centerline and right of way to be monumented by a registered professional land surveyor.
- 3. The Council orders that \$2656.00 is due as compensation for the removal of the encroaching portion of the western wall and directs staff to take all measures necessary to provide this compensation to the landowner.

4. This resolution takes effect immediately upon adoption.

Adopted by a vote of the Bend City Council on December 16, 2020.

YES: Sally Russell, Mayor  
Bruce Abernethy  
Barb Campbell  
Bill Moseley  
Justin Livingston  
Gena Goodman-Campbell  
Chris Piper

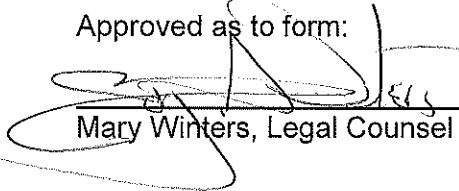
NO: none

  
Sally Russell, Mayor

Attest:

  
Robyn Christie, City Recorder

Approved as to form:

  
Mary Winters, Legal Counsel

NEFF ROAD  
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27 & THE NORTHWEST QUARTER OF SECTION 34  
TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN  
CITY OF BEND, DESCHUTES COUNTY, OREGON  
DECEMBER 1, 2020



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12-1-2020  
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*B. J. J. J.*  
OREGON  
DEPT. 17, 2018  
BENJAMIN J. J. J.  
6573

HWA  
SHEET 1 OF 1

SHEET  
1 OF 1

DATE	10-10-19
TIME	10:00 AM
BY	100
NO.	100

[illegible]



December 1, 2020

Sinclair Burr, PE  
Project Engineer  
City of Bend

RE: Neff Road Legalization, Project No. 1TNPS, Contact No. 32100118

Mr. Burr,

Our recent right-of-way resolution, title review and asbuilt survey efforts for a portion of Neff Road have uncovered many discrepancies. Neff Road was originally established as "Almus Neff Road", November 13, 1910 per Crook County Commissioner's Journal 4 at Page 415 (see Exhibit 'A') and contained a total width of 60.00 feet. This right-of-way was surveyed on the ground by then Crook County Surveyor Fred A. Rice as memorialized in his field notes filed as RD00781, sketch is attached as Exhibit 'B'. We were provided an additional survey titled "The Neff Road" drawn by Ron Davis, dated February 18, 1956 and reports Book 103, Pages 31-62 (see Exhibit 'C'). We were unable to find this document and reached out to the Deschutes County Surveyor's Office who was unable to find it as well. It is the understanding of this office that right-of-ways established by Commissioner's Journal entries are easement estates on the underlying land.

The existing right-of-way within Section 34 varies in width from 40.00 feet to 30.00 feet as reported on my enclosed Exhibit and the existing roadway is fully within this right-of-way. With this in mind I do not believe any lands within Section 34 are affected.

That portion of the Neff Road right-of-way within the lands included in the plat of Eastwood Addition, were dedicated by this plat as stated in the Declaration (see Exhibit 'D'). There is a discrepancy between the line between Sections 27 & 34 as reported on this plat vs. the present-day location of the line. Based on my research of the filed survey records it appears that the corner of Sections 27, 28, 33 & 34 at the time this survey was conducted was monumented with numerous spikes in pavement. This was put on the record clearly by Mr. William Hudson's survey filed as CS02828 (see Exhibit 'E'). The Deschutes County Surveyor's Office was not able to provide any supplemental information as to who set the present-day monument at this corner location. With this in mind the plat of Eastwood Addition dedicated that portion of right-of-way lying outside of the platted lots as I have resolved. The original "Almus Neff Road" right-of-way easement which does not agree with these lines is an encumbrance on Lot 1, Block 1 and Lots 1 & 7, Block 2. In addition, the existing sidewalk located in the locus of the southeast corner of Lot 7, Block 2 is on private property. I do not believe the lands within this subdivision are affected (see Exhibit 'F').

