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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 314120

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

Leonard Browning, a single person Barbara Drake, a single person Appellants, vs. DOTY FAMILY TRUST, Forest C. Doty and Lil Doty, husband and wife, and the marital community composed thereof; Charles C. Amburgey, Sr., and Sandra R. Amburgey, husband and wife, and the marital community composed thereof; Steve Greene, a single person, and Susan Beamer, a single person; CHERITH FAMILY TRUST, and James Gibson and Sylvia Gibson, husband and wife, and the marital community composed thereof, Respondents.	REPLY BRIEF OF APPELLANT BROWNING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES I

CORRECTIONS/OBJECTIONS TO STATEMENT OF CASE ... 1

REPLY TO DOTY'S ARGUMENT 3

REPLY TO DOTY'S ARGUMENT, SECTION B, 1 4

REPLY TO DOTY'S ARGUMENT, SECTION B, 2 5

REPLY TO DOTY'S ARGUMENT, SECTION B, 3 8

REPLY TO DOTY'S ARGUMENT, SECTION B, 4 11

REPLY TO DOTY'S ARGUMENT, SECTION C, 1 12

REPLY TO DOTY'S ARGUMENT, SECTION C, 2 13

REPLY TO DOTY'S ARGUMENT, SECTION D, 1 14

REPLY TO DOTY'S ARGUMENT, SECTION D, 2 20

REPLY TO DOTY'S ARGUMENT, SECTION E 21

REPLY TO DOTY'S ARGUMENT, SECTION F 21

SUBSECTION 1 21

SUBSECTION 2 21

SUBSECTION 3 22

SUBSECTION 4 23

SUBSECTION 5 24

SUBSECTION 6 24

SUBSECTION 7 24

SUBSECTION 8 25

SUBSECTION 9 25

TABLE OF AUTHORITIES

Black's Law Dictionary, Abridged Sixth Edition, 1991, 453. 5, 22

Brown v. Voss, 105 Wn.2d 366, 715 P.2d 514 (1986). 2

City of Spokane v. Catholic Bishop of Spokane,
33 Wn.2d 496, 503, 504, 206 P.2d 277 (1949). 8

Goedecke v. Viking Inv. Corp., 70 Wn.2d 504, 509,
424 P.2d 307 (1964). 11

Granite Beach Holdings, LLC v. State, 103 Wash.App. 186,
11 P.3d 847 (Wash.App.Div. 1 10/30/2000),
citing Hellberg v. Coffin Sheep Co., 66 Wn.2d at 667 12

Grey v. McDonald, 46 Wn.2d 574, 283 P.2d 135 (1955) 10

Harris v. Ski Park Farms, Inc., 120 Wash.2d 727, 738,
844 P.2d 1006 (Wa. 02/11/1993),
citing swan v. O'Leary, 37 Wash 2d 533,
225 P.2d 199 (1950). 5,23

Hellberg v. Coffin Sheep Co., 66 Wn.2d at 667 13

Holland v. Boeing Co., 90 Wn.2d 384, 390-91,
583 P.2d 621 (1978). 4

In re the Marriage of Littlefield, 133 Wn. 2d 39, 47,
940 P.2d 1362 (1997),
citing State v. Rundquist, 79 Wn.App. 786, 793,
905 P.2d 922 (1995) 19

Kemery v. Mylroie, 8 Wn.App. 344,
506 P.2d 319 (1973). 4

Willim H. Kiely and Sally Chapin v.
Kenneth W. Graves and Karen R. Graves, Trustees,
Graves Family, 271 P.3d 226 (Wash. 03/01/2012 11,13

King County v. Hagen, 30 Wash. 2d 847, 853,
194 P.2d 357 (Wa. 06/01/1948). 9,10

Lingvall v. Price, 97 Wash.App. 245,
982 P.2d 690 (Wash.App.Div.2 08/27/1999) 10

Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684,
132 P.3d 115 (2006) 19

McPhaden v. Scott, 95 Wn.App. 431, 439,
975 P.2d 1033, 1038 (1999),
citing Berline v. Robbins, 180 Wn. 176, 189,
38 P.2d 1047 (1934). 7

Mullally v. Parks, 29 Wash.2d 899, 190 P.2d 107
(Wa. 03/01/1948) [with cites to 9 other similar cases] 18,19

Roediger v. Cullen, 26 Wash. 2d 690, 701,
175 P.2d 669 (Wa. 12/19/1946). 8
Roediger at 706, 707,
citing Northwest Cities Gas Co. v. Western Fuel Co.,
13 Wash. 2d 75, 123 P.2d 771 9

Rogers Potato Service, LLC v. Countrywide Potato, LLC,
119 Wash.App. 815, 119 Wash.App. 1002, 79 P.3d 1163
(Wash.App.Div.3 11/04/2003) 20,21

Sweeten v. Kauzlarich, 38 Wn.App. 163, 166,
684 P.2d 789 (1984). 4

Thompson v. Smith, 59 Wash. 2d 397, 406,
367 P.2d 798 (Wa. 01/12/1962). 9

Visser v. Craig, 159 P.3d 453, 139 Wash.App. 152
(Wash.App.Div.2 06/05/2007), 13
citing Hellberg v. Coffin Sheep Co., 66 Wn.2d 664, 667-68,
404 P.2d 770 (1965) 11-12
citing Brown v. Voss, 105 Wn.2d 366, 715 P.2d 514 (1986) 14

Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.,
122 Wn.2d 299, 339, 858 P.2d 1054 (1993) 19

STATUTES:

RCW 7.28.090 11

RCW 8.24 12,1314

RCW 36.75.080 10

RCW 64.12.040 17

CORRECTIONS/OBJECTIONS TO STATEMENT OF CASE

For the sake of clarity and accuracy, Doty's Response Brief contains an error on Page 3, the second paragraph under "A" in the Statement of the Case. It reads, the Farm property borders the "**eastern**" edges . . ." To be accurate, this sentence should read "The Farm property borders the "**western**" edges. . ."

On Page 3 of Doty's Response Brief, Statement of the Case, in the last paragraph, first sentence, Doty states that the Farm property, and at least a portion of Skookum Creek were once commonly owned by Nor-Pac Land and Timber Co., Inc. Neither the property description nor the map/drawing of Section 11 in Ex. D106 show that any portion of Skookum Creek Development is included. This statement is without foundation. Nor-Pac was never a common owner of both the Farm and Lot 21. There is no proof of unity of title in NorPac.

On Page 7 of Doty's Response Brief, Statement of the Case, Doty refers to a letter written by Mr. Browning to Mr. Doty in 2006. (CP 49 – Amended Complaint, Exhibit E thereto) In the letter, Browning claimed Doty had "tied up" this property in "excess of 10 years". Browning does not make reference to Doty's gate. In 2006 when Browning wrote this letter, Doty's gate had not been in existence for 10 years to block Skookum Meadows Drive. (RP 308, ll.8-9; RP 325, ll. 9-10)

On Pg. 7-8 of Doty's Response Brief, Statement of the Case, reference is made to a settlement agreement between Browning/Drake and the Monks. The

easement agreement is unrecorded, permissive, non-transferable, and **not entered into the record**. It permits Drake/Browning to cross Lot 20 through Lot 21 to access the Farm. Upon the sale of the farm, the easement agreement is revoked. See Browning's testimony. (RP 450, ll. 4-11; RP 480, ll. 15-23) See Drake's testimony at RP 511, ll. 8-17. See also Monk's testimony, RP 720, ll. 19-25; and RP 721, ll. 1-13. "Expansion of the dominant parcel [Lot 21], to allow access to land not originally benefited by the easement [the Farm], is a misuse of the easement." Brown v. Voss, 105 Wn.2d 366, 715 P.2d 514 (1986).

On Page 8 of Doty's Response Brief, Statement of the Case, Doty stated that Browning had previously removed trees from the Monks' property. This allegation is based upon a video recording taken by Monk and allowed into evidence for the sole purpose of establishing the credibility of Browning's testimony when he "testified that he did not cut down any trees on Mr. Monk's property". (RP 692, ll. 18-23) The content of the video tape has no relevance to the case at hand other than as an attempt to impeach Browning's testimony. (RP 692 – 694) The video recording depicts two neighbors who obviously dislike each other, intensely involved in an angry exchange of words and threats. The content of the video recording cannot be introduced as evidence, or proof, or suspicion of a timber theft, because the court ruled that it was admitted "for the limited purpose of impeachment". (RP734, ll. 13-14) The Monks settled their claim with Browning/Drake prior to trial, and the Monks' allegations of timber

theft were not litigated at trial. The contents of the video recording did not impeach Browning's testimony. (RP 720, ll. 1-12) As a result, to allege that Browning cut trees on someone else's property is a hearsay statement that cannot be corroborated from the record in this case, is unfounded and irrelevant to this case, could not be considered by the trial court except for impeachment purposes, and cannot be considered in this review.

On Page 9 of Doty's Response Brief, Doty states that Browning/Drake failed to ask the trial court to declare an easement by necessity. To the contrary, Browning/Drake prayed the court for a "declaratory judgment declaring plaintiff Leonard N. Browning has an easement by implication over Lots 23 and 24-DT, 25-CT, and 26-GB. . ." (CP 49, Pg. 14, Paragraph 4.6) Since a necessary element of an easement by implication requires necessity, and in the body of Browning/Drake's Amended Complaint (CP 49, Pg. 10, Paragraphs 3.32, 3.33 and 3.34) the plaintiffs allege necessity, Browning/Drake did, in fact, pray for a finding and declaration of necessity through implication. The challenged findings are erroneous and the conclusions of law are subject to review.

REPLY TO DOTY'S ARGUMENT

The trial court's challenged findings are not supported by substantial evidence, or they contradict the actual facts, or they lack foundation. They do not support the trial court's conclusions of law.

> Where the trial court has weighed the evidence our review is limited to determining whether the findings are supported by substantial evidence and, if so, whether the findings in turn support the trial court's conclusions of law.

Holland v. Boeing Co., 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978).

REPLY TO DOTY'S ARGUMENT, SECTION B, SUBSECTION 1

> Dedication is a mixed question of law and fact. Although an owner's intent to dedicate is a factual question, whether a common law dedication has occurred is a legal issue.

Sweeten v. Kauzlarich, 38 Wn.App. 163, 166, 684 P.2d 789 (1984).

Prior to TransWest's purchase of the Real Property, or the Development property, every prior deed for the property in Section 11 was transferred subject to or reserving the existing roads for the public. (See Exs. P 5, P 8, P 9, P 10, P 13, P 14) The Declaration declares and reserves easements for ingress, egress, and utilities **over and across** the Real Property "as shown on Schedule B", including **existing** roads. (Ex. P-3) The crucial inquiry and decisive factor in the creation of an easement hinge upon the intentions of the parties. Kemery v. Mylroie, 8 Wn.App. 344, 506 P.2d 319 (1973). When the court found that the roadways in the Skookum Creek Development were private easements intended **only** for the owners of the Skookum Creek Lots, its finding was in direct contradiction to the stated intent of the Sellers as found in the Declaration itself.

> The purpose of this declaration is to establish certain protective covenants and easements to promote the orderly use and enjoyment of all of said real property for said purposes, to protect and increase the property value thereof and otherwise **to generally benefit all owners of said real property and the community at large.**

[Emphasis added.] (Ex. P-3)[1] This Declaration was signed, notarized and recorded by the Sellers of the Real Property. The trial court's finding that the easements shown on Schedule B were intended to benefit only the owners of the Skookum Creek lots is in direct contradiction to the Declaration's stated intent. To alter the authors' intent is erroneous and an abuse of discretion, and the trial court's conclusions are subject to review.

> The intention of the parties to the conveyance is of paramount importance and must ultimately prevail in a given case.

Harris v. Ski Park Farms, Inc., 120 Wash.2d 727, 738, 844 P.2d 1006 (Wa. 02/11/1993), citing swan v. O'Leary, 37 Wash 2d 533, 225 P.2d 199 (1950).

> The intention of the parties, especially that of the grantor, is to be gathered from the instrument as a whole and not from isolated parts thereof.

Black's Law Dictionary, Abridged Sixth Edition, 1991, 453.

REPLY TO DOTY'S ARGUMENT, SECTION B, SUBSECTION 2:

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[1] Because the copy of the microfilm is so difficult to read or reproduce, this exhibit was also submitted as Ex. P-15 – "Retyped for clarity purposes".

Doty sets out in his argument a detailed set of requirements to establish an implied easement. He cites various authorities to establish that former unity of title and subsequent separation is the only requirement; and that a quasi-easement and a certain degree of necessity, although they bolster the claim, are not conclusive to an implied easement.

Doty claims that Nor-Pac previously owned the Farm property as well as Lot 21 of the Skookum Creek Development, but there is nothing in the record to substantiate this claim. The legal description of the property transferred to Nor-Pac from Proctor (Ex. D106), does not include even "a portion of Skookum Creek". See the legal description of the Real Property in the Amended Declaration. (Ex. P-3 & 15) Doty's unity of title claim is erroneous.

When Drake traced the deed history of Section 11 (RP 517, ll. 3-9; RP 527, l. 25 & RP 528, ll. 1-3), she discovered that the SW ¼, and the W ½ SE ¼ of Section 11, remained under a unity of title from 1905 to 1959. Then Pend Oreille County, who had acquired title to the S ½ NW ¼; SW ¼; and W ½ SE ¼ of Section 11 in January, 1959 from the Federal Government (Ex. P 12), transferred the W ½ SE ¼ of Section 11 by Treasurer's Deed to T.W. Schwab, et ux. in March, 1959 (Ex. P 13). The Farm is located in the SW ¼ of Section 11; and Lots 21, 22, 25, and 26 of the Development are located in the W ½ SE ¼ of Section 11. At the time of this separation of title, there was only one road on these properties that allowed the owners of the Farm property to access a county road, and that

road is Skookum Meadows Drive. See the 1957 Metsker map showing the roads in Section 11 in the upper center of the map, and showing the ownership of the property in the U.S. prior to its transfer to Pend Oreille County in 1959 (Ex. P-11). The only way to access the Farm was on Skookum Meadows Drive which was reserved in the deed for the public (and accepted as such). At this point in time, Big Dog Drive did not exist. Watertower Lane did not exist. Neither did Big Dog Drive exist at the time of the recording of the Declaration. (See Ex. P 3, Schedule B) The only way for the Farm to access a county road is on Skookum Meadows Drive. The fact that Skookum Meadows Drive was being actively utilized at the time of the formation of the Declaration is revealed by the fact that Schedule B (Ex. P 3) shows the "existing" road continuing on through the outside border of the Development to the Farm. At the time of the separation of title in 1959, Skookum Meadows Drive, as the only existing road, was a reserved and deeded public roadway, and a quasi-easement offering, of necessity, the only method of egress and ingress for the Farm. A careful review of Ex. P-11, the 1957 Metsker map, makes it quite obvious that the farm property, without trespassing on neighbors, cannot create a substitute easement and, of necessity, has no choice but to use Skookum Meadows Drive for ingress and egress. See McPhaden v. Scott, 95 Wn.App. 431, 439, 975 P.2d 1033, 1038 (1999), citing Berline v. Robbins, 180 Wn. 176, 189, 38 P.2d 1047 (1934).

