

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

Attest:

Robyn Christie, City Recorder

Sally Russell

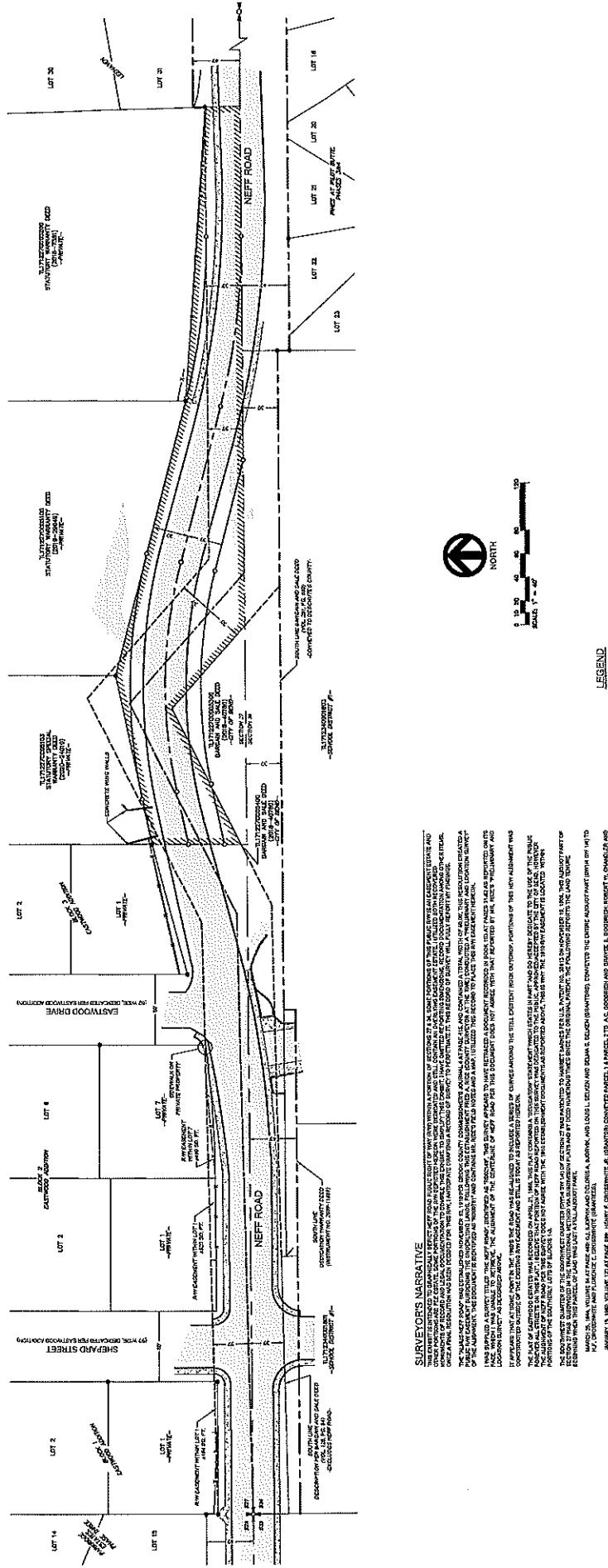
Sally Russell, Mayor

Approved as to form:

Mary Winters, Legal Counsel

LEGALIZATION EXHIBIT

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 27, THE NORTHWEST QUARTER OF SECTION 34,
TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILAMETTE MERIDIAN
CITY OF BEND, DESCHUTES COUNTY, OREGON
DECEMBER 1, 2020



בְּאֵלֶּלֶת הַמִּזְרָחָה

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A rectangular registration card for a registered professional land surveyor in Oregon. The card features a large, stylized signature 'B. O. S.' in the center. At the top, it says 'REGISTERED PROFESSIONAL LAND SURVEYOR'. To the right, it says 'OREGON DEPARTMENT OF LAND BENEFITS, 4100 857-3333'. At the bottom right, it says 'EXPIRES: 09/06/2023'.

SHREE | 1 OF 1

1000



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 my 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



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

CJ 4

8000782

Thursday the 3rd day of November, 1920. - 115

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

The Viewers' report on the G.W. Kibret 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.P. Carter Road. }

The Viewers' report on the W.P. 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 bondholder for said proposed road.