Tax Lots 171227CC005300 (TL5300) & 171227CC005400 (TL5400) are owned by the City of Bend and the description contained in the vesting deed (Bargain and Sale Deed, Instrument No. 2018-40780) for this parcel states in part "lying southerly of the Neff Road right of way". The only legal document describing the Neff Road right-of-way in the area is the original 1910 establishment documents, which is what is used to compute these parcels. Additionally, TL5400 is actually located in the lands included in the right-of-way dedication per the hereinbefore described plat of Eastwood Addition and may not be a legal parcel of land. TL5300 may be affected for the 30.00-foot southerly offset of the Asbuilt centerline falls within it.

The lands identified as Tax Lot 171227CC005100 (TL5100), Tax Lot 171227CC005103 (TL5103) and Tax Lot 171227CC005200 (TL5200) were at one time one parcel of land with a southerly boundary of the line between Sections 27 & 34. This original parcel over the years was subdivided in the traditional method by plat along with deeded subdivisions. I have further detailed the land tenure of this original parcel on the enclosed Exhibit. The descriptions of the lands contained in the current vesting deeds for these tax lots specifically call out in various ways the "Northerly line of Neff Road", as being the southerly boundary. These parcels of land have been surveyed numerous times: March

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1961, Fancher & Swarens Tracts (CS02828, see Exhibit 'E'); August 10, 1978, Minor Land Partition MP-78-162 (CS02815, see Exhibit 'G'); September 1, 1978, Map of Survey (CS02847, see Exhibit 'H'). All three of these surveys report this south line being the northerly line of Neff Road. It is my opinion that the surveyors in this case established the right-of-way of Neff Road by locating the actual road and not the 1910 Almus Neff Road alignment. These three parcels of land have changed hands a few times since the 1970s. Based on my title research the original Grantor, which actually appears to be three married couples who may or may not still be alive: A.C. Goodrich and Grayce B. Goodrich (one-third interest); Bradley D. Fancher and Dagmar Fancher (one-third interest) and Robert W. Chandler and Nancy R. Chandler (one-third interest). These three parties conveyed present day TL5300 to School District No. 1 and then it was conveyed to the County and then to the present-day owner: The City of Bend. This leads me to believe that they understood that they owned the land on the south side of Neff Road as well. I believe they did not understand that they actually owned the land under the 1910 Almus Neff Road right-of-way easement.

To summarize I believe the only parcels of land potentially to be affected include TL5400 and the underlying remainder of the original lands presently identified as TL5100, TL5103 and TL5200.


I believe there are a few options to remedy this situation:

Option - 1: Road Legalization per ORS 223.935(3).

Option - 2:

- a) Track down the three owners or heirs of the underlying lands: A.C. Goodrich and Grayce B. Goodrich (one-third interest); Bradley D. Fancher and Dagmar Fancher (one-third interest) and Robert W. Chandler and Nancy R. Chandler (one-third interest) and purchase this parcel of land for right of way purposes.
- b) Dedicate a portion of or all of TL5400 (owned by the City of Bend) to the public for right-of-way.
- c) Release that portion of the original 1910 Almus Neff Road right-of-way easement with TL5100, TL5103 & 5200.

Sincerely,



Benjamin J. Hron, PLS, CFedS

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
SEPTEMBER 17, 2018  
BENJAMIN J. HRON  
92723

EXPIRES: 6/30/2021

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Exhibit 'A'  
Crook County Commissioner's Journal 4, Page 415 "Almus Neff Road"

CJ 4

8800782

Thursday the 3rd day of November, 1960. 415

In the Matter of }  
the G.W. Kroat Road. }

The Viewers' report on the G.W. Kroat Road, having been read first time on November 2nd and second time on November 3rd, said report is hereby approved, road declared a public highway and Clerk directed to notify Supervisor to open said road, as soon as funds in his hands warrant the same, and request petitioners to each work one day on the same.

In the Matter of }  
the G.A. Beckwith Road. }

The Viewers' report on the G.A. Beckwith road, having been read first time on November 2nd and second time on November 3rd, said report is hereby approved, road declared a public highway and Clerk directed to notify Supervisor to open said road as soon as funds in his hands warrant the same, and request petitioners to each work one day on the same.

In the Matter of }  
the Almus Neff Road. }

The Viewers' report on the Almus Neff road having been read first time on November 2nd and second time on November 3rd, said report was approved, road declared a public highway and Clerk directed to notify Supervisor to open said road, as soon as funds in his hands warrant the same, and request petitioners to each work one day on the same.