Skookum Meadows Drive was always an inferior road. Ex. P 11; RP 308, ll. 7-9; RP 739 and 740. However, little or no use does not extinguish an easement or deeded public road. It is unnecessary to show that the dedicated property has been used by any certain number of persons for any set period of time; rather it requires merely a showing "that those persons who might naturally be expected to enjoy it have used it to their pleasure and advantage." City of Spokane v. Catholic Bishop of Spokane, 33 Wn.2d 496, 503, 504, 206 P.2d 277 (1949). There is sufficient and substantial evidence to support the fact that Skookum Meadows Drive is an existing road, and has been in existence since at least 1923. See the 1923 Metsker map, 1932 Forest Service aerial photo, and Schedule B of the Declaration. (Exs. P3 or 15, P-6, & P-7)

In Browning's Appellate Brief, Pgs. 24-27, Appellants contested the trial court's finding and conclusion that no implied easement existed.

REPLY TO DOTY'S ARGUMENT, SECTION B, SUBSECTION 3.

> "Public easements by prescription are generally based upon an implied dedication by the owner of the land." [Citations omitted.] Sant v. City of Seattle, 47 Wash. 2d 196, 201, 287 P.2d 130 (Wa. 08/18/1955). In Northwest Cities Gas Co. v. Western Fuel Co., 13 Wash. 2d 75, 123 P.2d 771, decided in 1942 . . . it is said: "An easement of right of way across the land of another, including even the establishment of a public highway over private property, may be acquired by prescription."

Roediger v. Cullen, 26 Wash. 2d 690, 701, 175 P.2d 669 (Wa. 12/19/1946).

In citing Northwest Cities Gas Co. v. Western Fuel Co., 13 Wash. 2d 75, 123 P.2d 771, the court in Roediger, supra at 706, 707, states:

> To establish a prescriptive right of way over the land of another person, the claimant of such right must prove that his use of the other's land has been open, notorious, continuous, uninterrupted, over a uniform route, adverse to the owner of the land sought to be subjected, and with the knowledge of such owner at a time when he was able in law to assert and enforce his rights. These propositions . . . apply when the easement sought is public or private.

"The crucial question then becomes the character of the use. . ." King County v. Hagen, 30 Wash. 2d 847, 853, 194 P.2d 357 (Wa. 06/01/1948).

Throughout the years, the uses the public has made of "Skookum Meadows Drive" are various, and are not limited to ingress and egress to a dominant estate.

> [In] such prescriptive public road cases as Gray v. McDonald (1955), 46 Wash. 2d 574, 283 P.2d 135; Gray v. McDonald (1958), 52 Wash. 2d 822, 329 P.2d 478; and King County v. Hagen (1948), 30 Wash. 2d 847, 194 P.2d 357, . . . the public had used for the prescriptive period the road or way to get some place other than the property of those who had a right to the use of the road as a private way.

Thompson v. Smith, 59 Wash. 2d 397, 406, 367 P.2d 798 (Wa. 01/12/1962).

See testimony of Lawrence Ashdown (RP 179-181, 183, 185, 187-189, 194, 196); and John Provo (RP 282, 284-286, 288, 291, 295, 302); Leonard Browning (RP 352-354, 356). This public use was always exercised as a matter of right. Permission was never sought. Nor was the public's use of the road ever

challenged by any successors in interest. "[U]nchallenged use for the prescriptive period is a circumstance from which an inference may be drawn that the use was adverse." (Citations omitted.) Lingvall v. Price, 97 Wash.App. 245, 982 P.2d 690 (Wash.App.Div.2 08/27/1999) If the public utilizes the right of way for the prescriptive period for its own use, rather than as a means of ingress to or egress from the dominant estates, a public easement by prescription may be found. Grey v. McDonald, 46 Wn.2d 574, 283 P.2d 135 (1955); King County v. Hagen, 30 Wn.2d 847, 194 P.2d 357 (1948). State law RCW 36.75.080 allows public easements by prescription if the right of way has been used as a public highway for over 10 years – "All public highways in this state, outside incorporated cities and towns and not designated as state highways which have been used as public highways for a period of not less than ten years are county roads".

Citing Stofferan v. Okanogan County, the Hagen court states:

> In this state, however, we have repeatedly held that roads may be established by prescription by the use by the public . . . where not so kept up at public expense . . . for a period of . . . ten years. (Citations omitted). It is plain that, under the authority of the foregoing decisions, a public highway in this state may be just as effectually established by prescription as by order of the county commissioners on petition.

King County v. Hagen, Supra at 855, 856, 857.

> Land does not lose its character as a public property merely because no public funds are expended for the maintenance or upkeep of the public facility.

Goedecke v. Viking Inv. Corp., 70 Wn.2d 504, 509, 424 P.2d 307 (1964).

REPLY TO DOTY'S ARGUMENT, SECTION B, SUBSECTION 4

Doty then claims that the Dotys extinguished any easement Drake/Browning may have had through adverse possession. In Willim H. Kiely and Sally Chapin v. Kenneth W. Graves and Karen R. Graves, Trustees, Graves Family, 271 P.3d 226 (Wash. 03/01/2012), the Supreme Court opined as follows:

> Land does not lose its character as a public property merely because no public funds are expended for the maintenance or upkeep of the public facility. Goedecke v. Viking Inv. Corp., 70 Wn.2d 504, 509, 424 P.2d 307 (1964).
>
> This case hinges on whether an easement dedicated for a public thoroughfare constitutes "lands held for any public purpose" under RCW 7.28.090. We hold it does.
>
> . . ., it is significant to note that one clause of RCW 7.28.090 prohibits adverse possession of government owned property and another clause disallows adverse possession of "lands held for any public purpose." . . . the legislature must have intended the clause [lands held for any public purpose] to refer to land held by the government in something less than fee simple. An easement logically would be such a property interest.
> . . .
> When the public holds an easement, the "lands held for any public purpose" prong of RCW 7.28.090 is satisfied, barring adverse possession claims against that property.

"An easement of necessity is an expression of a public policy that will not permit property to be landlocked and rendered useless." Visser v. Craig, 159 P.3d 453,

139 Wash.App. 152 (Wash.App.Div.2 06/05/2007), citing Hellberg v. Coffin Sheep Co., 66 Wn.2d 664, 667-68, 404 P.2d 770 (1965).

Doty's claim of adverse possession does not meet the requirements necessary to extinguish an easement. From the time that he installed a gate across the road in 1998 to the filing of this lawsuit in 2006, only eight years had elapsed. This action did not meet the 10 year requirement.

REPLY TO DOTY'S ARGUMENT, SECTION C, SUBSECTION 1

Doty claims that "Appellants' Amended Complaint failed to make a statutory condemnation claim or to ask the trial court to declare an easement by necessity". Browning does "not now advance a new legal theory" by claiming an easement pursuant to RCW 8.24.

> [C]ondemnation by RCW 8.24 is not necessary where the landlocked party has an easement by implication over the land to be condemned.

Granite Beach Holdings, LLC v. State, 103 Wash.App. 186, 11 P.3d 847 (Wash.App.Div. 1 10/30/2000), citing Hellberg v. Coffin Sheep Co., 66 Wn.2d at 667.

Browning claims that Skookum Meadows Drive is reserved for the public, and that claim cannot be obliterated by a claim for adverse possession. Kiely v. Graves, Supra.

"An easement of necessity is an expression of a public policy that will not permit property to be landlocked and rendered useless." Visser v. Craig, Supra. In this case, despite Browning/Drakes' proofs that Skookum Meadows Drive is a public road, and their claim of necessity, and implication, the trial court abused its discretion by ruling contrary to public policy that the Farm is landlocked.

REPLY TO DOTY'S ARGUMENT, SECTION C, SUBSECTION 2:

Doty's entire Argument hereunder does not address Browning's issues as presented in his Appellant Brief. It is an argument pertaining to a condemnation claim pursuant to RCW 8.24. Such a claim is unnecessary "where the landlocked party has an easement by implication over the land to be condemned." Hellberg v. Coffin Sheep Co., 66 Wn.2d at 667. In addition to the implied easement claim pursuant to the separation from unity of title, Browning also claims that Skookum Meadows Drive is a road that has been reserved for and accepted by the public through successive deeds since 1905. The necessity for the route along Skookum Meadows Drive results from the fact that the current Farm access was granted personally to Browning and Drake individually and does not run with the property. Browning/Drake have a deeded access to Lot 21 through Lot 20, but it

does not extend to the Farm. "Expansion of the dominant parcel, to allow access to land not originally benefited by the easement, is a misuse of the easement. Visser, Supra, citing Brown v. Voss, 105 Wn.2d 366, 715 P.2d 514 (1986). The permissive easement granted to Browning/Drake dissolves upon the divestiture of Lot 21 and/or the farm. The record contains no express easement for the benefit of the Farm across Lot 20. However, the road currently known as Skookum Meadows Drive has provided the only access to the farm property since, at least 1923, when it was depicted on the Metsker map, displayed in aerial photos, and referred to in deeds as an "existing" road reserved for the public. (See Exs. P-6, P-11, P-7, P-5, P-8, P-9, P-10, P-13) Indeed, a "reasonable necessity" exists to utilize Skookum Meadows Drive as the implied easement that it is, without the necessity of pursuing a statutory condemnation action pursuant to RCW 8.24.

REPLY TO DOTY'S ARGUMENT, SECTION D, SUBSECTION 1:

In reply to Doty's Argument, Browning maintains that the trial court refused to address the location of the boundary during the entire trial, the Presentment Hearing on January 3, 2013, and the post judgment motion for reconsideration hearing on January 31, 2013. On the last day of trial, the trial court stated:

> [T]here's a number of issues that aren't properly before the court – For example, the true boundary line on the east edge of the farm

> property and the west edge of the Skookum Creek property. . . is it the fence line, is it the survey line, what is it – not properly before the court. Nobody said "determine that." (RP 866, ll. 10-17)
> . . .and . . .
> I say, well, there won't be a determination from me. . ." (RP 866, l. 24)

At the presentment hearing on January 3, 2013, Browning raised the objection that since the boundary had never been established, how could the court come up with damages. (RP 888, l.25; RP 889, ll.1-4, 20-25) At the hearing on Browning's Motion for Reconsideration held January 31, 2013, Browning again objected to the trial court establishing the property boundary when the issue had never been determined, when the parties had never been allowed to argue the boundary, when the parties had not been allowed to present evidence in this regard. None of the parties had asked the court to establish a property boundary. In effect, the trial court created an issue, refused to allow the parties to present evidence or testimony in regard to the boundary, and then ruled on it. (Mot. for Reconsideration, 1/31/13, Pg. 5, ll. 13-25; Pg. 6, ll. 1-11) The old fence line had been installed by a previous owner of the Farm and had been installed as a boundary line fence. There is ample testimony in the record from everyone that testified in regard to the old fence line that it was the boundary between the Farm property and the Skookum Creek Development lots. Browning's Appellant's Brief (Pgs. 32-35) cited the various specific instances where this occurred.

The survey upon which the trial court relied to establish the boundary between the Farm and the Dotys' property was performed in 2006 (Ex. D-121) - after Browning cut the trees in the old fence line. As soon as Doty informed Browning that there was a dispute regarding the boundary, Browning ceased all work on repairing or replacing the old fence line until the matter could be resolved. (RP 363, ll. 10-25) Doty never told Browning about the survey, and testified that the corner pins were underground so they couldn't be "removed", which also served to hide any evidence of the survey. (RP 742, ll. 15-17)

Doty testified (RP 348, ll. 13-25, RP 349, l. 1) that when he bought Lots 22 and 23 in 1998, there was an old barbed wire fence along the west side of Lot 22, between his property and the Farm. This fence went all the way down to the southwest corner of Lot 26. This fence was accepted as a line or boundary fence between the Farm and Skookum Creek Development by everyone, and there is absolutely no testimony from anyone at trial to discredit the fence being accepted as the determination of the boundary between the properties. In his counterclaim, Doty alleges that Browning "removed an existing fence line between the property the plaintiff was leasing and the defendant's property". (CP 86, Pg. 6, Paragraph 15) Doty and Browning spoke one day after Browning had removed some of the trees that were "right in the fence line, some small ones" (RP 362, ll. 21-22), and Doty never mentioned anything about any timber theft, or survey, or allegations that Browning had trespassed on his property. However, he did ask that

Browning cease working on the boundary fence – a request granted by Browning who put up the temporary fence for his animals out of cattle panels, tied with bailing twine to the trees, and discontinued all attempts to repair the old fence line until this matter could be settled. (RP 363) There is nothing in the record to indicate that once Browning learned that there was a dispute involving the boundary line, he cut any more trees or shrubs, but stopped his efforts to repair the old fence line. There is an aerial photo that bolsters the fact that the old fence line was accepted through mutual recognition and acquiescence of the parties to be the boundary line. (See Ex. D101) The Farm has been logged and cleared up to the tree line. The Development lots that adjoin the farm are treed up to the fence line. In addition, Exs. D501 A & B, which are photos of Gibson's property, show the fence posts from the old fence line, the stacks of wood along the old fence line, a stack of new fence posts that Browning intended to use in the repair of the fence. The temporary cattle panel barrier fence that Browning tied to the existing trees as a barrier to keep his animals in is also shown. (RP 431-432) There are no stumps showing between the old fence line and the temporary barrier fence on Gibson's property. The pictures are taken looking north. Doty's property is the next lot north from where Gibson is standing.

> Under RCW 64.12.030, a party may recover treble damages for injury to a tree or shrub on their land. Judgment is limited to single damages where a defendant had probable cause to believe that the land on which such trespass occurred was his own. RCW 64.12.040.

> In a long line of decisions, this court has consistently held that where boundaries have been defined in good faith by the interested parties, and thereafter for a long period of time acquiesced in, acted upon, and improvements made with reference thereto, such boundaries will be considered the true dividing lines and will govern, and whether the lines as so established are correct or not becomes immaterial. Mullally v. Parks, 29 Wash.2d 899, 190 P.2d 107 (Wa. 03/01/1948) [with cites to 9 other similar cases]

In Mullally, where a person deliberately and intentionally destroys trees and other property in an area **with knowledge of a bona fide boundary dispute,** he cannot justify his act on the basis that he had probable cause to believe he owned the land, and he is subject to treble damages. There is nothing in the record to indicate that Browning had any previous knowledge of any boundary dispute when he started on his project to repair the old fence line.

Proctor purchased the SW ¼ of Section 11 (which included the Farm – the E1/2SW1/4) in 1968 from Pend Oreille County (Ex. P-14), and sometime after this, fenced the property boundaries for the purpose of running cattle. Tracy Monk, a witness at trial, testified that he had worked for Proctor "from probably '63 to '69". Monk worked on "the long fence in between what's called the Farm and the Ted Schwab property, which is now the Skookum Creek development." (RP 685-686) When Browning claims to be the owner of the fence, his claim is based upon the fact that he is a successor owner of Proctor's property which

includes Proctor's fence. Under Mullally, a party need only be appraised that the other party disputes the boundary and then act with that knowledge to be subject to treble damages. Mullally, supra at 911.