In the Matter of }
the Myers Aerobago Tract. }

Now, on this day is presented to the Court the plat of Harry A. Myers, at no., owner in fee of the land platted under the name of "Myers Aerobago", 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 spread of record.

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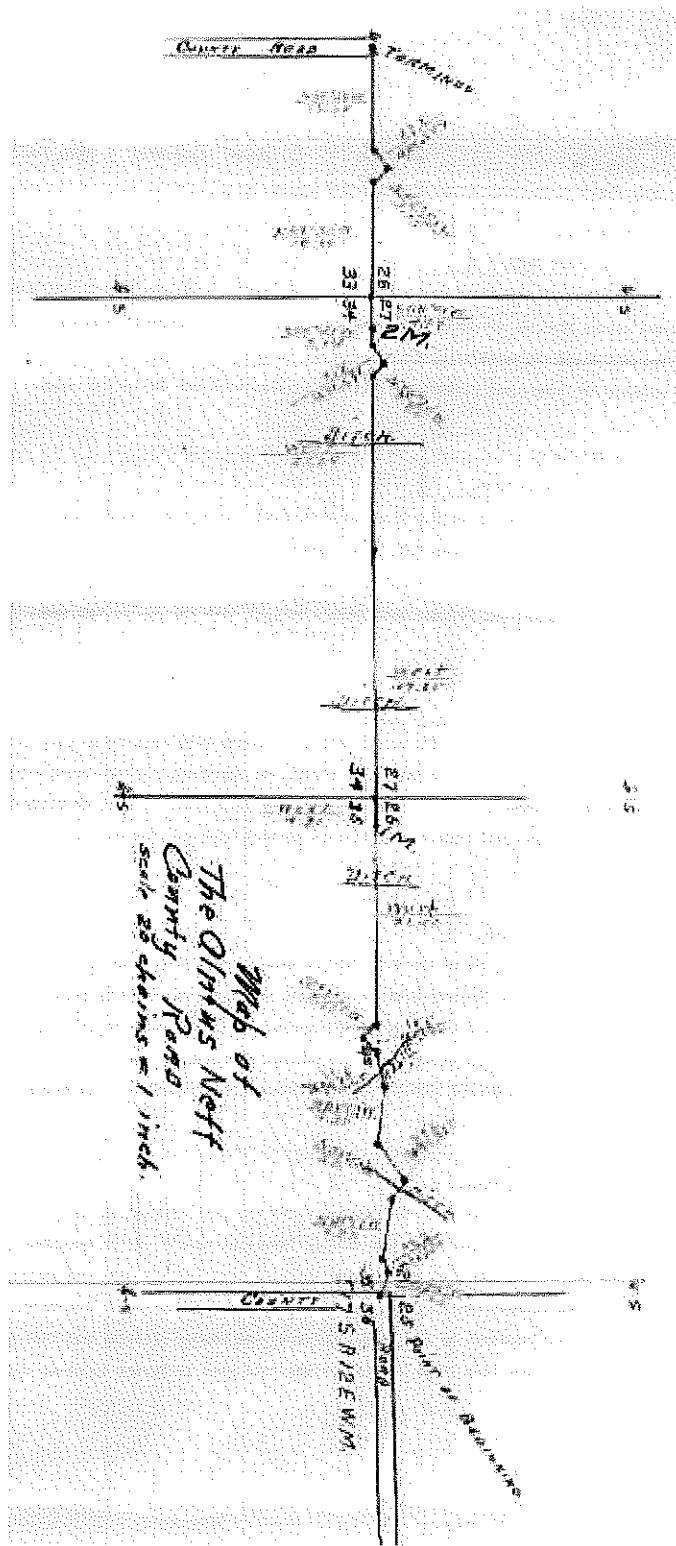
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Exhibit 'B'

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.