In the Matter of }  
the W.F. Carter Road. }

The Viewers' report on the W.F. Carter Road, having been read first time on November 2nd and second time on November 3rd, said report is hereby approved by this Court. The report being adverse to the granting of said proposed road, the petition is hereby disallowed and the Clerk directed to make out an itemized statement of the expense necessarily incurred by the County and demand payment thereof from the dondant for said proposed road.

In the Matter of }  
the Myers Acreage Tract. }

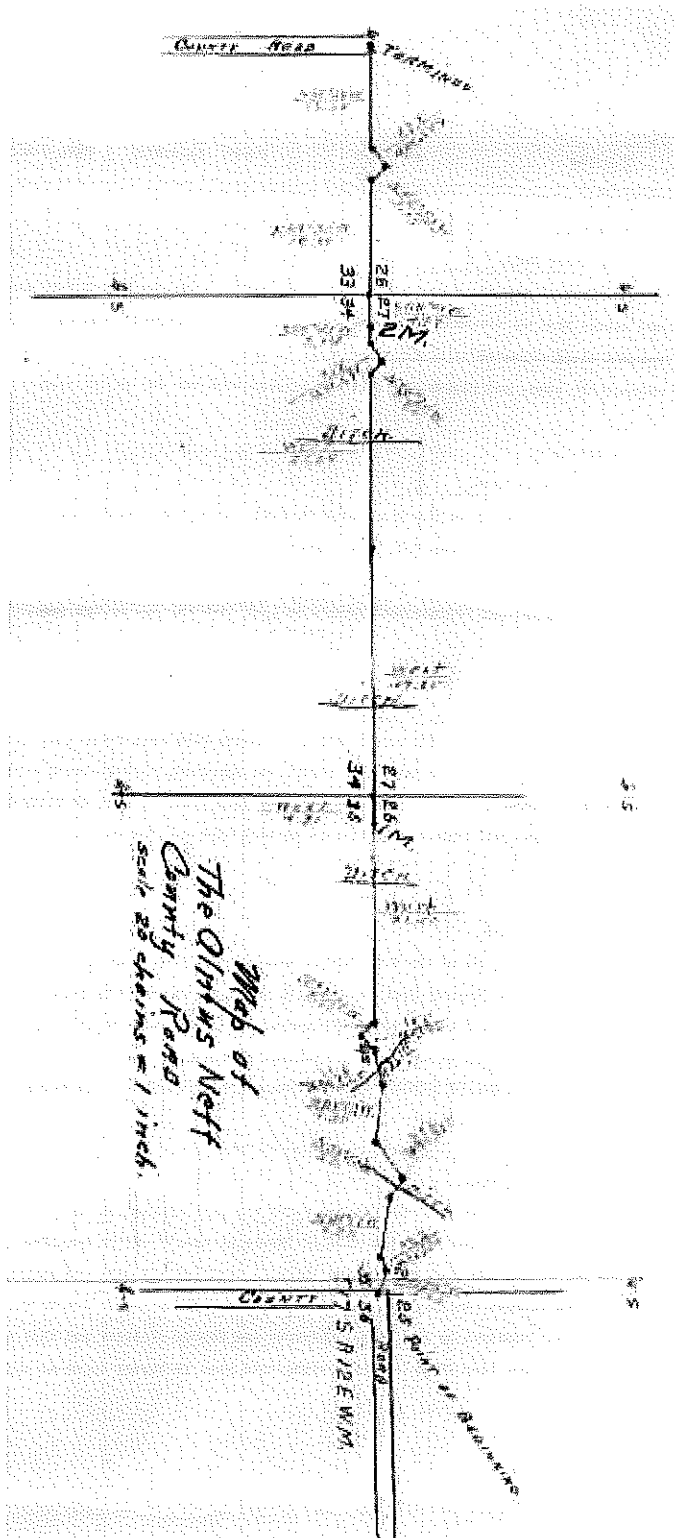
Now, on this day is presented to the Court the plat of Harry A. Myers et al., owners in fee of the land platted under the name of "Myers Acreage", and it satisfactorily appearing to the Court that the plat and tracing thereof, together with the dedication of the roads to the public, without reservation, has been properly filed with the County Clerk; that the same has been duly approved by the County Surveyor and County Assessor and that all the requirements of law have been fully complied with, said plat is hereby approved and ordered agreed of record.