> A trial court abuses its discretion when it bases its decision on manifestly unreasonable or untenable grounds. Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) We may find an abuse of discretion where the trial court relies on unsupported facts, adopts a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

In the case at hand, the trial court refused to allow the parties to argue the boundary line, thereby removing Browning's defense to the charge of trespass. There was no evidence introduced establishing that Browning had known there was a boundary dispute. Doty's survey was done at least two years after the trees were cut without notifying Browning. The survey stakes were hidden. There is no basis in the record, or any indication from the trial court to substantiate its findings that Browning acted willfully and intentionally. The trial court has abused its discretion because its decision is based on untenable grounds for untenable reasons. The finding is untenable because "it is based on an incorrect standard or the facts do not meet the correct standard." In re the Marriage of Littlefield, 133 Wn. 2d 39, 47, 940 P.2d 1362 (1997), citing State v. Rundquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995).

REPLY TO DOTY'S ARGUMENT, SECTION D, SUBSECTION 2:

Defendant's expert witness, Tim Kastning, by his own admission, was not competent to determine where the boundaries of Doty's property were located, or if the stumps he was assessing were located on Doty's property. (RP 661, ll. 4-12) "Q. And you didn't know whose property it was on. A. Very likely, I **presume** that it's on Mr. Doty's." Kastning included multiple photos in his "report" (Ex D120), however provided no key to their relevance or the location of the stumps. He could not identify where or why he had taken many of the photos he had included in the report. (RP 657, ll. 1-6; 658, ll. 5-8; 661, ll. 1-12) In his testimony (RP 660, ll.1-2), he testified: "No; **I'm pretty confident** that all the stumps that I measured were between the old fence line and the new fence." He made no effort to ascertain the exact location of the boundary fence, but merely speculated as to its location. (RP 659, ll. 15 – 25, 660, ll.1-2) He stated: "I do not know where Mr. Doty's property is except for what he told me. . ." (RP 673, ll. 5-6) In direct examination (RP 638, ll. 21-22) he stated, "I'm not sure – You'll have to forgive me; I'm not sure exactly of the north, south, east and west."

> [T]he opinion of an expert must still be based on facts; opinions based on assumptions are not sufficient. [Citations omitted] An expert's opinion must have a proper foundation. [Citations omitted]

Rogers Potato Service, LLC v. Countrywide Potato, LLC, 119 Wash.App. 815, 119 Wash.App. 1002, 79 P.3d 1163 (Wash.App.Div.3 11/04/2003).

The number and location of the stumps included in Kastning's report was arrived at without a proper foundation. The facts are insufficient to support the expert's opinion, and the trial court's finding cannot be sustained. "To the extent the court's conclusions of law depend on this finding, they too are" without foundation. Id, supra.

RESPLY TO DOTY'S ARGUMENT, SECTION E: By way of reply, Browning relies on his argument contained on Page 52 of his Appellate Brief with the references to his prior objections.

REPLY TO DOTY'S ARGUMENT, SECTION F:

1. Findings of Fact 1.1 and 1.2:

The two errors in Findings of Fact 1.1 must be corrected for accuracy. They are clerical error and inaccurate.

Regarding the trial court's failure in Finding 1.2 to include the fact that Browning was also leasing Lot 21 from Drake at the filing of the Amended complaint, the omission of this language from the findings, in effect weakens Browning's standing to have brought the suit.

2. To say the "the trial court's paraphrasing in Finding 1.8 of the Declaration accurately reflects its meaning", is to distort a distortion. The "paraphrase" is not supported by substantial evidence, and fails to meet the demands of "The Four

Corners Rule" Black's Law Dictionary, Supra at 453. It is not only inaccurate, but it is deficient in the following respects:

In the paraphrase, the court finds that the reserved easements are for ingress, egress and utilities "to each property subject to the Declaration." In reality, the Declaration clearly states the easements are for ingress, egress, and utilities "over and across the Real Property." These are two very different concepts. Obviously, the trial court's paraphrase is not supported by substantial evidence, is without foundation, and distorts the intentions of the authors of the Declaration. The trial court also failed to include the second sentence of Article C in Section 1, wherein the authors of the declaration refer to the easements as following the centerline of each existing or proposed road "as located on the attached Schedule B." The framers of the Declaration utilized the existing roads for the convenience of the development lot owners and, as stated in the preamble, for "the community at large." Substantial evidence does not exist to support the "paraphrased" finding 1.8. The "paraphrased" finding distorts the intent of the Declaration. The "paraphrased" finding is without foundation, and therefore the trial court's conclusion is subject to review.

3. Regarding Finding No. 1.11, Defendant Doty stated on Pg. 32, Paragraph 3 of his Response Brief that the court found the easement roads to be private and to benefit **only** the development lot owners. "The intention of the parties to the conveyance is of paramount importance and must ultimately prevail in a given

case." Harris v. Ski Park Farms, Inc., 120 Wash.2d 727, 738, 844 P.2d 1006 (Wa. 02/11/1993), citing Swan v. O'Leary, 37 Wash. 2d 533, 225 P.2d 199 (1950). Not only is Finding 1.11, that the easement roads were intended only for the Skookum Creek owners, not based on substantial evidence, but the trial court's finding is in direct contradiction of the stated intent of the authors.

Sweeten v. Kauzlarich, 38 Wn.App. 163, 166, 684 P.2d 789 (1984) supports the premise that a dedication may be accomplished under statute or at common law, and "whether a common law dedication has occurred is a legal issue" and subject to review.

4. The gate Doty installed in "'91 or '92" blocked the driveway to Doty's house, but did not block Skookum Meadows Drive. Finding No. 1.12 has no foundation and substantial evidence does not support it. The gate Doty installed in '98 did block access, but had not been in existence for 10 years when Browning filed suit in 2006.

The last sentence in the court's Finding No. 1.12 is as follows:

> At no time has there been open, notorious, continuous or hostile use of any access or roads within the Skookum Creek Declaration by the owners of the farm property or any other owners of property lying west of the farm property.

This statement is clearly erroneous. Not only does it lack "substantial evidence", but there is absolutely nothing in the record to support it. It lacks foundation. When Browning/Drake access the farm, as they have done so openly and

continuously since Browning first purchased it in 2002 (Ex. D 108), and of necessity they travel on roads within the Development. In addition, Browning has helped maintain the roads in the Development with his road equipment without seeking permission but as a right. (RP 689, ll. 12-20).

5. The easements granted to the Skookum Creek Development lot owners are designated on their deeds as being "non-exclusive", contrary to the court's Finding of Fact No. 1.13.

6. The trial court finds "There is no implied easement in favor of plaintiff which would allow access through Skookum Meadows to any county road." As argued in Browning's Appellate Brief, Pg. 25, this Finding No. 1.14 is in reality a conclusion of law and subject to review.

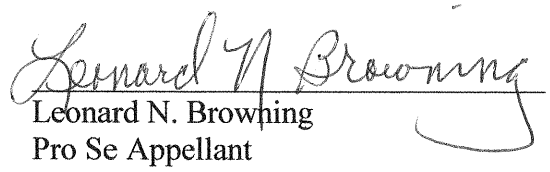
7. It is difficult to understand the exact meaning of Finding No. 1.15. Drake owns both Lot 21 and the Farm (CP 49), but both parcels were purchased separately from different owners. No deeded easement through Lot 20 to Watertower Lane exists for the Farm property, and there is no evidence in the record to support this finding, which is without foundation and erroneous. Schedule B (Ex. P 3 or 15) clearly reveals that Lot 21 does not intersect with Watertower Lane, making this finding by the trial court erroneous. The court then finds that this "extension of the road to Watertower Lane" was not allowed for, nor did it grant Drake the use of Watertower Lane, nor any other roadway within the Skookum Creek Declaration. This portion of the finding, again, is

without foundation and erroneous. By virtue of Drake's ownership of Lot 21, she enjoys all of the covenants and easements appurtenant to this ownership interest, including the use of Watertower Lane and Skookum Meadows Road. (Ex. P 3, or P-15) This entire finding lacks foundation, is not supported by substantial evidence, and is therefore erroneous.

8. Finding No. 1.18 is erroneous in its entirety. Big Dog Drive does not allow the farm property to access any easement roadway shown within the Skookum Creek Declaration. The trial court has acted contrary to public policy in the state of Washington by finding that the farm is landlocked, and concluding that the only way to cure this problem is by a condemnation action pursuant to RCW 8.24, in spite of the fact that Skookum Meadows Drive is a public road. This finding is erroneous, not supported by substantial evidence, is an abuse of discretion, and comes to a conclusion of law that is subject to review.

9. Browning relies upon his earlier argument herein regarding Finding No. 1.19, as well as the argument contained in his Appellate Brief beginning on Page 31 therein, in regard to any timber trespass that is alleged to have occurred. The trial court's finding that Browning intentionally and without authority, without probable cause to believe he owned the property, removed trees from Doty's property is without foundation. The value of the trees was determined by conjecture and assumption because it was not properly determined upon whose property these trees were taken, and the finding is erroneous.

Respectfully submitted this 30th day of December, 2013.



Leonard N. Browning
Pro Se Appellant

CERTIFICATE OF SERVICE

Leonard N. Browning, Appellant herein, under penalty of perjury of the laws of the state of Washington, does hereby certify and declare that I mailed a true and correct copy of my REPLY BRIEF OF APPELLANT BROWNING on the ____ day of December, 2013, to the parties and their attorneys herein:

Mr. Neil E. Humphries
Attorney for the Dotys
421 W. Riverside Ave., Ste. 1555
Spokane WA 99201-0402

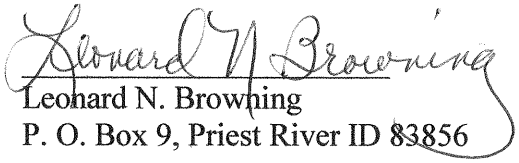
Mr. Michael J. McLaughlin
Attorney for Amburgeys
312 S. Washington Avenue
Newport WA 99156

Mr. Steve Greene
Ms. Susan Beamer Greene
7501 S. Greens Ferry Road
Coeur d'Alene ID 83814

CHERITH TRUST
James and Sylvia Gibson
P. O. Box 2208
Priest River ID 83856

Mr. Eric Shumaker
Attorney for Barbara Drake
113 E. Baldwin Avenue
Spokane WA 99207

Signed at Newport WA this 30th day of December, 2013.



Leonard N. Browning
P. O. Box 9, Priest River ID 83856

APPENDIX

For the convenience of the Court, Browning has attached hereto some copies of the documents and exhibits referred to in this Reply Brief.

- A copy of the trial court's Findings of Fact and Conclusions of Law.
- Pages 1 and 6 contain a reference to Ex. D106: The Proctor to NorPac deed.
- Page 1 contains a reference to CP 49, the Amended Complaint, Exhibit E: Browning's letter to Doty.
- Pages 3 and 24 refer to portions of CP 49, Pg. 14, Paragraph 4.6; and CP 49, Pg. 10, Paragraphs 3.32, 3.33 and 3.34: the Amended Complaint.
- Pages 4, 5, 6, 7, 24, and 25 contain references to Ex. P3: the Skookum Creek Declaration of Covenants and Easements.
- Page 6 contains a reference to Ex. P13: The Pend Oreille County Treasurer's Deed to Schwab in 1959.
- Pages 7,8, and 14 contain references to Ex. P11: the 1957 Metsker Map.
-Pages 8 & 14 contain references to Ex. P6: The 1923 Metsker map; and Ex. 7: The 1932 Forest Service aerial photo.

- Page 15 contains a reference to the transcript of the RP - Motion for Reconsideration hearing held January 31, 2013, Pages 5 & 6.

- Page 16 contains a reference to CP 86 – Doty's Counterclaim, Page 6, Paragraph 6.

- Page 17 contains a reference to Ex. D101: This exhibit is an oversize aerial photo of the area showing the treeline where the old fence established a boundary between the Farm and the Development in a north/south direction. It is too large to attach here.

- Page 17 contains a reference to Exs. D501A and D501B: Pictures submitted by Gibson showing his property, fence posts, and tree line.

- Page 20 contains a reference to Ex. D120: The "report" of Kastning, the defense's expert witness. The only copy of this report that Browning has is black and white. Browning has only enclosed a portion of the report. The original report that was entered as evidence has colored photos, and they are much easier to read.

- Page 24 contains a reference to Ex. D108: Browning's deed to the Farm containing an easement for the Farm on Lot 21, not Lot 20.

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TAMMIE A. GWINSEY
CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PEND OREILLE

LEONARD N. BROWNING, a single person, and BARBARA DRAKE, a single person, Plaintiff, v. DOTY FAMILY TRUST, FOREST C. DOTY and LIL DOTY, husband and wife, and the marital community composed thereof; CHARLES C. AMBURGEY, SR., and SANDRA R. AMBURGEY, husband and wife, and the marital community composed thereof; TRACY D. MONK and PATRICIA L. MONK, husband and wife, and the marital community comprised thereof; STEVE GREEN, a single person; SUSAN BEAMER, a single person; CHERITH FAMILY TRUST, and JAMES GIBSON and SYLVIA GIBSON, husband and wife, and the marital community composed thereof, Defendant.	NO. 06-2-00139-3 FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER TRIAL

176

Superior Court
Stevens, Pend Oreille & Ferry Counties
215 S. Oak, Suite 209
Colville, WA 99114-2861

THIS MATTER came on for trial on August 24 and 27 through 29, 2012, on the complaint of plaintiff Leonard Browning for an easement, a declaration of rights and an injunction, as well as on the counterclaim of defendant Doty for timber trespass. The plaintiff's Complaint was joined by plaintiff Barbara Drake. Plaintiff Leonard N. Browning was self-represented. Plaintiff Barbara Drake was represented by attorney Eric R. Schumaker. Defendant Doty Family Trust and Forest D. Doty and Lil Doty were represented by attorney Neil E. Humphries. Defendant Charles C. Amburgey, Sr. and Sandra R. Amburgey were represented by attorney Michael McLaughlin. Defendants Tracy D. Monk and Patricia L. Monk were represented at the outset of the trial by Timothy P. Cronin, but settled their claims with the plaintiffs and the Court signed a mutual dismissal of claims prior to trial. Defendants Steve Green and Susan Beamer have married since the filing of the complaint in this matter, and were self-represented. The Cherith Family Trust was represented by James Gibson and Sylvia Gibson, presumptively its trustees, and were also self-represented. The Court heard testimony from each of the parties, as well as witnesses Lawrence Ashdam, Brandon True, Barbara Price, John Provo, Don Ramsey, Tim Kastning, and Tracy Monk. The Court also admitted and reviewed 72 exhibits.

Based on the testimony of the witnesses, the exhibits admitted at trial and the arguments of the parties, the Court does now make the following:

I. FINDINGS OF FACT

1.1 Plaintiff Leonard Browning is a single person and a resident of the State of Idaho. At the outset of the case in August, 2006, Mr. Browning was a lessor with option to purchase certain real property owned by Barbara Drake, to-wit:

Superior Court
Stevens, Pend Oreille & Ferry Counties
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> The East half of the Southwest quarter (E1 ½ of the SW ¼) of Section 11, and that part of the Northeast quarter of the Northwest quarter (NE ¼ of the NW ¼) of the North half of the Northwest quarter of the Northeast quarter (N ½ of the NW ¼) of the NE ¼ of Section 14, lying North of the South Fork of Skookum Creek, all in Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The above-described property is hereafter referred to as the "Farm Property," and lies directly west of and abuts the west boundary of property in the Skookum Creek large lot segregation, as hereinafter described. By its terms, the Lease Purchase Agreement includes only the above-described farm property, and was executed February 1, 2008. The agreement provides for $200 monthly payments, with the purchase price to be paid at the conclusion of its five year term. As of the date of trial, Mr. Browning had not exercised the option to purchase.