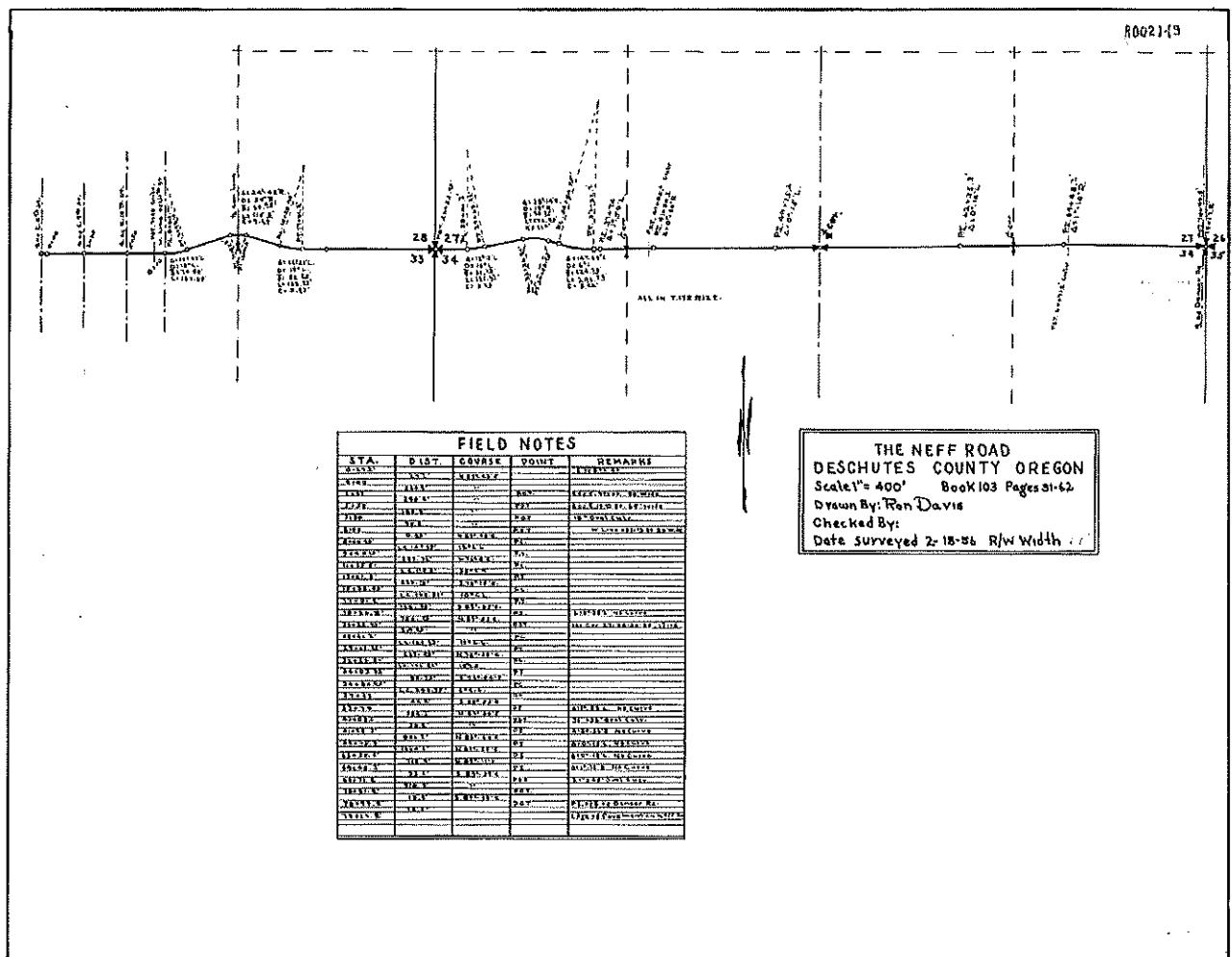
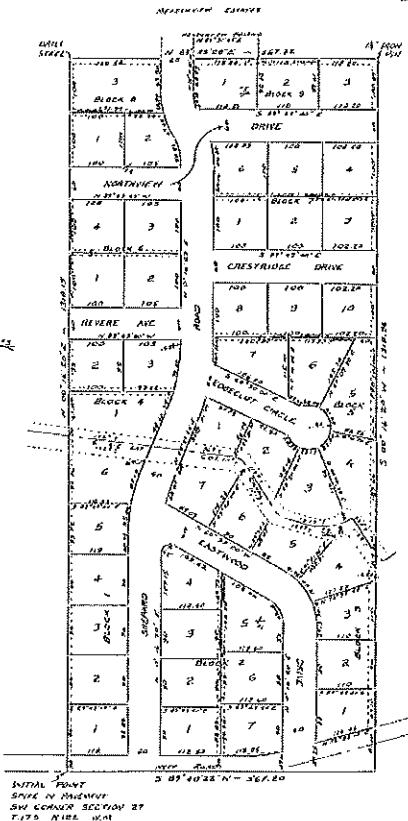


Exhibit 'D'
Eastwood Addition, by George J. Cook.