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### Exhibit 'B'

Crook County Surveyor Fred A. Rice original field note sketch.



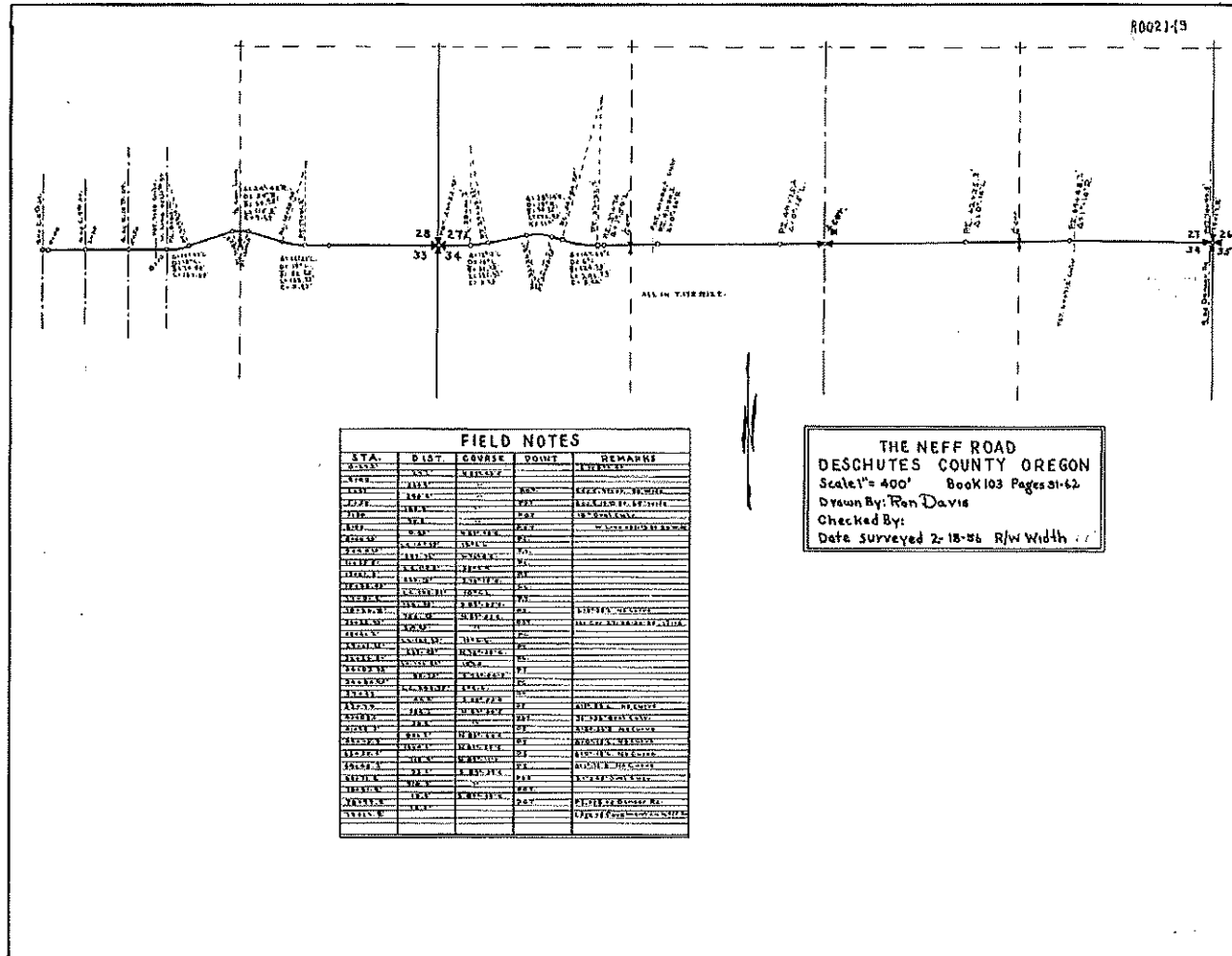
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**Exhibit 'C'**  
 "The Neff Road" drawn by Ron Davis, dated February 18, 1956.