1.2 Plaintiff Barbara Drake is a single person and a resident of the State of Washington. She is the titled owner of the real property described in 1.1, above. In addition, Ms. Drake is also the owner of the following described property which is located within the Skookum Creek large lot segregation, and therefore subject to the Skookum Creek Declaration hereafter referenced:

> The N ½ of the NW ¼ of the SE ¼ in Section 11, Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The described property is identified as Lot 21 on the Skookum Creek large lot segregation.

1.3 Defendants Forest Doty and Lil Doty are husband and wife and residents of Pend Oreille County, Washington and, through the Doty Family Trust, are the owners of the following described property:

Superior Court
Stevens, Pend Oreille & Ferry Counties
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The NW ¼ of the SE ¼ of the SE ¼; and the S ½ of the NW ¼ of the SE ¼; and the S ½ of the NE ¼ of the SE ¼, all in Section 11, Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The above-described property encompasses Lots 22 through 24 of the Skookum Creek large lot segregation, as later addressed herein.

1.4 Defendants Charles Amburgey and Sandra Amburgey are husband and wife and residents of Pend Oreille County, Washington, and are the owners of the following described property:

The SW ¼ of the NE ¼ of Section 11, Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The described property is identified as Lots 17 and 18 on the Skookum Creek large lot segregation.

1.5 While defendants Steve Green and Susan Beamer took title as individuals, they are now husband and wife and residents of the State of Idaho, and are the owners of the following described real property:

The S ½ of the SW ¼ of the SE ¼ of Section 11, Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The described property is identified as Lot 26 on the Skookum Creek large lot segregation.

1.6 Defendants James Gibson and Susan Gibson are residents of the State of Idaho and, through the Cherith Family Trust, are the owners of the following described real property:

The N ½ of the SW ¼ of the SE ¼ of Section 11, Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

The described property is identified as Lot 25 on the Skookum Creek large lot segregation.

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1.7 The real property owned by the named ~~properties~~ parties (excepting the farm property) is subject to the Skookum Creek Declaration of Protective Covenants and Easements recorded August 8, 1972, and as amended by an Amended Declaration recorded May 22, 1973. The property within and encompassing the Skookum Creek Declaration was a large lot segregation, exempt from platting requirements. The real property subject to the Declaration and the roads serving the property were shown on an attached Schedule B. The roads as shown on the Declaration are not located in the precise position shown on Schedule B; there is no indication that either the numbered lots or the roads shown on Schedule B were ever surveyed by the developer.

1.8 Article C, Section 1 of the Declaration reserves a 60 foot wide, non-exclusive private easement for ingress, egress and utilities to each property subject to the Declaration. At Article C(4), the seller reserves easements for drainage and utility purposes along a ten (10) foot strip of land abutting any or all of the exterior boundaries of each parcel in the large lot segregation. The use of the word "abutting" is intended to provide for the easement being placed within the exterior ten (10) feet of any lot subject to the Declaration.

1.9 Article C(5) declared that the easements would be divisible, perpetual and assignable, and be apportioned to and run with the real property subject to the Declaration.

1.10 All rights under Article C of the Declaration were reserved to the sellers; there is no stated mechanism for the reserved rights to devolve to the purchasers of property subject to the Declaration.

1.11 All easements shown on Schedule ~~D~~ B were intended to benefit only the owners subject to the Declaration. Thus, while Schedule ~~D~~ B shows one of the easement

Superior Court
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roads as travelling outside the boundaries of the property subject to the Declaration on the southwest, there is no intent that the easements and/or roads benefit anyone other than the owners of the property subject to the Declaration.

1.12 In 1991 or 1992, defendant Forest Doty placed a gate across an access near his home on Lot 24. At various times in the past, this same access, which also runs southwest and through the property of defendants Gibson and Green, had been episodically used to provide access to the farm property and other property lying west of the farm property. The access leading to the Gibson and Green properties remains a seasonal access, given the watery soil conditions. At no time has there been open, notorious, continuous or hostile use of any access or roads within the Skookum Creek Declaration by the owners of the farm property or any other owners of property lying west of the farm property.

1.13 As any access from the Doty property to the Gibson and Green properties is described as private and divisible, the Court finds that the benefit of the access provided by the easement/pathway to the Gibson and Green properties is exclusive to them, and not to any other owner of property subject to the Declaration. Because the road easements shown on Schedule B of the Declaration run with the land, no owner has the right to deny Gibson or Green access to their properties. Gibson and Green have permitted Doty to maintain a gate precluding access to their properties by any other persons, including other owners subject to the Declaration.

1.14 At no time has any pathway or roadway connected the Green or Gibson properties to the property of the plaintiff. There is no implied easement in favor of plaintiff which would allow access through Skookum Meadows to any county road.

Superior Court
Stevens, Pend Oreille & Ferry Counties
215 S. Oak, Suite 209
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1.15 Plaintiff Drake's predecessor in interest was also an owner of Lot 21 and provided easement access for the farm property to Lot 21. Such access has since been extended along the north thirty (30) feet of Lot 21 to its intersection with Water Tower Lane. The extension of the road to Water Tower Lane was not allowed for nor did it grant use to plaintiff Drake for the use of Water Tower Lane, nor any other roadway within the Skookum Creek Declaration.

1.16 By a document titled "Modification of Protective Covenants" and filed for record with the Pend Oreille County Auditor on October 29, 2010 under Auditor's File No. 201000306838, certain owners within the Skookum Creek Declaration attempted to modify Article C of the Amended Declaration. The attempted modification was ineffective. Article D of the original Declaration provides that only Article B of the Declaration may be amended by the property owners; there is no authority provided to the owners in the Declaration to amend any provision of Article C.

1.17 Plaintiff Browning alleges that Article C(4) of the Declaration provides him and/or plaintiff Drake with authority to utilize the southerly ten (10) feet of Lot 18, owned by defendants Amburgey, for purposes of controlling drainage from Lot 18 to Lot 21, owned by Drake. No such right exists. While plaintiffs are free to modify Lot 21 along its border with Big Dog Drive in any way they see fit, be it to improve the quality of the road or drainage, they do not have any right to come upon Lot 18 for that purpose.

1.18 There is no express easement allowing the farm property access to any easement roadway shown within the Skookum Creek Declaration, other than the modified Big Dog Drive. For that matter, there is no evidence that any lot subject to the Skookum

Superior Court
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215 S. Oak, Suite 209
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Creek Declaration has an express easement to travel along Skookum Meadow Drive to its intersection with Conklin Meadows Road. The farm property is landlocked, and no claim has been made for a private way of necessity pursuant to RCW 8.24.

1.19 On or between 2005 and 2006, plaintiff Browning removed forty-seven (47) trees from the Doty property. The removal of the trees was done intentionally, without lawful authority, without probable cause to believe the property belonged to him, and without the permission of the Dotys. The reasonable value of the trees is $16,450.

From the foregoing Findings of Fact, the Court does enter its:

II. CONCLUSIONS OF LAW

2.1 The plaintiffs do not have a right of access for the farm property which extends any further than the west edge of Lot 21, whether by adverse possession~~, necessity~~ or implication. As such, there is no basis for an injunction or an award of damages.

2.2 Judgment shall enter in favor of defendant Doty and against plaintiff Browning in the amount of $49,350, as the damages for timber trespass shall be trebled.

2.3 Each of the represented defendants shall be awarded their statutory attorney's fees, and each defendant shall be awarded costs as set forth at RCW 4.84.250.

IT IS SO ORDERED this 3 day of July, ~~2012~~ 2013.

PATRICK A. MONASMITH
Superior Court Judge

Superior Court
Stevens, Pend Oreille & Ferry Counties
215 S. Oak, Suite 209
Colville, WA 99114-2861

Approved as to form:

ERIC R. SHUMAKER, WSBA
Attorney for plaintiff Drake

Chose not to sign
LEONARD BROWNING, plaintiff

Approved as to form:

HUMPHRIES, PATTERSON & LEWIS

NEIL E. HUMPHRIES
Attorney for defendants Doty

MICHAEL J. McLAUGHLIN as to form
Attorney for defendants Amburgey

Not present
STEVE GREEN, defendant

Not present
SUSAN GREEN, defendant

CHERITH FAMILY TRUST

By Chose not to sign
JAMES GIBSON, defendant

By Not present
SYLVIA GIBSON, defendant

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EXHIBIT

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VOL 97 PAGE 1115-1121
REC NO 16226 AMT. PD. 13.00

D. Mattson DEPUTY

AFTER RECORDING RETURN TO:

MONTGOMERY LAW FIRM
344 East Birch Street
P.O. Box 269
Colville, Washington 99114-0269

STATUTORY WARRANTY DEED

THE GRANTORS, JOHN R. PROCTOR, CAROL MONK, MILDRED POOLE and SHIRLEY RAMEY, each as to an undivided one-fourth (1/4) interest, for and in consideration of TWO HUNDRED FIFTY FIVE THOUSAND and NO/100 DOLLARS ($255,000.00), in hand paid, convey and warrant to NOR PAC LAND & TIMBER CO., INC., an Oregon corporation; **GRANTEE**, the following described real estate situated in the County of Pend Oreille, State of Washington:

The SW 1/4 of the NW 1/4, and the North 1/2 of the NW 1/4, and the NW 1/4 of the NE 1/4 of Section 14, and the SW 1/4 of Section 11, all in Township 32 North, Range 44 East, W.M., in Pend Oreille County, Washington.

TOGETHER WITH AND SUBJECT TO an easement, including the terms, covenants and provisions thereof, as disclosed by instrument recorded October 26, 1962, under Auditor's File No. 108048, for an existing right of way for irrigation purposes which runs across parts of Sections 11 and 12 in above Township and Range, and which has been in use since about November 16, 1923.

Proctor ✓ Monk ✓ Poole ✓ Ramey ✓

SUBJECT TO an easement, including the terms, covenants and provisions thereof, as granted by instrument recorded April 29, 1976, under Auditor's File No. 115748, in favor of Pend Oreille County, Washington, for a county road.

SUBJECT TO an easement, including the terms, covenants and provisions thereof, as disclosed by instrument recorded May 25, 1950, under Auditor's File No. 74681, in favor of Panhandle Lumber Co., Ltd., for crossing lands in said Section 14 for logging purposes.

SUBJECT TO classification as forest lands for tax purposes. Said lands will be subject to further taxation and interest thereupon as provided by Chapter 84.34 R.C.W. upon withdrawal from such classification or change in use.

SUBJECT TO conditions, covenants and restrictions as set forth in that certain instrument dated November 18, 1968, and recorded under Auditor's File No. 127681, reserving unto the United States, its permittee or licensee, the right to enter upon, occupy and use any part or all of the SW 1/4 of the SW 1/4 of said Section 11 for the purposes provided in the Act of June 10, 1920 (41 Stat. 1063) and subject to the conditions and limitations of Section 24 of said

#0712
1% Excise Tax on Real Estate Sale
Amount Paid $ 3264.00
Date July 6, 1992
Betty Verbrugge, Treasurer
Pend Oreille County, Washington
By [signature] Deputy

212696

97-1115

Act as amended by the Act of August 26, 1935 (49 State. 846); and reserving therefrom a right of way thereon for ditches or canals constructed by the authority of the United States.

SUBJECT TO second half 1992 general real estate taxes.

DATED this 26th day of June, 1992.

JOHN R. PROCTOR

SIGNATURE APPEARS ON PAGE 2B
CAROL MONK

SIGNATURE APPEARS ON PAGE 2A
MILDRED POOLE

SIGNATURE APPEARS ON PAGE 2C
SHIRLEY RAMEY

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

On this day personally appeared before me JOHN R. PROCTOR, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26th day of June, 1992.

DIANA L. KENYON
NOTARY PUBLIC
STATE OF WASHINGTON
MY COMMISSION EXPIRES 7-25-96

NOTARY PUBLIC in and for the State of Washington, residing at Port Townsend
My Appointment Expires: 7/25/96

STATE OF WASHINGTON)
) ss.
COUNTY OF PEND OREILLE)

On this day personally appeared before me CAROL MONK, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of June, 1992.

NOTARY SIGNATURE ON PAGE 2B

NOTARY PUBLIC in and for the State of Washington, residing at ___
My Appointment Expires: ___

97-1116

Leonard N. Browning
P. O. Box 9
Priest River ID 83856

June 19, 2006

Forest Doty
Lil Doty

Dear Mr. and Mrs. Doty:

I have given you notice on your gate which you have definitely received. You are blocking my legal ingress and egress to my property. The original deed to this property clearly states that the original owners have reserved a sixty foot easement on all existing and proposed rights of way that appear on "Exhibit B". This sixty foot strip of land does not belong to the property owners, but was reserved for roads and utilities.

I will be willing to work with you to straighten and realign this easement through your property to minimize the volume of land used for the easement. I am quite certain that Mr. Greene, on the other side of you, will cooperate in a sensible and neighborly fashion.

I am putting my best foot forward in an effort to work with you. I have a right to drive to my property and to have utilities at my property just as you have. Since you have tied this property up in the excess of ten years with brute force, I feel I am being very equitable in allowing you forty-eight hours to remove you gate, your fence, or any other object that obstructs a sixty foot easement through your property. You may contact me in a good faith effort at (509) 447-5293, or (509) 953-3606.

I do not wish to cause you any problems and I certainly do not wish to take you to court, but if I have to fight for what is right, I will. So you may be assured that if you fail to negotiate with me in a meaningful fashion, I will bring suit upon you forty-eight hours after you have been served with this notice. If you force me to begin a legal action to secure my legal access to my property, I will not cease or desist this action until it has been completely resolved in court regardless of the time frame. The longer you refuse to do what is right merely increases the damages that I have already sustained.

Leonard N. Browning

Leonard N. Browning, P. O. Box 9,
Priest River ID 83856

EXHIBIT
E

4.1 Plaintiff requests damages in the amount of $40,000 to be charged to each of the defendants separately and individually for acting in unison, in concert, and in conspiracy to deny Plaintiff's use of his properties as provided for in the Declaration of Covenants and Easements, said damages to be proven at time of trial.

4.2 For an order restraining all defendants from continuing to close, obstruct, stop up or interfere with plaintiff's rights of way; and from in any manner interfering with or attempting to prevent plaintiff from passing over, maintaining, improving and using the existing public rights of way and easements historically reserved for the public and as set out in the Declaration of Covenants and Easements, as plaintiff has no other adequate remedy at law.

4.3 For an order of specific performance requiring all defendants comply with the terms of the Declaration of Covenants and Easements by allowing plaintiff to use, maintain, and improve the existing roads and easements across defendants' various lots, and by allowing plaintiff to use, ditch, and maintain the 10-foot right-of-way servitude easements located on the borders of each of plaintiff and defendants' lots.

4.4 For declaratory judgment declaring plaintiff Leonard N. Browning has an easement by prescription over Lots 23 and 24-DT, 25-CT, and 26-G/B, as well as over Lot 20-M.