A-134
10

EASTWOOD ADDITION
BEND, OREGON



APPROVAL

EXAMINED AND APPROVED THIS 5th DAY OF APRIL, 1966.
Leighland M. Cook, CHAMBER PLANNERS, COMMISSION
John H. Cook, CITY ENGINEER
George J. Cook, CITY ATTORNEY
John H. Cook, CITY CLERK
John H. Cook, CITY JUDGE
John H. Cook, COUNTY JUDGE
John H. Cook, COUNTY COMMISSIONER
John H. Cook, COUNTY COMMISSIONER
John H. Cook, COUNTY COMMISSIONER

I HEREBY CERTIFY THAT ALL TAXES ARE PAID
TO THIS DATE OF April 1, 1966.
John H. Cook
John H. Cook, COUNTY ASSESSOR

I HEREBY CERTIFY THAT ALL AD VALOREM TAXES AND
ALL SPECIAL ASSESSMENTS, FEES AND OTHER CHARGES
DUE AND DUEABLE ON THIS PLAT FOR THE 1965-1967
TAX ROLL, WHICH BECOME DUE AND DUEABLE THIS YEAR
OR WILL BECOME A LIEN DURING THE CALIFORNIA
YEAR, BUT NOT YET CERTIFIED TO THE TAX COLLECTOR
FOR COLLECTION, HAVE BEEN PAID TO ME.

John H. Cook
John H. Cook, COUNTY ASSESSOR

CURVE DATA					
NUMBER	A	M	T	L	
1	52° 21' 12"	100.00	61.11	74.55	
2	21° 21' 04"	300.00	61.73	187.50	
3	21° 21' 04"	300.00	60.73	187.50	
4	21° 21' 03"	141.82	59.00	74.55	
5	21° 21' 02"	121.71	59.30	70.50	

SCALE 1"=100'
MARCH, 1966
FILED
1966 MARCH 21 1966
H. COOK, SECRETARY

SURVEYOR'S CERTIFICATE

I, GEORGE J. COOK, BEING FIRST FULLY SWORN DO HEREBY CERTIFY
THAT I HAVE CAREFULLY SURVEYED AND MARKED WITH PROPER MONUM-
ENTS THE LANDS SHOWN ON THIS PLAT, LOCATED IN THE W.M. SW.
SW. SECTION 27, TOWNSHIP 17 SOUTH, RANGE 18 EAST, W.M.
DECHUHALIS COUNTY, OREGON, DESCRIBED AS FOLLOWS: BEGINNING AT
THE NORTHEAST CORNER OF THE SW. 1/4, THENCE 5 DEGREES 20' 16"
1318 FEET, THENCE N 85° 20' E. 367.22 FEET; THENCE S 04° 16'
1318.56 FEET; THENCE S 85° 20' E. 827.00 FEET TO THE
POINT OF BEGINNING. SAID PLAT DOES CONTAIN 1.177 ACRES, MORE OR
LESS. THE COMMISSIONER'S SURVEYOR'S FEES ARE \$25.00 FOR FEET AND
\$2.00 FOR WITNESS STAKER. SURVEYOR'S FEES ARE BASED ON THE LENGTH
OF THE WEST PROPERTY LINE AS DETERMINED BY JOHN H. COOK.



SUBSCRIBED AND SWORN TO BEFORE ME THIS 20th DAY OF MARCH,
ADVERTISING FOR OREGON George J. Cook
MY COMMISSION EXPIRES July 10, 1966

DEDICATION

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 DEDICATE TO THE USE OF THE
PUBLIC FOREVER ALL STREETS ON THIS PLAT.
John H. Cook
John H. Cook, SECRETARY
PRESIDENT

George J. Cook

John H. Cook

John H. Cook

ACKNOWLEDGMENT

ON THIS 20th DAY OF MARCH, 1966, WE APPEARED LA SWARKE,
PRESIDENT, AND GORDON H. RANDALL, SECRETARY, OF M.R.S.
COMPANY INC., A CORPORATION DULY ORGANIZED AND INCORPORATED
UNDER THE LAWS OF THE STATE OF OREGON, TO US, TO BE
THE FIDUCIAL PARTIES DESCRIBED IN AND WHO EXECUTED THE
PRECEDING DEDICATION AND ACKNOWLEDGED TO US THAT THEY
EXECUTED THE SAME FREE AND VOLUNTARILY FOR THE PUR-
POSES THEREIN NAMED. IN TESTIMONY WHEREOF, I HAVE
UNTO SET MY HAND AND SEAL John H. Cook
AND COMMISSION EXPIRES July 10, 1966



DEDICATION

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 DEDICATE TO THE USE OF THE
PUBLIC FOREVER ALL STREETS ON THIS PLAT.