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A-134  
10

## 339 :

EXAMINED AND APPROVED THIS 28. DAY OF SEPTEMBER  
OF 1967 DATED  
Richard B. Galt COUNTY CLERK  
John W. Galt CITY ENGINEER  
John Galt CITY ENGINEER  
Charles B. Galt ANNU. CFT. BOARD

EXAMINED AND APPROVED THIS 5. DAY OF SEPTEMBER, 1967.  
John W. Galt COUNTY SUPERVISOR  
Robert C. Galt COUNTY DEPUTY SUPERVISOR

EXAMINED AND APPROVED THIS 15. DAY OF SEPTEMBER, 1967.  
Richard B. Galt COUNTY JUDGE  
John W. Galt COUNTY ENGINEER  
Charles B. Galt COUNTY ENGINEER

I HEREBY CERTIFY THAT ALL TAXES ARE PAID  
TO THIS DATE OF October 1, 1967.  
John W. Galt COUNTY TREASURER

I HEREBY CERTIFY THAT, ALL ADVALOREM TAXES AND  
ALL SPECIAL ASSESSMENTS, FEES AND OTHER CHARGES  
REQUIRED BY LAW TO BE PLACED ON THE 1966-1967  
TAX ROLL, HAVE BEEN PAID TO THE COUNTY OF CALIFORNIA  
OR WILL BECOME A LIEN DURING THIS CALENDAR  
YEAR, BUT HAVE NOT CONTRIBUTED TO THE FUND COLLECTION  
FOR COLLECTION OF THE SAME TO THE COUNTY OF CALIFORNIA.  
John W. Galt COUNTY DEPUTY SUPERVISOR

STATION	N	E	T	L
1	60° 31' 20"	70.00	63.11	74.35
2	28° 23' 04"	200.00	64.73	187.20
3	88° 21' 04"	200.00	64.73	187.20
4	35° 51' 05"	144.92	30.00	70.25
5	31° 38' 00"	122.77	30.20	70.20

SCALE 1" = 100'  
MARCH 1966

FILED

APR 21 1952  
HALL: H. P. D. C. C. C. C.

REGISTERED  
OREGON  
LAND SURVEYOR  
J. L. COOK  
MAY 14 1951  
J. L. COOK  
340



SUBSCRIBED AND SWORN TO BEFORE ME THIS 28<sup>th</sup> DAY OF March, 1966  
NOTARY PUBLIC FOR OREGON Barth H. Hendry  
MY COMMISSION EXPIRES July 13, 1969

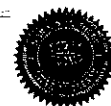
KNOW ALL MEN BY THESE PRESENTS THAT M.R.S. COMPANY INC. BEING  
THE OWNER IN FEE SIMPLE OF THE LANDS SHOWN ON THIS PLAT AND  
THAT BY RESOLUTION OF ITS STOCKHOLDERS HAVE CAUSED SAID  
LAND TO BE SURVEYED AND PLATTED INTO LOTS AND STREETS AS  
SHOWN ON SAID PLAT AND DO HEREBY SUBMIT FOR APPROVAL AND  
RECORD SAID PLAT AND DO HEREBY REQUEST FOR THE USE OF THE  
PUBLIC. FURTHER ALL STREETS ON THIS PLAT:

W. H. Foster, Jr. W. H. Foster, Jr.  
PRESIDENT VICE PRESIDENT

ON THE 28<sup>TH</sup> INST. 1964, I WAS BEFORE ME APPEARED L.A. SWANBERG,  
PRESIDENT, AND GORDON H. RANDALL, SECRETARY OF M.R.S.  
COMPANY INC., A CORPORATION ORIGINALLY ORGANIZED AND INCORPORATED  
UNDER THE LAWS OF THE STATE OF OREGON, TO ME KNOWN TO BE  
THE IDENTICAL PERSONS DESCRIBED IN AND WHO EXECUTED THE  
DEDICATION AND ACKNOWLEDGMENT TO ME THAT THEY  
EXECUTED SAME FREELY AND VOLUNTARILY FOR THE PURPOSES  
POSES THEREIN. NAMED TESTIMONY WHEREOF I SUB-  
SCRIBED MY HAND AND SEAL.