4.6 For declaratory judgment declaring plaintiff Leonard N. Browning has an easement by implication over Lots 23 and 24-DT, 25-CT, and 26-G/B, as well as over Lot 20-M.

Leonard N. Browning
P. O. Box 9
Priest River ID 83856

plaintiff of his rights to use the existing public road right of way in violation of RCW 7.40.030.

3.27 Plaintiff is purchasing The Farm, and must access The Farm via an existing public road commonly known as Skookum Meadows Drive, a portion of which is set out on the Development's Schedule B.

3.28 Skookum Meadows Drive on its course through Defendants Doty, Gibson, Greene and Beamer's lots, has been used continuously for more than 10 years.

3.29 Skookum Meadows Drive through Lots 23-DT, 24-DT, 25-CT, and 26-G/B is an historical uniform defined roadway.

3.30 The use of Skookum Meadows Drive in its entirety has been open and notorious.

3.31 The use of Skookum Meadows Drive has been continuous for more than 10 years.

3.32 The Farm is landlocked, and cannot be legally accessed by any means other than on Skookum Meadows Drive across Lots 23 and 24-DT, 25-CT, and 26-G/B.

3.33 Plaintiff Leonard N. Browning has an easement by necessity along the portion of Skookum Meadows Drive traversing Lots 23 and 24-DT, 25-CT, and 26-G/B owned by the Doty Family Trust, the Cherith Trust, and Defendants Greene and Beamer.

3.34 There is a necessity for the easement over Lots 23 and 24-DT, 25-CT, and 26-G/B to secure and maintain the quiet enjoyment of The Farm.

Leonard N. Browning
P. O. Box 9
Priest River ID 83856

RETYPED FOR CLARITY PURPOSES ONLY

SKOOKUM CREEK

DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS

The undersigned, THE TRANS-WEST COMPANY, a Washington Corporation, is acquiring the real property legally described on the attached Schedule B. The undersigned plans to sell all of said real property in parcels 20 acres of larger in size to purchasers for recreation or residential use. The purpose of this declaration is to establish certain protective covenants and easements to promote the orderly use and enjoyment of all of said real property for said purposes, to protect and increase the property value thereof and otherwise to generally benefit all owners of said real property and the community at large. Therefore, the undersigned, in furtherance of such objectives, does hereby declare and establish the following covenants, restrictions, and easements appurtenant:

ARTICLES A - DEFINITIONS

1. As used herein the word or words:

   (a) "Real Property" shall refer to all of the real property described on the attached Schedule B.

   (b) "Parcel" shall refer to any portion of the Real Property hereafter conveyed by Seller or by any Owner, regardless of size of Parcel.

   (c) "Owner" shall refer to the holder of a fee simple interest in any parcel of the Real Property except for any parcel subject to a contract for the sale thereof, in which event "Owner" shall refer to the holder of the vendee's interest under such contract, all to the exclusion of any other interest in the Real Property. Such interests shall be determined by the public records of the county in which the Parcel is located.

   (d) "seller" shall refer to THE TRANS-WEST COMPANY, a Washington corporation.

ARTICLES B - LAND USE RESTRICTIONS

1. No Parcel shall be used for any commercial purpose or for any use other than residential, recreational or agricultural purposes without the approval of the County Planning Commission, or equivalent body, of the County in which the Real Property is situated.

2. No sign of any kind shall be displayed on any Parcel except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale, or signs used by Seller to advertise the property for sale.

3. To preserve the natural environment, trees shall not be cut, topped, destroyed or removed from the Real Property except as absolutely necessary to permit construction of roads,

house or other improvements, including personal agricultural use.

4. Each Parcel and the external appearance of improvements thereon shall be maintained in a clean, neat and orderly condition and in good repair. No trash, junk, debris, equipment, out growth, noxious odor or other waste shall be permitted to accumulate on any Parcel. No Parcel shall be used as to unreasonably interfere with the peaceful use or enjoyment of any other Parcel.

5. The work of constructing, altering or repairing any structure shall be diligently prosecuted from the commencement until completion and, in any event, the exterior appearance thereof shall be completed within six (6) months after the commencement thereof.

6. No structure or improvement other than fences and roads shall be constructed or placed nearer than 25 feet from any boundary line of any Parcel except as approved by Seller.

ARTICLE C - EASEMENTS AND RESERVATIONS

1. Seller does hereby declare and reserve sixty (60) foot wide non-exclusive, private easement for ingress, egress, and utilities over and across the Real Property, said easements to be located as shown on the attached Schedule B.. Centerline of each of said easements shall follow the centerline of each existing or proposed road as located on the attached Schedule B.

2. In the event that Seller shall hereafter reasonably determine at any time or times, that it is not economically practical to construct and maintain a road suitable for passenger car use over and across any portion of the easements as located in accordance with paragraph 1, above, by reason of excessive grade, inadequate soil conditions, or other natural conditions, then Seller in its discretion may, by supplemental Declaration of Easement, relocate such portion or portions of the easements at such alternate location as Seller may determine is suitable to permit construction and maintenance of such road on an economically practical basis; provided, that such relocated easement shall conform in each case as nearly as practically possible to the easements as in accordance with paragraph 1, above. Said right of relocation shall terminate five years from the date of this instrument.

3. In addition to the easements set forth in paragraphs 1 and 2 above, Seller hereby declares and reserves the right to make slopes for cuts and fills in the reasonable grading of all roads constructed over and across the above-described easements and to make necessary provisions for drainage thereof.

4. Seller hereby declares and reserves easements for drainage and utilities purposes over and across a strip of land not to exceed ten feet in width along and abutting any or all of the exterior boundaries of each Parcel hereinafter conveyed by Seller.

5. All of the easements declared herein shall be divisable, perpetual, and assignable, and shall be appurtenant to and run with the Real Property. Seller hereby reserves for itself, its personal representatives, agents and assigns, the right to the use and benefit of all of said

easements and further hereby reserves the right to grant the use of said easements to all parties who now are or shall hereafter become Owners and to parties supplying utilities to any portion of the Real Property.

6. The Owners of sixty-six (66) per cent or more in area of the Real Property shall have the right, power, and authority, by written declaration, to dedicate all or any part of any of the above-described easements to public use at any time.

ARTICLE D - MISCELLANEOUS

1. All provisions of Article B of this instrument shall remain in full force and effect for a period of ten years from the date of recording of this instrument and thereafter until amended, changed, revoked or terminated in whole or part by written instrument signed by Owners of a majority in area of the Real Property.

2. Unless and until amended, changed, revoked or terminated as above provided, the provisions thereof shall remain in full force and effect as covenants, restrictions, easements, rights, liens and encumbrances running with the land and binding upon the Real Property and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of the Real Property shall constitute an agreement by any person, firm or corporation accepting such an interest, that they and each of them shall be bound by and subject to the provisions of this instrument.

3. In the event that any provision hereof shall be declared invalid or unenforceable by any court of competent jurisdiction, no other provision shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

4. The parties in interest in and to any part of the Real Property, and each of them, shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise, shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise, shall have the right to injunctive relief. The prevailing party in any action to enforce any provision hereof shall receive a reasonable sum for attorney's fees and the reasonable costs of searching and abstracting the public records which sums shall be paid by the unsuccessful party.

SKOOKUM CREEK
SCHEDULE B

Legal description

Northeast quarter of the Northeast quarter (NE-1/4 NE-1/4); South half of the Northeast quarter (S-1/2 NE-1/4), and Southeast quarter (SE-1/4) of Section 11;

Also, the North half (N-1/2), Southwest quarter (SW-1/4); and West half of the Southeast quarter (W-1/2 SE-1/4) of Section 12;

Also, the Northwest quarter (NW-1/4) of Section 13, Subject to a reservation by Pend Oreille County, Washington, of the South 40 feet of the Southwest quarter of the Northwest quarter (SW-1/4 NW-1/4) of said Section 13, as made in Deed recorded in Book 37, Deeds, Page 89, Auditor's File No. 98515;

All in Township 32 North, Range 44 East, Willamette Meridian, Pend Oreille County, Washington.

Except County Road right-of-way.

AMENDED DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS

The undersigned, THE TRANS-WEST COMPANY, a Washington Corporation, does hereby declare as follows:

WHEREAS, by instrument dated July 28, 1972, filed of record August 8, 1972, in the office of the Pend Oreille County Auditor under Auditor's File #136116 (hereinafter called the "Original Declaration"), the declarant hereunder established certain protective covenants and easements; and

WHEREAS, the legal description attached to and made a part of the Original Declaration as Schedule B thereof, erroneously described the real property intended to be subjected to said protective covenants and easements, by including therein certain parcels of real property not then owned by the declarant; and

WHEREAS, declarant now wishes to reform and correct the Original Declaration by this amendment thereto to properly state the legal description to conform with the intent of declarant at the time the Original Declaration was executed and placed of public record; and

WHEREAS, the declarant hereunder also now wishes to make certain amendments to the substantive provisions of the Original Declaration, and

WHEREAS, none of the real property subject to the provisions of the Original Declaration has been sold or conveyed by declarant since the date of execution and recording of the Original Declaration;

NOW, THEREOF, the undersigned declarant does hereby amend the Original Declaration, in the following respects:

1. The legal description incorporated into the Original Declaration as Schedule B thereof, is revoked in its entirety, and in substitution therefor the attached corrected Schedule B is hereby established and adopted.

2. Article B, paragraph 1, is hereby amended to provide as follows:

   "1. No parcel shall be used for any commercial purpose or for any use other than residential, recreational, agricultural or timber land purposes, without the approval of the County Planning Commission, or equivalent body, of the County in which the Real Property is situated."

3. Article B, paragraph 3 of the Original Declaration is hereby deleted in its entirety.

4. In all other respects the terms and conditions of the Original Declaration shall; continue in full force and effect as originally stated.

DATED this *18* day of May, 1973.

[signatures/acknowledgment]

SKOOKUM CREEK
SCHEDULE B

LEGAL DESCRIPTION

Northeast quarter of the Northeast quarter (NE-1/4 NE-14); South half of the Northeast quarter (S-1/2 NE-1/4); and Southeast quarter (SE-1/4) of Section 11;

Also, the North half (N-1/2); Southwest quarter (SW-1/4); and West half of the Southeast quarter (W-1/2 SE-1/4) of Section 12;

Also, the Northwest quarter (NW-1/4) of Section 13, subject to a reservation by Pend Oreille County, Washington, of the South 40 feet of the Southwest quarter of the Northwest quarter (SW-1/4 NW-1/4) of said Section 13, as made in deed recorded in Book 37, Deeds, Page 89, Auditor's file no. 98515;

All in Township 32 North, Range 44, East, Willamette Meridian, Pend Oreille County, Washington.

Except county road right-of-way.

And except the following:

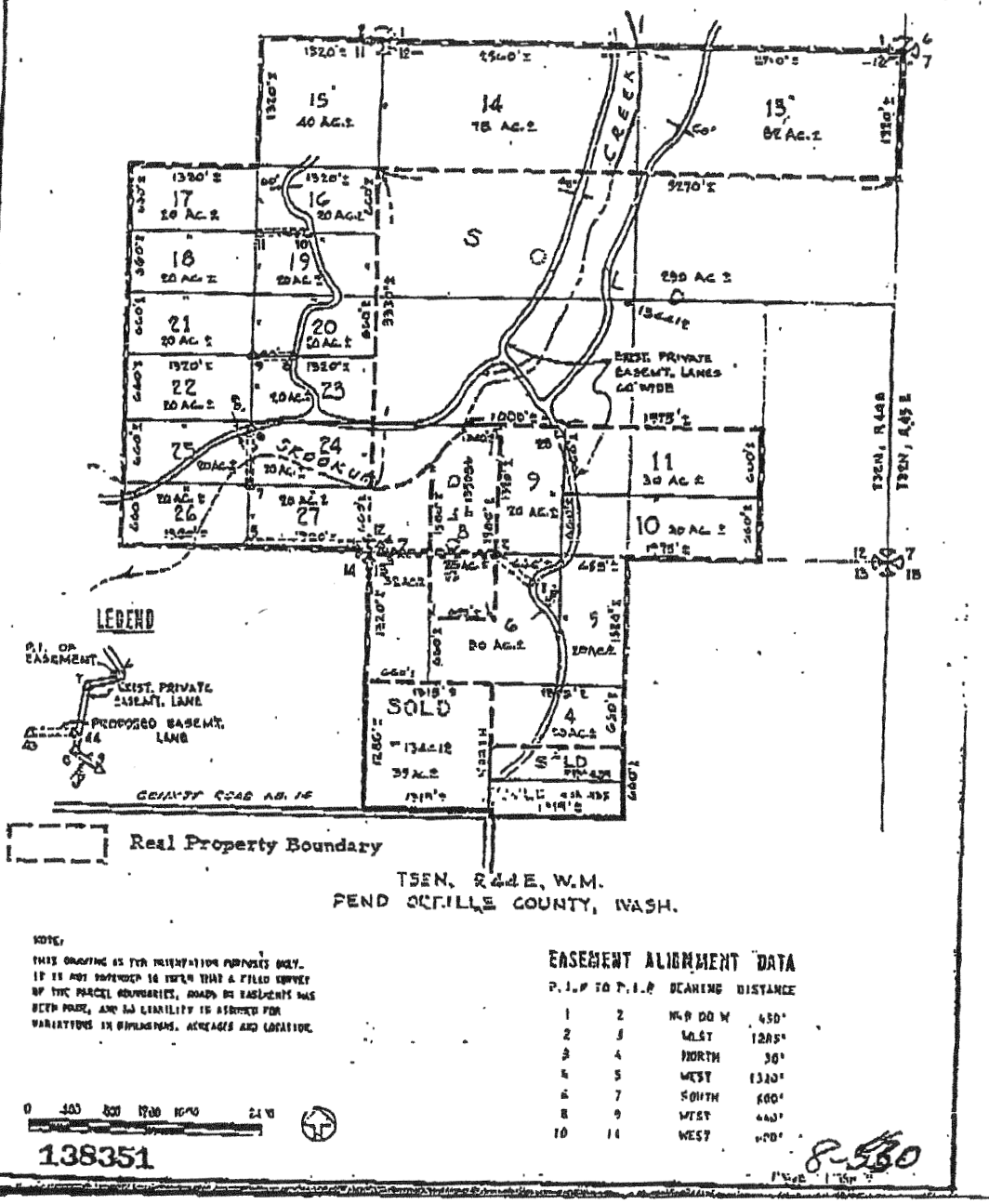
The South half of the Southeast quarter of the Norwest quarter of Section 13, the Southwest quarter of the Northwest quarter of Section 13, the Northeast quarter of the Northwest quarter of the Northwest quarter of Section 13, and that portion of the East half of the Southwest quarter of the Southwest quarter lying South of the Centerline of Skookum Creek in Section 12; the South half of the North half; the North half of the Southwest quarter, the Northwest quarter of the Southeast quarter; and that portion of the Southwest quarter of the Southwest quarter lying Northwesterly of the centerline of Skookum Creek, all in Section 12. All in Township 32 North, Range 44 East, Willamette Meridian, Pend Oreille County, Washington.