John H. Cook
John H. Cook, SECRETARY
PRESIDENT

Gordon H. Randall
Gordon H. Randall, SECRETARY

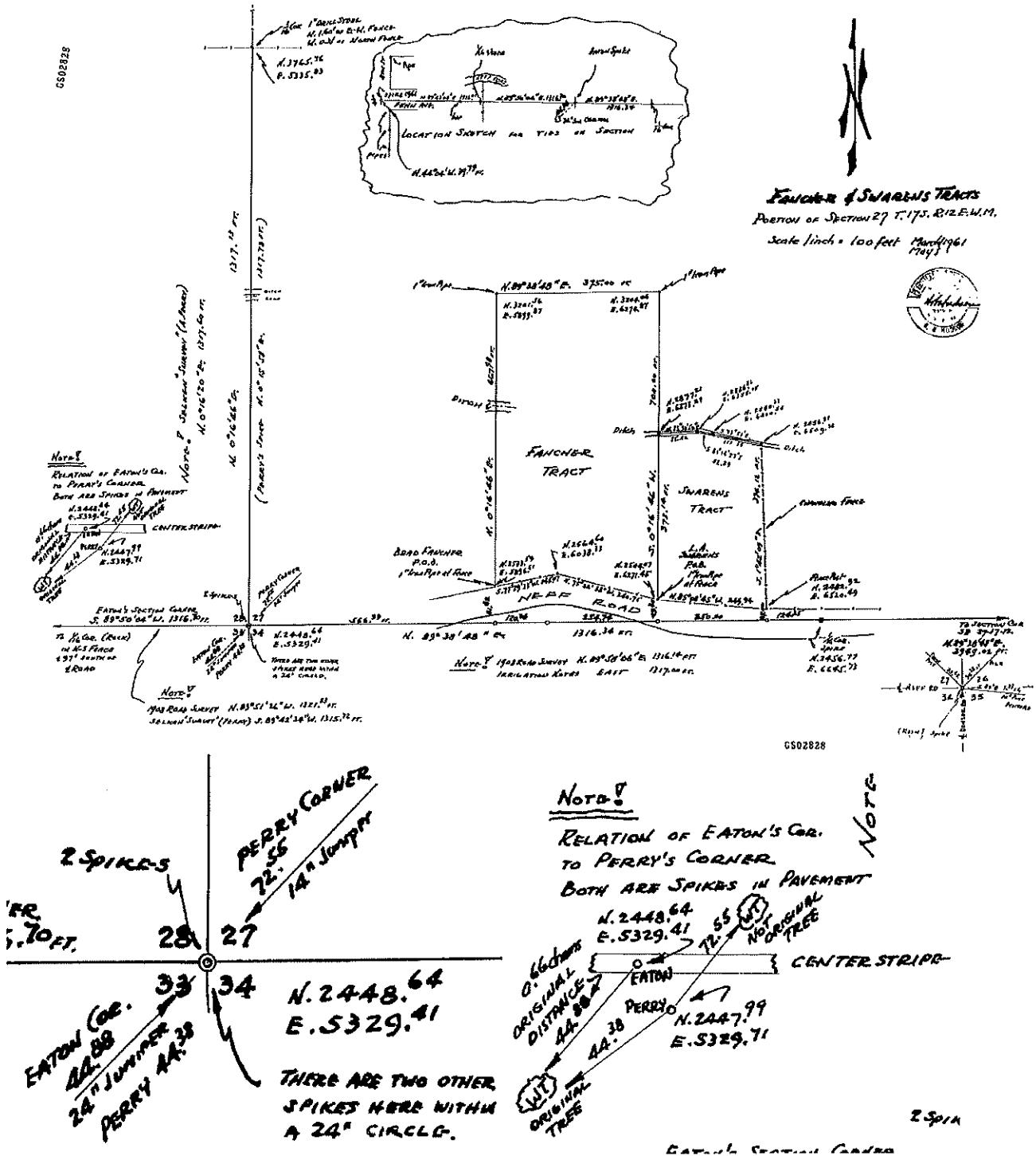
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Exhibit 'E'
Mr. William Hudson's survey, CS02828.



