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NO. 70691-8-I  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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REGINALD K. WREN and BRENDA M. WREN, husband and wife,

Respondents,

v.

TAMMY S. BLAKEY, an unmarried person, and  
FLYING T RANCH, a Washington corporation,

Appellants.

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BRIEF OF RESPONDENTS

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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 FEB 19 PM 4:00

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A. INTRODUCTION

Forget about the fence. A significant amount of time was spent at trial in an attempt to establish the location of a historic fence that existed between the properties of the parties. The Appellants (hereinafter collectively “Blakey”) have likewise devoted a significant amount of effort in their opening brief challenging the trial court’s findings as to the location of the historic fence. Although the location of the historic fence may be interesting, and may have been of some assistance to the trial court in reaching its ultimate decision, the decision of the trial court did not turn on the location of the historic fence. The decision of the trial court turned, instead, upon the existence of the large hedgerow that separated the properties. Substantial evidence supports the trial court’s decision that the Blakey did not possess the property within the hedgerow, and therefore Blakey’s claim of adverse possession fails. Without an adverse possession defense, Blakey’s entry onto the Wren’s property and resulting damage amounted to a trespass under RCW 4.24.630.

As the name implies, the touchstone of a claim of adverse possession is possession. In the instant case Blakey could not establish the essential element of possession. As a result, the trial

court correctly ruled that the Blakey's entry onto the Respondents' (hereinafter "Wren") property constituted a trespass, and awarded the Wrens damages resulting from the trespass.

The Blakey challenges the decision of the trial court claiming that the decision was not supported by substantial evidence. In this regard Blakey is correct, the evidence was not substantial, *it was overwhelming*. The evidence considered by the trial court in reaching its decision was not just the testimony of the parties, but also the testimony of the former owners of both the Blakey's and Wren's property, and the daughter of one of the former owners. In addition to the testimony of the owners of either property, the trial court considered the testimony of a certified photogramist who, through the interpretation of decades worth of aerial photographs, opined that the historic fence was located right on the property line.

The trial court found that the historic fence was partially or totally obscured by the hedgerow, and that the parties had possessed the property to the edge of the hedgerow. In addition, testimony lead the trial court to the conclusion that a fence was located for decades on the property line, and that the fence was a straight line. This fence that had existed for decades was not located west of the property line,

nor was it crooked as it was constructed by the Blakey in 2009.

Wren and Blakey own adjacent parcels of property. Since the 1930s a fence was located on the boundary line between the two parcels.<sup>1</sup> However, over time as a result of the different uses of both of the parcels, the historic fence was, to differing degrees, obscured by the growth of a large hedgerow. The hedgerow served as a more effective barrier between the two properties than did the fence. Although the size and composition of the hedgerow changed over the years, at times it was as wide as 70 feet and included several large trees. Wren, Blakey, and their respective predecessors in interest conducted agricultural activities on their respective parcels up to the edge of the hedgerow.

In 2009 Blakey used an excavator to remove the hedgerow between the two properties, and after its removal, she constructed a new fence which was not placed in the same location as the historic fence, but instead was placed west of the location of the historic fence. Although the precise distance from the property line varied, at the north end of the property line the fence installed by Blakey was in

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<sup>1</sup> Throughout this brief, the fence that existed prior to the Blakey's incursion will be referred to as the "historic fence".

excess of 49 feet west of the boundary line. Not only was the 2009 fence located west of the section/deed line, at the northernmost end it was even located west of the hedgerow.

The removal of the hedgerow was done by the Blakey without any prior notice to Wren . When Mr. Wren observed activity along the hedgerow, he confronted Blakey's laborer, who admitted that he did not know where the property line was located. The laborer requested Mr. Wren's assistance in locating the property line, and in response to this request Mr. Wren showed the laborer a survey which showed the property line. RP 489; RP 274. The laborer then left that day without doing any further work. RP 492

A few weeks later Mr. Wren while sitting in his home noticed that large trees located on the property line were moving back and forth. He went to see what was going on and he saw that the hedgerow had been largely removed by an excavator operated by the laborer. A confrontation ensued, at which time Ms. Blakey, who had appeared at the site where the work was being done, told Mr. Wren to get off her property and to cease interference with the work. She told Mr. Wren that the property where the work was being performed was her property by adverse possession. RP 70-77.