[redacted]

138351

SKOOKUM CREEK

SCHEDULE B



NOTE:

THIS DRAWING IS FOR ORIENTATION PURPOSES ONLY. IT IS NOT INTENDED TO INFER THAT A FIELD SURVEY OF THE PARCEL BOUNDARIES, ROADS OR EASEMENTS HAS BEEN MADE, AND NO LIABILITY IS ASSUMED FOR VARIATIONS IN DIMENSIONS, ACREAGES AND LOCATION.

EASEMENT ALIGNMENT DATA

P.I.# FROM	P.I.# TO	BEARING	DISTANCE
1	2	N49 00 W	450'
2	3	WEST	1285'
3	4	NORTH	30'
4	5	WEST	1320'
6	7	SOUTH	600'
8	9	WEST	440'
10	11	WEST	[illegible]

0 400 800 1200 1600 2400

138351

8-560

Note:

This drawing is for orientation purposes only. It is not intended to infer that a field survey of a parcel boundaries, roads or easements has been made, and no liability is assumed for variations in dimensions, acreages and location.

98514

TREASURER'S DEED

STATE OF WASHINGTON } ss.
COUNTY OF PEND OREILLE}

This indenture, made this 30th day of March, 1959, between Edgar R. Arman, as Treasurer of Pend Oreille County, State of Washington, the party of the first part, and T. W. Schwab and Doris K. Schwab, his wife, parties of the second part.

Witnesseth, That Whereas, at a public sale of real property, held on the 27th day of March, A.D. 1959, pursuant to an order of the Board of County Commissioners of the County of Pend Oreille, State of Washington, duly made and entered, and after having first given due notice of the time and place and terms of sale, and, whereas, in pursuance of said order of said Board of County Commissioners, and of the laws of the State of Washington, and for and in consideration of the sum of Eight Hundred ----------Dollars --- lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby acknowledged, and confirmation of said sale having been entered by the Board of County Commissioners, meeting in regular session, the 30th day of March, 1959, I have this day sold to T. W. Schwab and Doris K. Schwab, his wife, of Route 4, Newport, Washington the following described real property, and which said real property is the property of Pend Oreille County, and which is particularly described as follows, to-wit:

The West half of the Southeast quarter of Section 11, Township 32 North, Range 44, E.W.M., Pend Oreille County, Washington.
The above described land is subject to the right of owner of fences to remove same, within 30 days from the date of this instrument.

The above described land is subject to existing easements and public highways and roads and to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of Court; and subject to reservation by the United States of America to a right-of-way on all said lands for ditches or canals con-

Pend Oreille County, State of Washington
I hereby certify that the 1% excise tax on this instrument has been paid is exempt.
$ _____
Dated this 30th day of March 1959
Attest Edgar R. Arman Treasurer
By _____ Deputy

the said T. W. Schwab being the highest and best bidder at said sale, and the said sum being the highest and best sum bid at said sale;

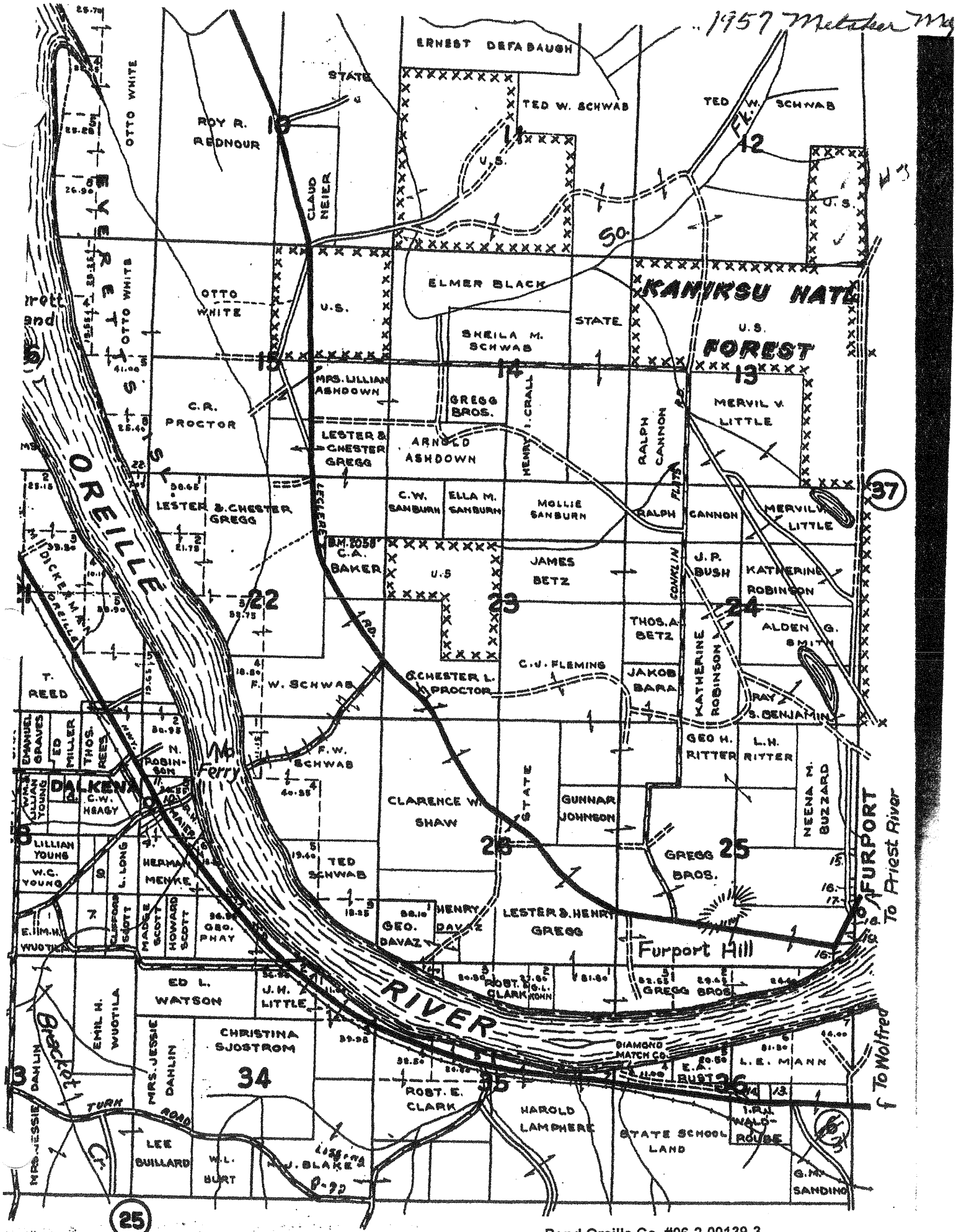
Now, therefore, know ye that I, Edgar R. Arman, County Treasurer of said County of Pend Oreille, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases made and provided, do hereby grant and convey unto T. W. Schwab and Doris K. Schwab, his wife, their heirs and assigns, forever, the said real property hereinabove described, as fully and completely as the said party of the first part can by virtue of the premises convey the same.

The title to the land hereby conveyed is subject to the lien of all drainage or diking improvement assessments, or instalments thereof against the same, not yet due at the date hereof, and is subject to any existing easement for the conveyance of irrigation or drainage water across the same, and/or for public road purposes.

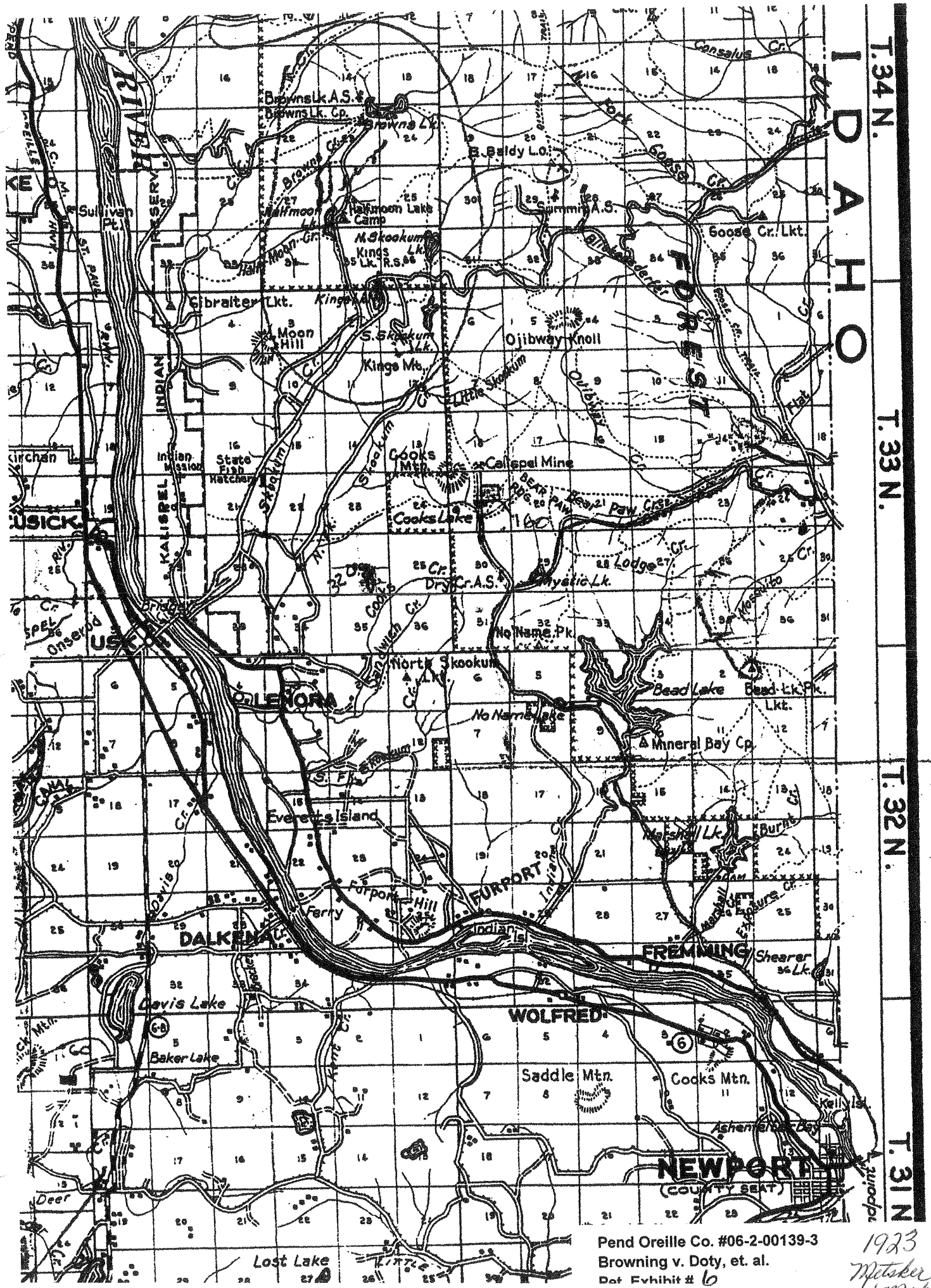
Given under my hand and seal of office this 30th day of March, A.D. 1959

Edgar R. Arman
County Treasurer.

Pend Oreille Co. #06-2-00139-3
Browning v. Doty, et. al.
Pet. Exhibit # 13



Pend Oreille Co. #06-2-00139-3
Browning v. Doty, et. al.
Pet. Exhibit # 11



Pend Oreille Co. #06-2-00139-3
Browning v. Doty, et. al.
Def. Exhibit # 6

1923
Metsker
Map

Pend Oreille Co. #06-2-00139-3
Browning v. Doty, et. al.
Pet. Exhibit # 7

Copy

Court of Appeals No. 314120

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PEND OREILLE

LEONARD N. BROWNING, a single person, and BARBARA L. DRAKE, a single person, Plaintiffs, vs. DOTY FAMILY TRUST, et al., Defendants.	No. 06-2-000139-3 Hon. Patrick Monasmith January 31, 2013

SUPPLEMENTAL REPORT OF PROCEEDINGS
From Electronic Recording

APPEARANCES:

For Plaintiff: ERIC R. SHUMAKER
Attorney at Law
113 E Baldwin Ave
Spokane WA 99207-2241

LEONARD N. BROWNING, Pro Se

1 THE COURT: All right.
2 Well, this is your motion, so you have the opportunity
3 to go first. If you would, please.
4 MR. BROWNING: Okay.
5 Well, the first issue was a meeting that was had with
6 the attorneys in your chambers, and the pro se people were
7 not there. And I really believe that's an abuse of
8 discretion.
9 And also, the damages were excessive and inadequate --
10 on several different reasons.
11 Number one, I don't believe Mr. Doty even paid that much
12 money for his whole 20 acres.
13 Second place, the exact location of those trees was
14 never established as to whose property it was on, and the
15 property boundary was never pled; that issue was not before
16 the court, and therefore without determining where the
17 property boundary's at it was absolutely impossible to
18 decide whose trees those were and if they had any market
19 value at all.
20 I'm contending that those trees are my trees. I cut
21 them long before I sold that property to Barbara Drake;
22 those are my trees.
23 And I was never allowed to argue the issue of property
24 boundaries. Because it wasn't before the court. It wasn't
25 pled. It wasn't claimed. Nobody asked for a decision on

1 the property boundary. I wasn't able to plead against it.
2 I wasn't able to -- present any evidence of adverse
3 possession or anything regarding that. Or state laws,
4 Washington Supreme Court laws, case law as to what a fence
5 line is, how long it has to be -- be a property boundary.
6 I was never able to plead any of that because -- nobody
7 asked to establish a property boundary. And I really don't
8 believe that the court can create an issue and then rule on
9 it. I don't think that's allowed.
10 And I really believe that that particular order is null
11 and void.
12 And also on the -- as far as access goes, there are
13 deeds, maps and testimony stating the fact that there is a
14 road that goes clear across the properties in dispute,
15 clear across the farm, clear across the property behind us,
16 across the creek and to Leclerc. There's maps. And
17 testimony. Used to be a bridge there.
18 And the honorable court said in its decision that
19 there's never been a road there, never been a trial,
20 there's never been a foot path. Well, that's not true.
21 You could drive your car through there, if there isn't any
22 snow, right now, today. And have been ever since I can
23 remember 1955.
24 And that's well-established with testimony, with maps,
25 and with deeds. In 1905, it was -- in the deed it said

11. These defendants and/or their predecessors in interest have prevented the plaintiff and/or the owner of the property the plaintiff is leasing and/or their predecessors and/or successors in interest and all other persons except owners of Parcels 25 and 26 from accessing that property for a period in excess of 10 years and their prevention of access has been open, notorious and hostile for a period in excess of 10 years.

Plaintiff's action are frivolous and advance without reasonable cause for which the defendants are entitled to reasonable expenses including fees of attorneys incurred in posing such action pursuant to R.C.W. 4.84.185.

13. That this is an action in equity and the trial court, at its discretion, may order reasonable attorneys fees to the defendants if the defendants are successful in this action.

BY WAY OF COUNTER CLAIM the defendants, Doty Family Trust, Forest C. Doty and Lil Doty complain and allege as follows:

14. These defendants reallege the allegations contained in paragraph 1 through 11 of defendants Affirmative Defense.

15. The plaintiff, Leonard N. Browning, as the lessee of property adjacent to the property owned by Doty Family Trust removed an existing fence line between the property the plaintiff was leasing and the defendant's property and placed a new fence upon the property belonging to these defendants and cut and removed a substantial number of trees, shrubs and other vegetation from these defendant's property.