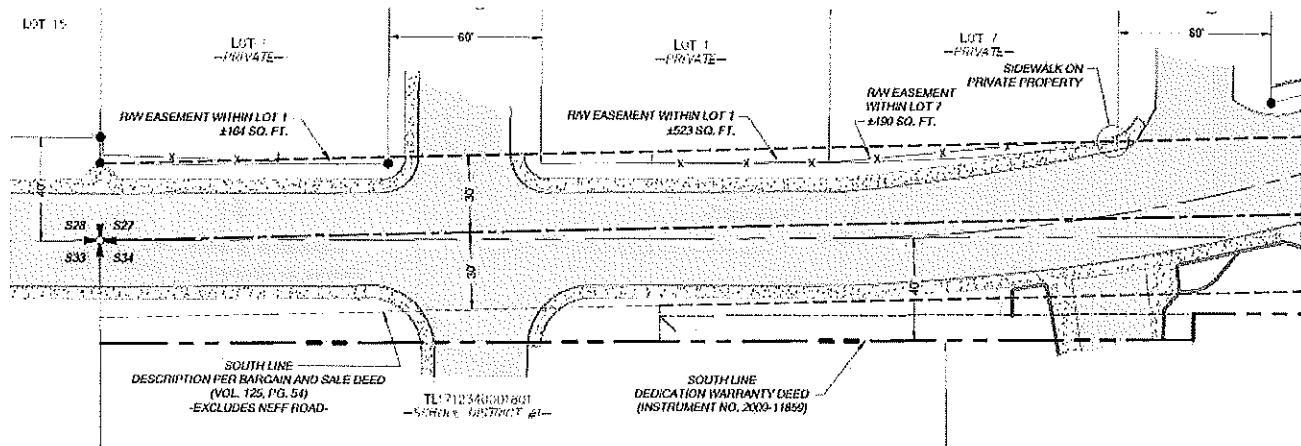
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Exhibit 'F'
ROW Easement encumbrance.

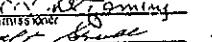
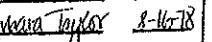
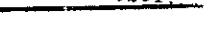


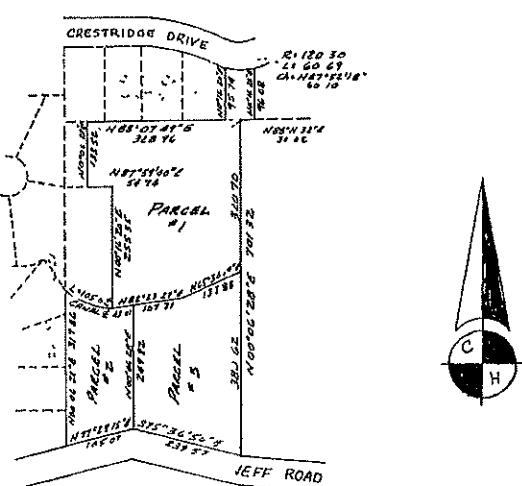
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Exhibit 'G'
Minor Land Partition MP-78-162, by George Colvin, CS02815.

GS02815

MINOR LAND PARTITION	
MP- 78 - 162	DATE 8-10-78
TWSHP 17S RNGE 12E SEC 27 1/4 SEC SW1	
DEED OWNER <u>B. FANCHER</u> <u>60206 TERRAIN RD BEND</u>	
PARTITIONER <u>G L DE BERNARDI</u> <u>1700 N E NEFF BEND</u>	
SURVEYOR <u>COLVIN AND HOERNING</u> ENGINEER <u>942 NW HILL ST BEND</u>	
SEWAGE DISPOSAL <input checked="" type="checkbox"/> SEPTIC TANK <input type="checkbox"/> ZONE R-1 CITY SEWER <input type="checkbox"/> COMMUNITY SEWER <input type="checkbox"/> WATER SOURCE WELL <input type="checkbox"/> CISTERN <input type="checkbox"/> COMMUNITY WATER <input type="checkbox"/> P. U. W. SYSTEM <input checked="" type="checkbox"/> <input type="checkbox"/> TAX LOT NUMBER <u>1712370G-5173</u> <u>AND 7300</u>	
 DESCHUTES COUNTY PLANNING DEPARTMENT Approvals:  County Commissioner 8/17/78  County Commissioner 8/17/78  County Commissioner 8/17/78  County Planning Director 8/16/78  County Senator 8/16/78 GS02815	