Blakey then proceeded to build a new fence which was located west of the property line, and on Wren's property. Ex. 6.

As a result of the destruction of the hedgerow it no longer served the purpose it had fulfilled for decades, a natural barrier between the two properties. Instead of the natural barrier a barb wire fence now separated the two properties, and Wren was no longer able to use the pasture west of the fence for their horses as barb wire fencing poses a danger to horses. As a result, Wren was required to keep their horses in a barn year round for the next couple of years, and were required to feed their horses the hay that they would normally sell to others. RP 278-81.

Wren commenced this action for damages resulting from Blakey's intentional trespass upon their property. Based upon the allegations made by Blakey at the time of the confrontation, Wrens included a claim to quiet title to the property located between the property line and the new fence installed by the Blakey in 2009. As expected, Blakey asserted the defense that she was entitled to remove the hedgerow and construct the fence where she did in 2009 alleging that she had adversely possessed the property in question.

After a four-day trial, the trial court rejected the Blakey's claim

of adverse possession, and quieted title in Wren. The trial court further awarded Wren damages resulting from the Blakey's trespass, and trebled those damages pursuant to the provisions of RCW 4.24.630. Finally, the trial court awarded Wren their reasonable attorney's fees and investigative costs pursuant to this same statute.

B. STATEMENT OF THE CASE

Wren purchased their property from Rollins in 2004. RP 54; Ex 39. Rollins previously purchased the property from Kroeze in 1983. Ex. 40, p. 8. Kroeze was born in a house located on the property in 1934, and lived on the property until it was sold to Rollins in 1983. *Id.*

Blakey acquired her property in 1989 at a Sheriff's sale, but did not take possession until the former owner's right of redemption had expired in 1990. RP 236. The former owner of the Blakey's property was Ed Tannis. Prior to Tannis, Blakey's property was farmed by Thorsen. Ex. 40, p. 14.

During the entire time of Kroeze's ownership of the property there was a fence located on the property line between the two parcels. *Id.* Although over the course of time the fence was in a state of disrepair, the fence was always a straight line from the southwest corner of Blakey's property all the way to the northwest corner of the

her property. Ex. 40, p. 14; Ex. 40, p. 20.

After this lawsuit was commenced, Kroeze visited the property, and during that visit inspected the boundary line and the fence installed by Blakey in 2009. It was clear to Kroeze that the fence installed by Blakey in 2009 was not the same straight line fence that existed during his ownership. (Ex. 40, pp. 25, 26-29).

During Rollins' subsequent ownership of the Wren property he farmed both his property and Blakey's property. RP 92. During the entire period of his ownership, a fence existed on the property line, which was located amongst the hedgerow separating the property. RP 94-95; RP 112; RP 115-16; RP 360-61. However, there was a gap in the fence on the north end of about 50 feet, which allowed Rollins to move farming equipment between the two properties. RP 95; RP 112; RP 114. Rollins grew "green chop" <sup>2</sup> Blakey's property, and would move equipment from his property to Blakey's property, which he farmed for several years. Lois Geist, the Rollins' daughter, was involved in the farming operation occurring on both parcels on a daily basis, and clearly remembered the fence located on the property line, and the gaps in the fence that allowed the movement of equipment.

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<sup>2</sup> Green chop is corn that is cut for silage that is then fed to dairy cattle. RP 114.

RP 110-11. Both Rollins<sup>3</sup> and Geist remembered that the fence was a straight line.

In addition to Rollins, the former owner of Blakey's property, Tannis, also testified regarding the location of the fence. Edward Tannis owned Blakey's property for the 20 years prior to Blakey. RP 236. Like Kroeze, Tannis testified that the fence was a straight line from its south to north end. RP 238; 240. Like Kroeze, Tannis also visited the property before he testified, and observed the fence installed by Blakey. In addition to noting that the fence then in place was no longer a straight line or in the same location as the fence that existed when he owned the property, Tannis also observed that a large cottonwood tree that was on the Kroeze/Rollins property during Tannis' ownership now was enclosed by the fence installed by Blakey. RP 241-245. So the only conclusion that could be reached is either that Blakey did not replace the fence in its historic location, or the large cottonwood tree had mysteriously moved.