16. The reasonable and fair amount of damages done by the plaintiff to the trees, shrubs and other vegetation of these defendants is the sum of $19,450.00.

17. That RCW 64.12.030 provides that judgment given for these damages shall be trebled.

WHEREFORE, these defendants pray for judgment as follows:

1. That judgment be entered dismissing plaintiff's complaint with prejudice and with costs to these defendants.

HUMPHRIES PATTERSON & LEWIS

421 W RIVERSIDE AVE., SUITE 830, SPOKANE, WA 99201
TELEPHONE: (509) 838-4148 • FAX: (509) 623-1196

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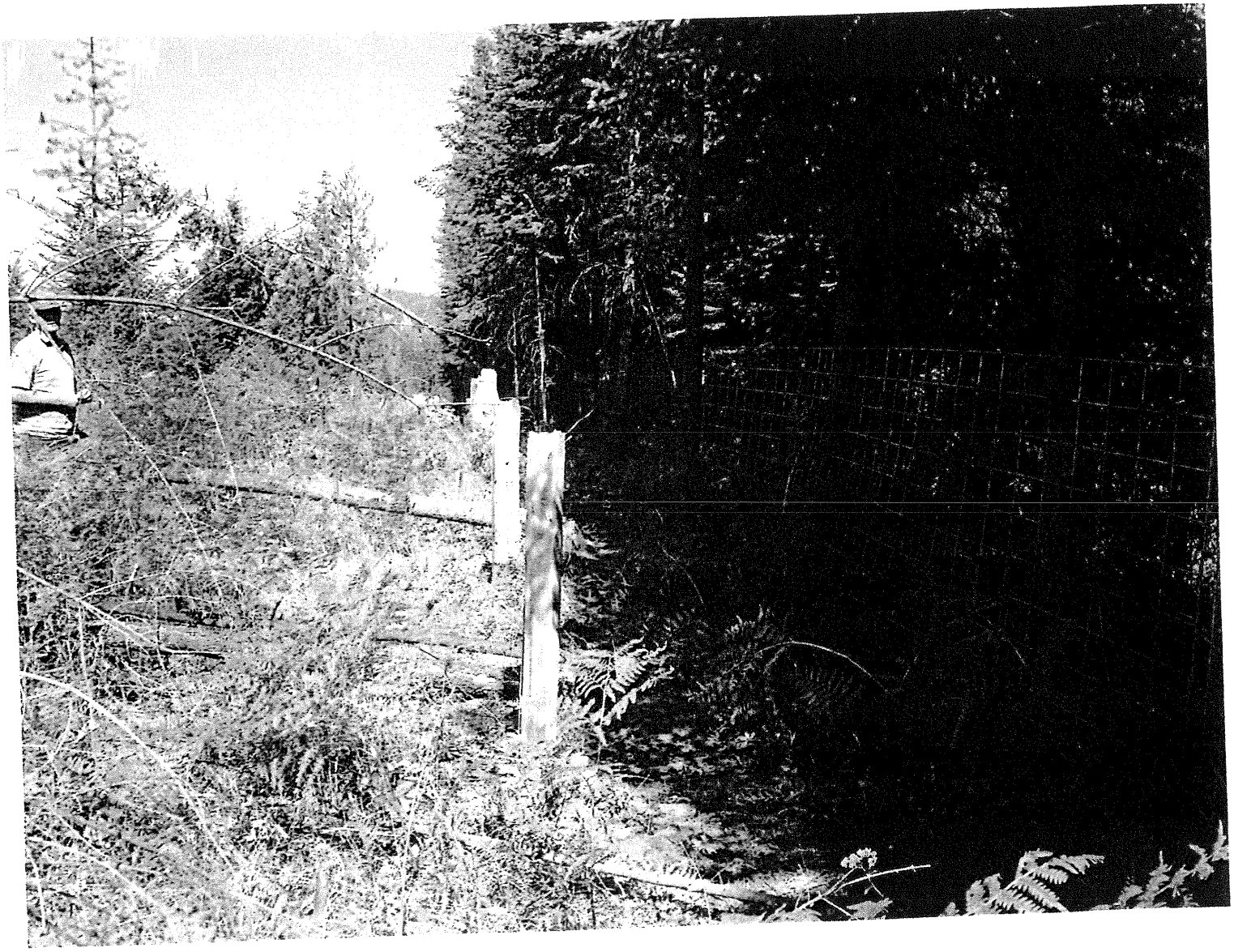


Sept 2006

GRACE
TREE SERVICE
Complete Tree Care

EXHIBIT
D180

Property Owner:
Forrest and Lillian Doty
PO Box 90
Usk, WA 99180
805-325-1930
509-671-1080

Attorney:
Neil E. Humphries
Humphries, Patterson, & Lewis
421 W Riverside Ste. 1555
Spokane, WA 99201-0402

ASSIGNMENT

On September 15, 2006 Tim Kastning and Jeri Stoeckert from Grace Tree Service, Inc. and Sheldon Magnuson from Woodlands Management surveyed a section near the west property line of Forrest Doty's property and inventoried stumps. All stumps were photographed and inventoried by size and species. Measurements were taken from the property line to the old fence line and from the old fence line to the new fence.

INVESTIGATION AND OBSERVATIONS

An existing 5 foot field fence was present. It was noticed that red twine was used to tie the fence to the trees. From the new growth and girdling of these trees, it has been estimated that the fence had been up for approximately two years. The fence was attached to trees on Forrest Doty's property. There was also evidence of old fence posts that had been pulled from the ground and/or fallen. Old wire was rolled up and placed behind the new fence. A row of trees were cut down along the old fence line. All stumps were cut flush or very low to ground. Brush and limbs were present from the trees that were cut down along the old fence line and were piled up.

1860 W. Hayden • Hayden, ID 83835 • (208) 762-5800

STUMP INVENTORY

Stump #	Species	Size	Notes
1	GF	2	
2	GF	4	
3	GF	4	
4	GF	2	
5	GF	2	
6	GF	2.5	
7	LPP	4	
8	GF	13	
9	GF	2	
10	LARCH	7	Merchantable
11	GF	2	
12	GF	5	
13	SPRUCE	2	
14	GF	6	
15	GF	2	
16	GF	2	
17	GF	3	
18	GF	4	
19	GF	2	
20	GF	6	
21	GF	1	
22	GF	5	
23	GF	2	
24	GF	1	
25	GF	1	
26	GF	6	

Stump #	Species	Size	Notes
27	WRC	9	Merchantable
28	GF	7	
29	GF	6	
30	WRC	2	
31	WWP	2	
32	GF	1	
33	NONE-MISSING CARD	X	
34	WRC	7	Merchantable
35	NONE-MISSING CARD	X	
36	GF	5	
37	SPRUCE	5	
38	LPP	4	
39	SPRUCE	14	Merchantable
40	GF	8	Merchantable
41	DF	5	
42	GF	3	
43	GF	2	
44	GF	9	Merchantable
45	GF	2	
46	GF	6	
47	GF	3	
48	GF	8	Merchantable
49	GF	10	Merchantable
50	GF	4	
51	GF	4	
52	LPP	12	Merchantable
53	GF	6	Not merchantable
54	SPRUCE	12	Merchantable
55	GF	1	

Stump #	Species	Size	Notes
56	GF	2	Twin set
57	LPP	8	Merchantable
58	GF	11	Merchantable
59	LPP	7	
60	GF	7	Merchantable
61	LPP	10	Merchantable
62	NONE-MISSING CARD	X	
63	LPP	6	
64	LPP	11	
65	LPP	6	? Merchantable
66	LPP	8	Merchantable
67	GF	7	? Merchantable
68	LPP	7	? Merchantable
69	LPP	9	Merchantable/has cat face
70	LPP	9	Merchantable
71	LPP	10	Merchantable
72	GF	2.5	
73	GF	6	? Merchantable
74	LPP	9	Merchantable
75	GF	10	Merchantable

KEY

DF = Douglas fir
GF = Grand fir
LPP = Lodge Pole Pine
WRC = Western Red Cedar
WWP = Western White Pine

MEASUREMENTS

Stump #1
From surveyed property line to old fence line - 15' 5"
From old fence line to new fence-5' 4"
Distance from surveyed property line to new fence-20' 9"

Stump #51
From surveyed property line to old fence line - 14' 5"
From old fence line to new fence-15' 3"
Distance from surveyed property line to new fence-29' 8"

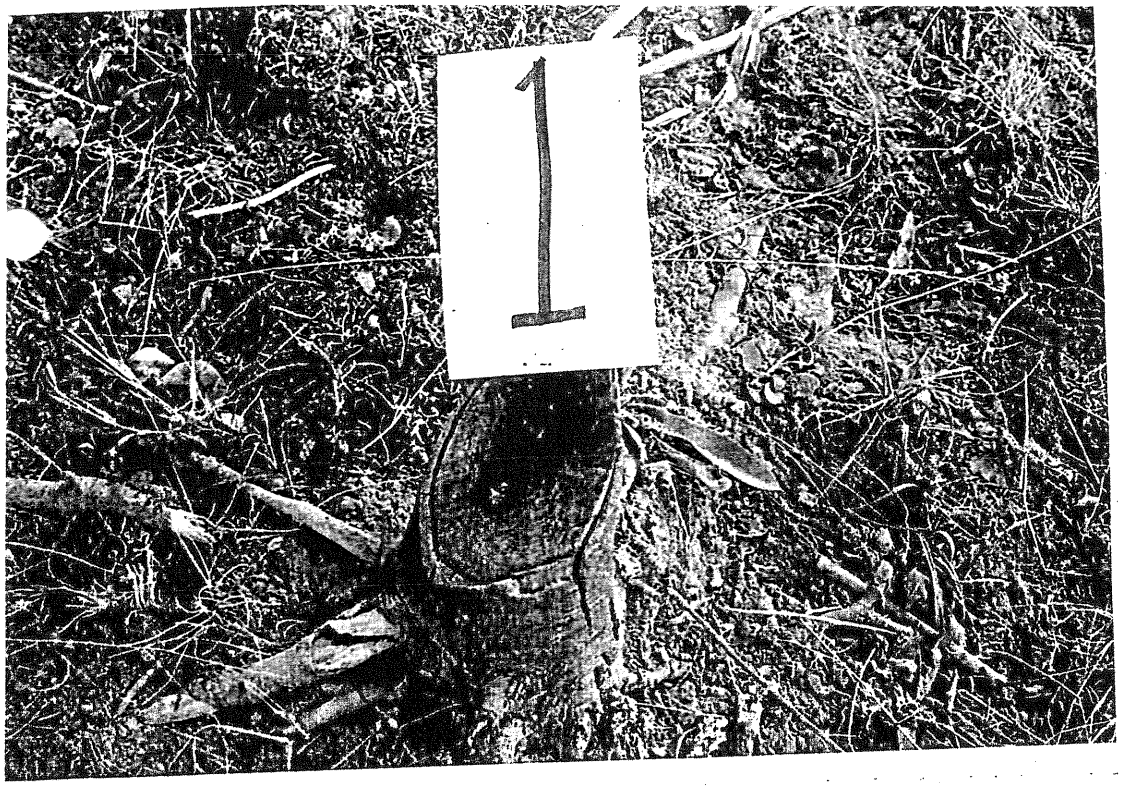
Stump #75
From surveyed property line to old fence line - 23' 7"
From old fence line to new fence- 6' 11"
Distance from surveyed property line to new fence-30' 1"

RESTORATION/COST OF CURE

It is our recommendation that in order to restore the area surveyed, it should have all trees with a 4 caliper inch and larger diameter replaced. Trees with a diameter smaller than 4 caliper inches do not warrant replacement. Forty-seven (47) trees will be replaced with a variety of species. The trees will be 10' tall and cost $350.00 each installed. This price includes the tree, trucking, and planting. During the first year the trees will require water maintenance.