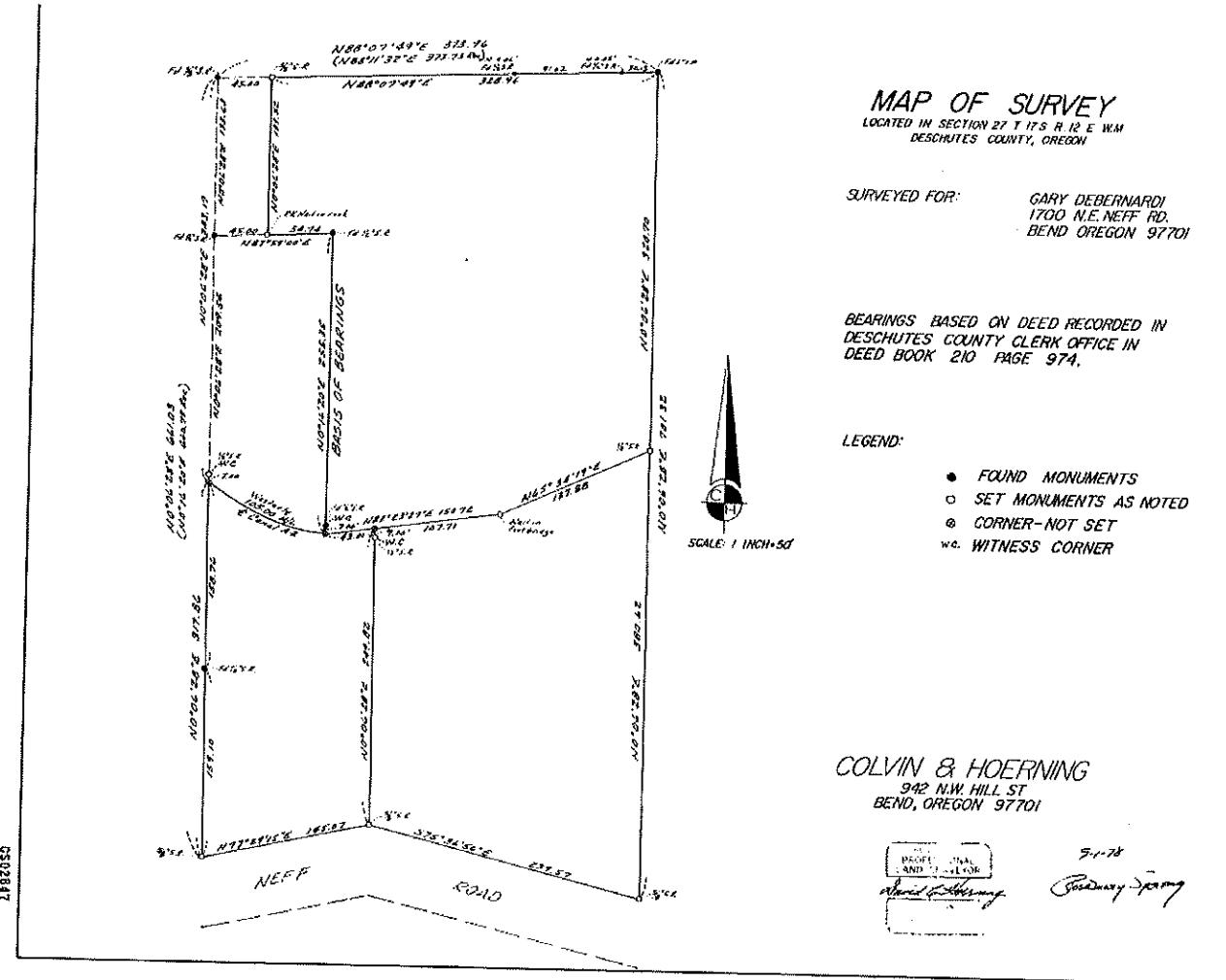


SCALE 1" = 200'

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



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