The most important testimony, however, was the testimony of Terry Curtis, an aerial photography expert. Mr. Curtis, using a method developed during World War II, examines two identical aerial

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<sup>3</sup> Both Robert and Winnie Rollins testified that the fence was a straight line fence.

photographs simultaneously, and thereby obtains a three-dimensional image. RP 156-57; RP 169-70. Mr. Curtis reviewed aerial photographs of the property from 1976 through 2009. RP 158; Exhibits 9-28. These photographs clearly show the existence of the large hedgerow encompassing the boundary area. RP 172-77. The aerial photographs also clearly show the use, or lack thereof, of the properties located on either side of the hedgerow. But most significant was an aerial photograph taken in 1983, from which Mr. Curtis was able to see fence posts that were located right on the property line. Exs. 13 & 28. Accordingly, it is abundantly clear from the photographic evidence that the historic fence was located right on the property line, confirming the lay testimony of Kroeze, Rollins, Geist and Tannis.

But more importantly, the photographs show that the fence line was right in the middle of the hedgerow which consisted mostly of blackberry vines. The photographs also show the cultivation of the properties on either side of the hedgerow. The only conclusion that can be reached from these photographs is that no one possessed the property on the east side of the fence to the eastern edge of the hedgerow. Instead, the possession line, or “use line” as Mr. Curtis

called it, was dictated by the hedgerow, not the fence. RP 178<sup>4</sup>. The use line of the property to the east of the hedgerow was some 30 feet east of the section/deed line. RP 116.

Following Blakey's encroachment onto Wren's property the Wren arranged for a survey of the property line by Cascade Surveying & Engineering. The results of that survey were reduced to a survey which located (1) the actual boundary line between the two properties; and (2) the location of the fence installed in 2009 by Blakey. (Ex. 6) Based upon this survey the fence installed by Blakey in 2009 was located west of the location of the section/deed<sup>5</sup> line by a distance ranging from 6.83 feet west at the south end, to a whopping 49.35 feet at the north end. Ex. 6.

After a consideration of all of the evidence, the trial court determined that Blakey had failed to establish adverse possession of any of the property west of the section/deed line. In fact, the trial court determined that Blakey did not possess the property to the

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<sup>4</sup> Mr. Curtis engaged in a lengthy discussion of the use of the property as interpreted from the aerial photographs. RP 173-204.

<sup>5</sup> Both the Appellants and the Respondent use the reference to the "section/deed" line. The easterly boundary of the Wren property and the westerly boundary of the Blakey property as described in their respective conveyance instruments is on the section line.

section/deed line, which was in the midst of the hedgerow, but actually only possessed up to the east line of the hedgerow. The trial court denied Blakey's claim of adverse possession and quieted title in Wren as to any property lying west of the section/deed line consistent with the description contained in the grant to them.

Accordingly, the trial court held that the entry onto Blakey's property and Blakey's removal of the hedgerow and existing fence, constituted a trespass. The removal of the hedgerow was particularly damaging to Wren, as it removed a natural barrier that retained the Wren's horses. Because of the removal of the hedgerow, Wren was not able to pasture their horses for a period of two years, and instead were required to feed their horses with hay they would have sold to others. RP 481. One of the consequences of Blakey's actions was, therefore, the income lost by Blakey's of all the hay they were required to feed their horses. The income lost by Wren was found to be \$4,285.00.

Of greater significance was the loss of the natural barrier created by the hedgerow. The trial court found that Wrens were entitled to the replacement of this barrier which replacement would be in the form of a fence, and awarded Wren a judgment in the amount

of \$9,182.25, which represented the cost of the replacement fence.

Because the damages sustained by Wren resulted from Blakey's intentional trespass, the trial court further trebled the damages established at trial<sup>6</sup>, resulting in a total judgment of \$40,398.75.

The intentional trespass statute, RCW 4.24.630, also provides that a party recovering under this statute is also entitled to an award of reasonable attorney's fees and investigative costs. The trial court awarded Wren in excess of \$69,000 as their reasonable attorney's fees and investigative costs.