NOTARY PUBLIC FOR OREGON

MY COMMISSION EXPIRES July 18, 1969



KNOW ALL MEN BY THESE PRESENTS THAT M.R.S. COMPANY INC. BEING THE OWNER IN FEE SIMPLE OF THE LANDS SHOWN ON THIS PLAT AND THAT BY RESOLUTION OF IT'S STOCKHOLDERS HAVE CAUSED SAID LAND TO BE SURVEYED AND PLATTED INTO LOTS AND STREETS AS SHOWN ON SAID PLAT, AND DO HEREBY SUBMIT FOR APPROVAL AND RECORD SAID PLAT, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS ON THIS PLAT.

415 PLAR.  
John H. Pundell  
SECRETARY

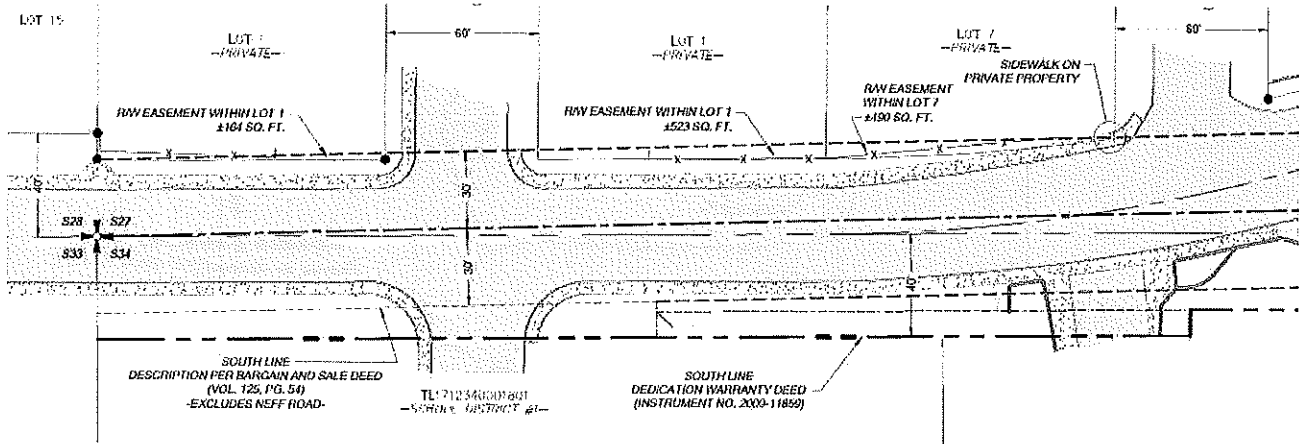
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## CS02828



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**Exhibit 'F'**  
ROW Easement encumbrance.



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**Exhibit 'G'**  
Minor Land Partition MP-78-162, by George Colvin, CS02815.