47 Trees	$16,450.00	
Water Maintenance	$ 3,000.00	* 1st year/10wks @ $300 per watering
	---	
Total Cost	$19,450.00	

Tim Kastning, ISA Certified Arborist
Grace Tree Service, Inc., President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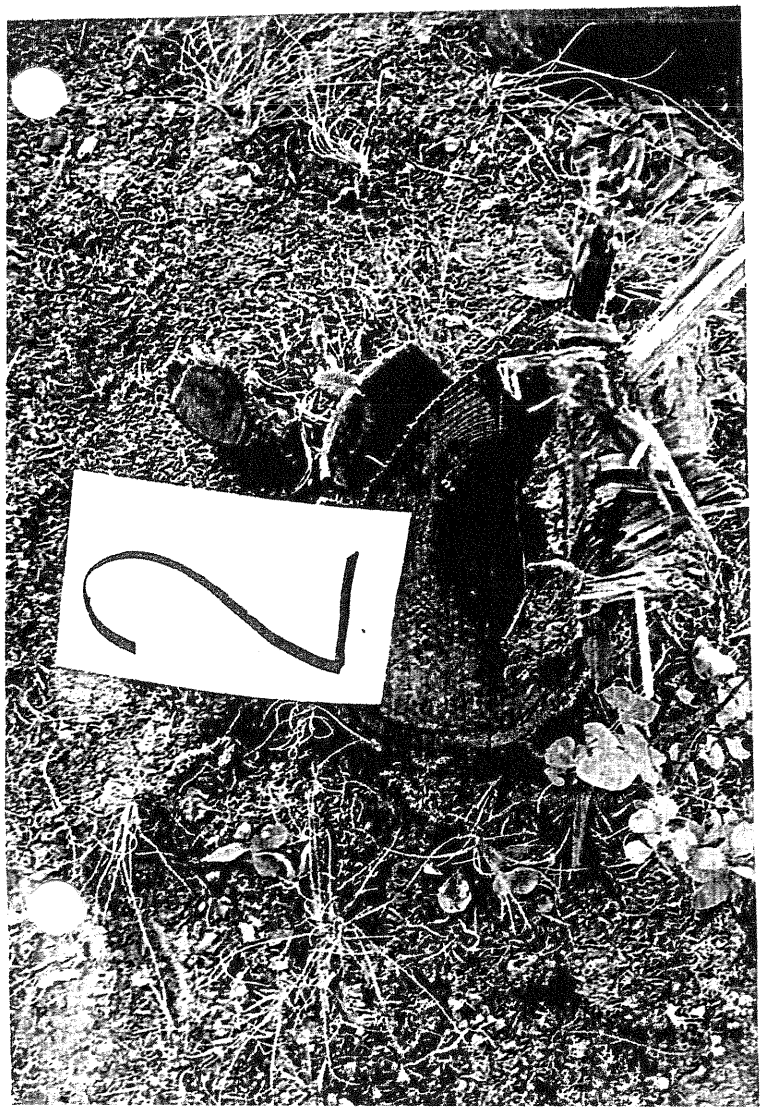
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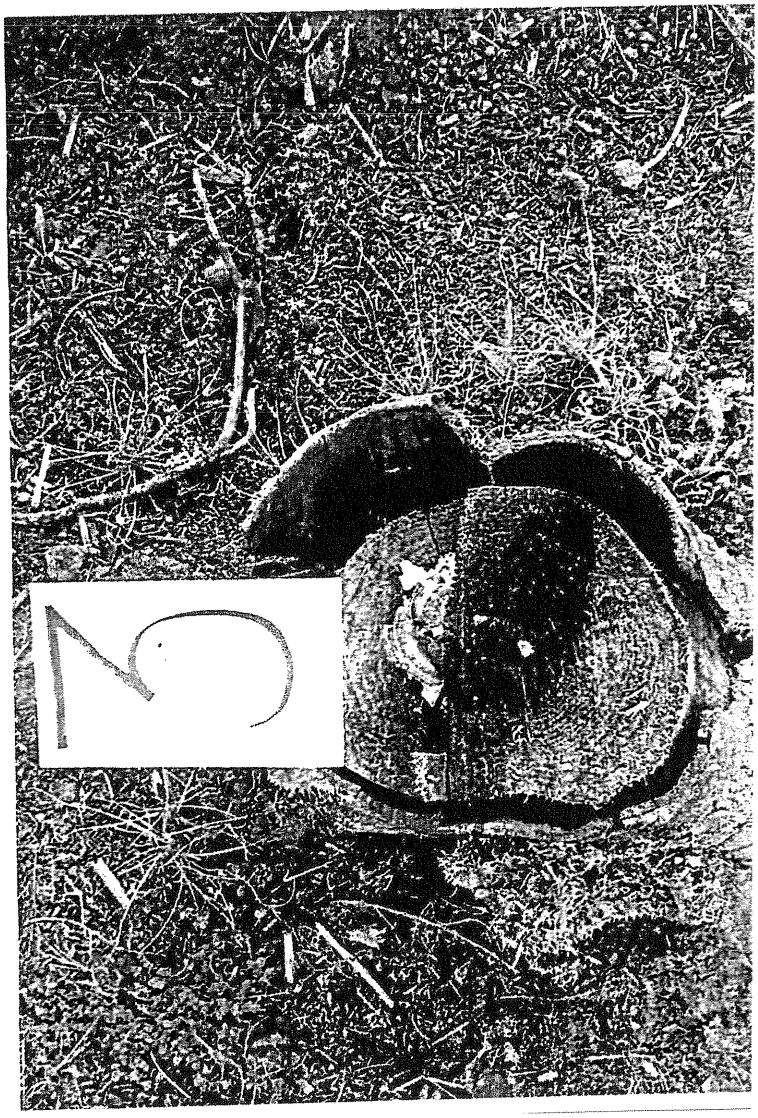
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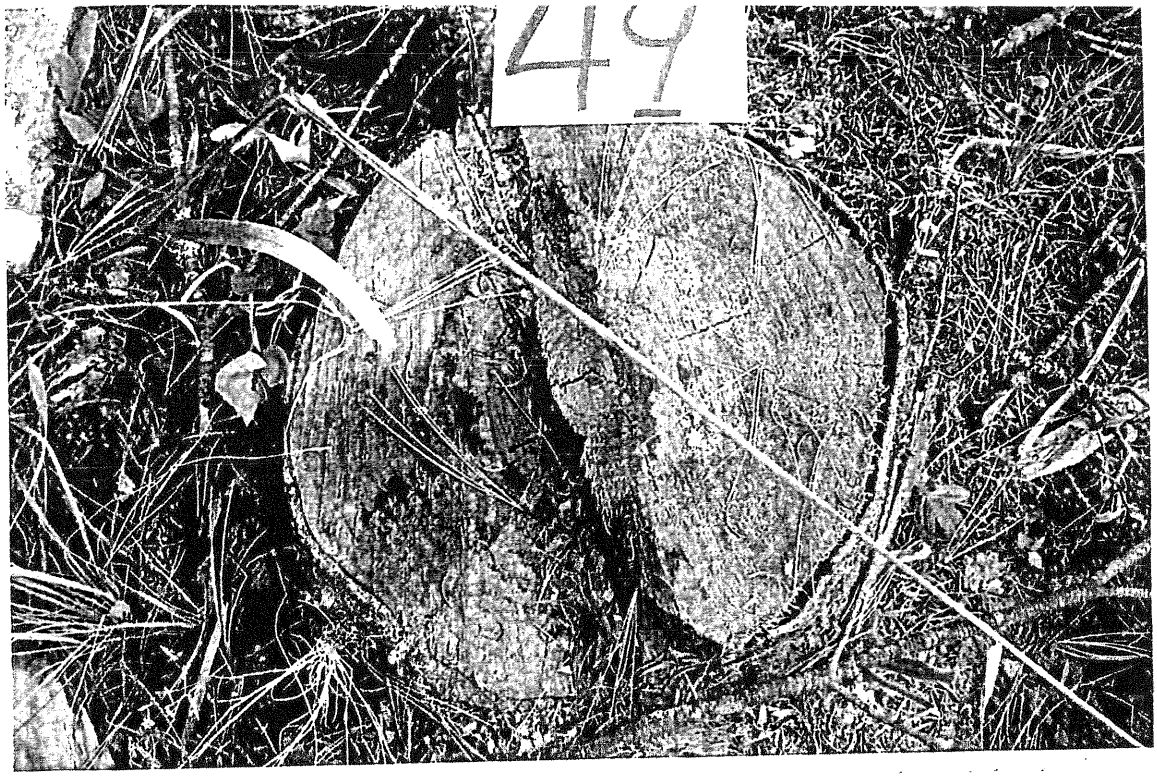
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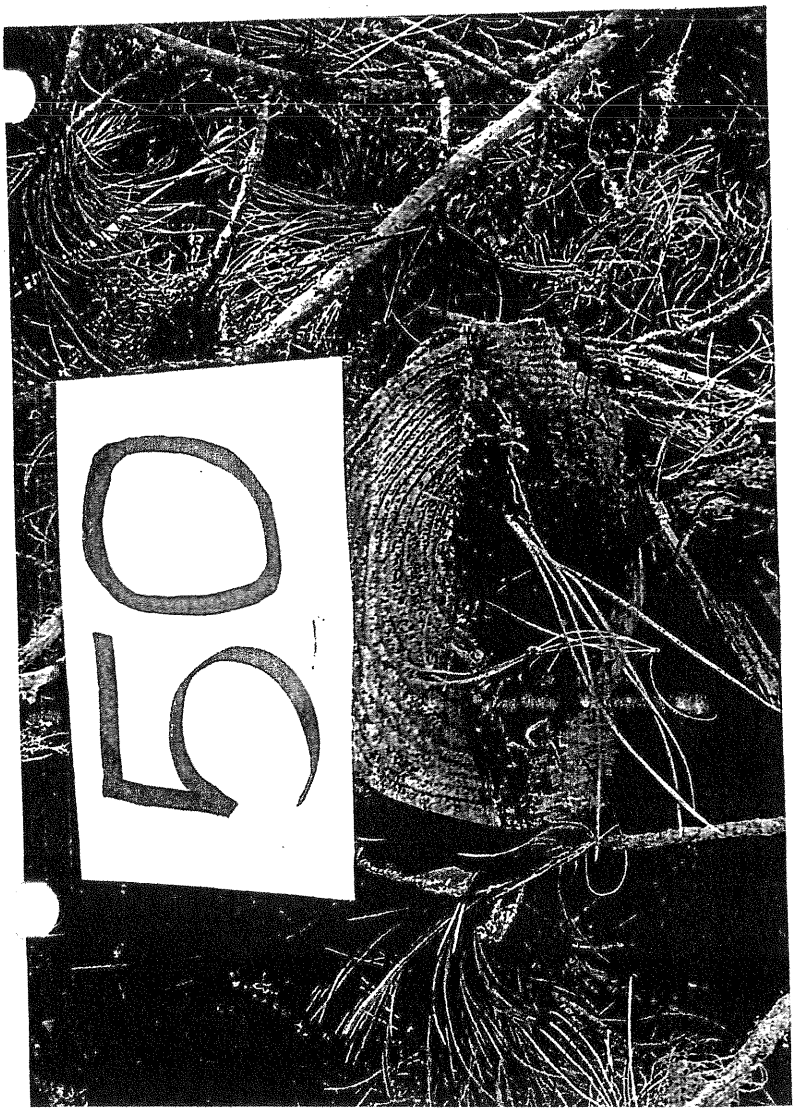
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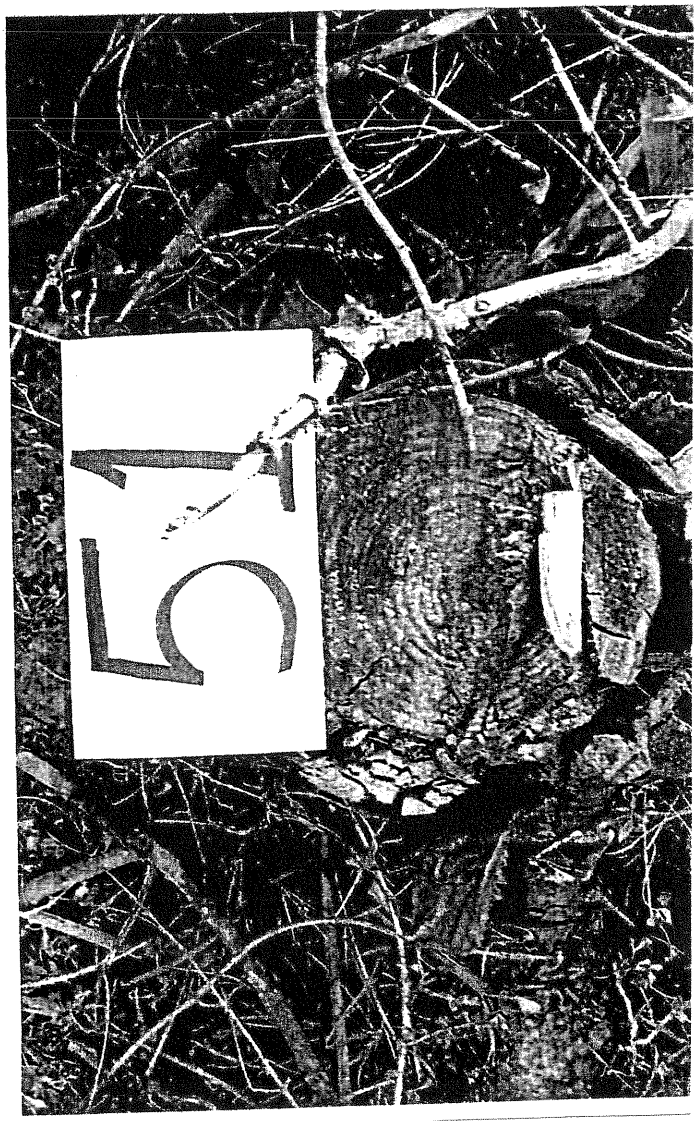
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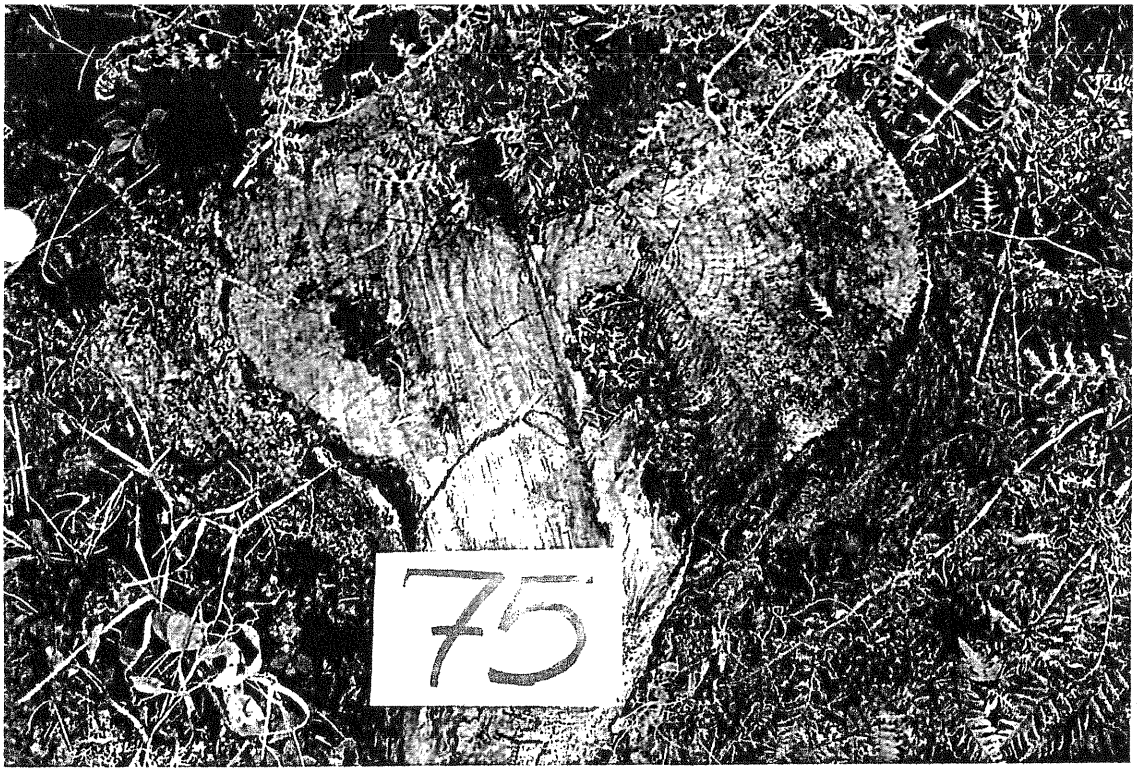
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WARRANTY DEED

For Value Received, We,

PATRICIA LOUISE DAY, of 503 E. 4th St., Oldtown ID 83822;
DONALD J. DAY, Jr., of P. O. Box 1132, Priest River ID 83856;
BARBARA JEAN PRICE, of P. O. Box 36, Cusick WA 99119;
ROBERT DAY, of P. O. Box 546, Priest River ID 83856;
JOHN T. DAY, of 503 W. 4th St., Oldtown ID 83822,

the grantors, do hereby grant, bargain, sell and convey unto LEONARD N. BROWNING of P. O. Box 9, Priest River ID 83856, the following described premises, in Pend Oreille County, Washington, to-wit:

The East half of the Southwest quarter of Section 11 and that portion of the Northeast quarter of the Northwest quarter, and the North half of the Northwest quarter of the Northeast quarter of Section 14, lying North of the South fork of Skookum Creek, all in Township 32 North, Range 44 East of the Willamette Meridian, Pend Oreille County, Washington.

Together with an easement for ingress, egress and utilities across the North half of the Northwest quarter of the Southeast quarter of Section 11, Township 32 North, Range 44 E.W.M.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all encumbrances except easements and rights of way existing or of record and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: 2-19-02 Patricia Louise Day
Patricia Louise Day, Grantor

DATED: 2-19-02 Donald J. Day Jr
Donald J. Day, Jr., Grantor

DATED: 2-20-02 Barbara Jean Price
Barbara Jean Price, Grantor

VOID
Real Estate Excise Tax Paid Sale
Amount $
Date
Treasurer
Pend Oreille County, Washington
By Deputy

DATED: 2-19-02 Robert J Day
Robert Day, Grantor

DATED: 2-18-02 John T. Day
John T. Day, Grantor