C. PROCEDURAL HISTORY OF THE CASE

After the commencement of this action, the case endured some extended period of inactivity until the Wren's former counsel was killed in a tragic accident. After Wren obtained replacement counsel, the case was noted for trial, and a trial date was scheduled to commence on February 12, 2013.

After the trial date was scheduled, Blakey's counsel withdrew,

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<sup>6</sup> RCW 4.24.630 provides, in part: "Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury."

and there was little further activity until December, 2012, when Blakey's counsel reappeared, and scheduled a summary judgment motion to be heard three days after the trial date was scheduled to commence. CP 303-07.

Upon learning of the scheduled summary judgment motion Wren's counsel immediately notified Blakey's counsel that not only was the hearing scheduled after the trial was scheduled to commence, it was scheduled in violation of CR 56 (c), which provides that summary judgment motions may not be scheduled within 14 days of trial. Wren's counsel demanded that the summary judgment motion be stricken, and in failure thereof, a motion to strike the summary judgment motion would be scheduled, along with a motion to impose CR 11 sanctions as a result of the improperly noted summary judgment motion. CP 290-302; 248-52.

Blakey's counsel refused to strike the summary judgment motion, and instead moved to continue the trial date, arguing that the Wren's failure to provide discovery requests warranted the continuance of the trial. On January 25, 2012, The Honorable Michael Downs denied the requested trial continuance, noting that the remedy for failing to provide discovery was to move to compel discovery,

which motion was not made. CP 253-54.

Immediately after the court refused to continue the trial date, The Honorable Ellen Fair heard the Wren's motion to strike the improperly noted summary judgment motion, and for the imposition of sanctions. Judge Fair found that the motion for summary judgment was improperly filed, and that Blakey's counsel was informed of this fact and adequately warned of the consequences if the summary judgment motion was not stricken. For the second time Blakey's counsel argued that the deviation from the court rules was justified by Wren's failure to provide discovery. Judge Fair rejected Blakey's arguments, and imposed sanctions against Blakey's counsel for the expenses incurred in bringing the motion to strike the summary judgment. CP 132-35.

On January 31, 2013, twelve days prior to the commencement of the scheduled trial, Blakey's counsel then moved to compel discovery<sup>7</sup>, which motion was denied by a Superior Court Commissioner. CP 136-37.

Finally, at the commencement of the trial Blakey moved in limine to exclude Wren's evidence as a result of the failure to provide

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<sup>7</sup> CP 244-47.

responses to discovery. CP 127-31. This motion was also denied, with the court noting that Blakey had done virtually nothing to compel discovery responses notwithstanding the fact that the court rules provide for a remedy. RP 41-43.

D. SUMMARY OF RESPONSE TO ARGUMENT

Blakey's adverse possession argument has two glaring failures. First, there is substantial evidence both from the testimony and the photographs, that the fence installed by the Blakey in 2009 was not placed in the location of the historic fence. Secondly, and more to the point is the fact that Blakey never actually possessed the property up to the location of the historic fence. At best, Blakey's possession was to the edge of the hedgerow which was located somewhere east of any fence line, and even east of the section/deed line.

For the first time in conjunction with a motion for reconsideration filed after the trial court entered its Findings of Fact, Conclusions of Law, Order and Judgment, Blakey argued that the section/deed line established by Cascade Surveying & Engineering (Ex. 6) was in error. The evidence in support of this argument consisted of a Declaration that was never provided to the trial court,

and therefore was never subjected to cross examination.

The argument that the historic fence was west of the property line relies upon the consideration of evidence that was not introduced at trial, but instead only submitted after trial in conjunction with a motion for reconsideration. Blakey offered no reason, let alone a compelling reason, why this evidence should be considered by the trial court at all.

Contrary to Blakey's assertions that are unsupported by the record introduced to the trial court, a fence was clearly observable in 1983 right on the property line, and was a straight line fence. Ex. 28; RP 178-79; RP 184-85; RP 207-07. According to the testimony of all of the witnesses, the historic fence was a straight line fence. RP 94-95; Ex. 40, p 8; Ex. 40, p 20. The fence installed by Blakey in 2009 was west of the section/deed line a distance of 6.83 feet at the south end, and 49.35 feet at the north end, and far from a straight line fence. Ex. 6 The fence that existed at the time of Tannis' ownership of the property, Blakey's predecessor in interest, did not encompass a large cottonwood tree, whereas the fence installed by Blakey in 2009 encompassed this same tree. Finally, there was no evidence that the fence was ever relocated or replaced by anyone, and

certainly not after the 1983 photographs were taken.