CS02815

CS02815

**MINOR LAND PARTITION**

MP- 78 - 162 DATE 8-10-78

TWSP 17S RGE 12E SEC 27 1/4 SEC SW

DEED OWNER B. FANCHER

60266 TERRACE RD BEND

PARTITIONER G L DE BERNARDI

1700 N B NEFF BEND

SURVEYOR COLVIN AND HOERNING

ENGINEER 942 NW HILL ST BEND

SEWAGE DISPOSAL

SEPTIC TANK ☒

CITY SEWER ☐ ZONE R-1

COMMUNITY SEWER ☐

WATER SOURCE

WELL ☐ TAX LOT NUMBER

CISTERN ☐ 1712, 2755-5175

COMMUNITY WATER ☐ AND 7300

R U W SYSTEM ☒

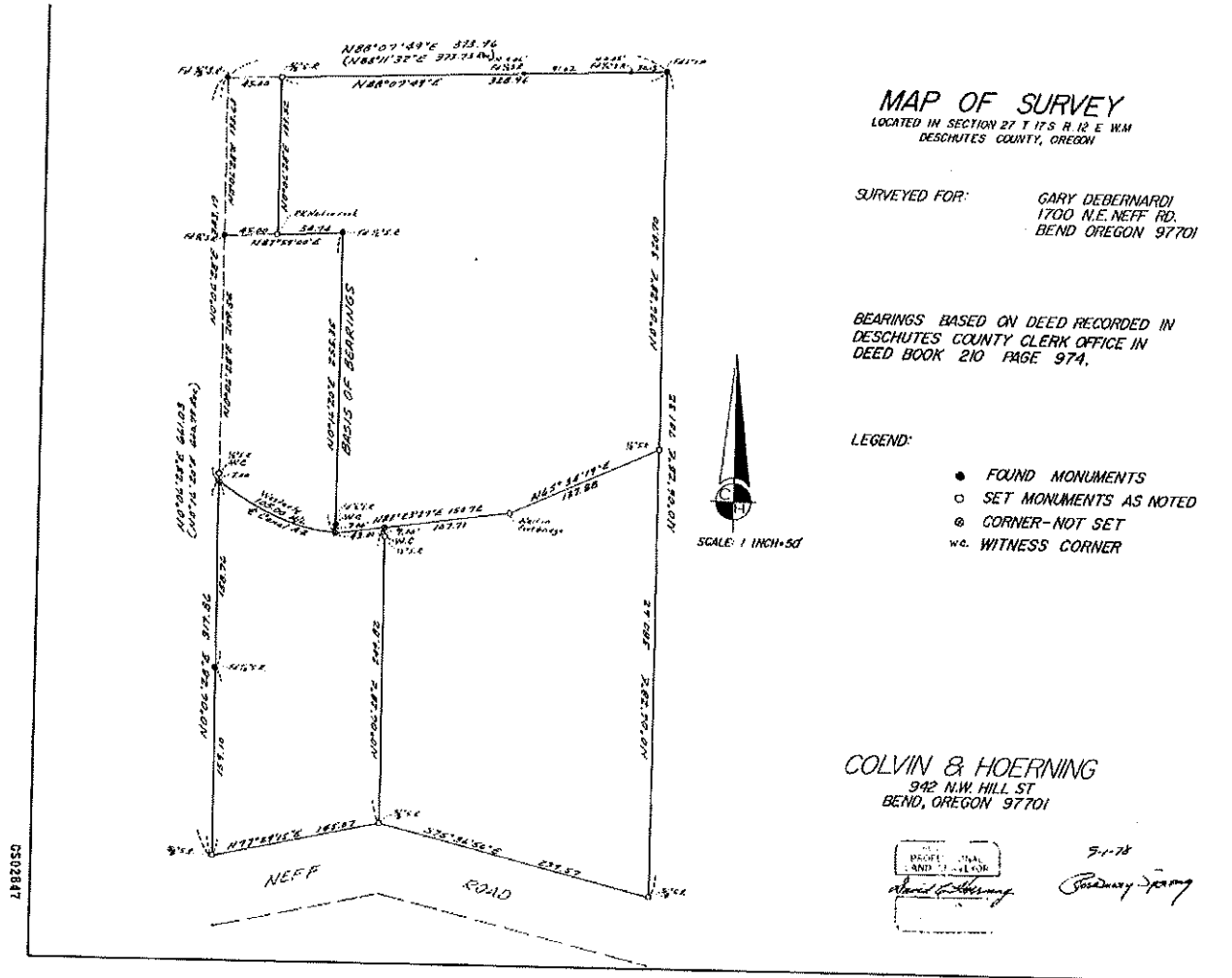
DESCHUTES COUNTY  
PLANNING DEPARTMENT

Approvals	DATE
<u>Alvin A. King</u>	<u>8/17/78</u>
County Commissioner	
<u>Wm. V. Hoerning</u>	<u>8/17/78</u>
County Commissioner	
<u>Robert E. Smith</u>	<u>8-17-78</u>
County Commissioner	
<u>Wm. V. Hoerning</u>	<u>8-16-78</u>
County Planning Director	
<u>George Colvin</u>	<u>8-16-78</u>
County Surveyor	

CS02815

SCALE 1" = 200'

**Exhibit 'H'**  
Map of Survey, by David Hoerning, CS02847.



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