It is important to also consider what evidence was not considered by the trial court. First of all the trial court was not provided any testimony by Andrew Floe, the person who installed the fence in 2009. Accordingly, there was no evidence presented to the trial court by the person who destroyed the hedgerow and built the 2009 fence that the 2009 fence was installed in the same location as the historic fence. Secondly, there was no evidence presented to the trial court that the historic fence shown in Exhibit 28 was not on the section/deed line. To the contrary, the only evidence presented to the trial court was that the fence observed in the 1983 aerial photograph was located exactly on the section/deed line. Blakey presented no competent survey evidence at all to the trial court.

The decision of the trial court on Blakey's adverse possession claim is not just supported by substantial evidence, it is supported by overwhelming and, for the most part, uncontroverted evidence.

The award of attorney's fees (and investigative costs) is specifically authorized by RCW 4.24.630. It would have been improper for the court to segregate from its award those fees that were incurred in defeating Blakey's adverse possession claim. It was

Blakey who claimed title by adverse possession, which was raised as a defense to the intentional trespass claim. As such, the adverse possession element of Blakey's defense was so intertwined with the intentional trespass claim that the claim and the defense could not be segregated.

Finally, the liability of Blakey is not based upon a corporate disregard theory, but instead because it was Blakey herself who committed the tort. Although a corporation is liable for the torts of its agents, the agent is also liable for its own actions even when undertaken on behalf of a principal.

E. ARGUMENT

1. *Substantial Evidence Supports the Findings that Blakey did not Adversely Possess any Property West of the Section/Deed Line.*

Substantial Evidence. Where, as is the case here, the trial court has weighed the evidence, appellate review is limited to determining whether the findings of fact are supported by substantial evidence. *Ridgeview Properties v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982). There is a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence. *Leppaluoto*

*v. Eggleston*, 57 Wn.2d 393, 401, 357 P.2d 725 (1960). Where substantial evidence exists, it is improper for the appellate court substitute its judgment for that of the trial court. *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 199, 570 P.2d 1035 (1977).

The crux of Blakey's argument is that substantial evidence does not support the trial court's findings that the historic fence was located on the section/deed line, but instead was located west of the section/deed line.<sup>8</sup> In fact, overwhelming evidence supports the trial court's conclusion that the historic fence was located on the deed/section line. The testimony of all the lay witnesses (Kroeze, Rollins, Geist and Tannis) all clearly testified that the fence was a straight line, not the curved line fence that Blakey constructed in 2009. In addition to the lay testimony, the only expert testimony admitted at trial placed the historic fence on the section/deed line.

Blakey's argument that the historic fence was not located on the section/deed line is based upon a complete misinterpretation of the evidence.

The Coffelt Survey. Blakey first argues that a "survey" prepared

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<sup>8</sup> Brief of Appellant, page 17.

by Russel Coffet<sup>9</sup> “depicts the fence located west of the section/deed line between what is now the Wrens’ property and Flying T’s property.<sup>10</sup> However, this survey shows no such thing. The Coffelt survey was prepared in 1992 in conjunction with a boundary line adjustment. RP 329-31. The boundary line adjustment (“BLA”) pertained to property that was south of the section/deed line separating Blakey’s and Wren’s properties that was at issue in this case. RP 331-32. At the most the Coffelt BLA document shows the existence of a short length of fence that is south of the section/deed line at issue. RP 341. The markings on the BLA document do not provide any information as to the length of a fence that may have existed in this location. RP 342. But what the Coffelt survey failed to even argue was that either the Lloyd survey<sup>11</sup> or the exhibit prepared by Terry Curtis<sup>12</sup> misplaced the location of the section/deed line.<sup>13</sup> In short, Blakey’s assertion that the Coffelt survey established to location

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<sup>9</sup> Exhibit 53.

<sup>10</sup> Brief of Appellant, page 17.

<sup>11</sup> Exhibit 6.

<sup>12</sup> Exhibit 28.

<sup>13</sup> Coffelt was not called as a witness in this case, and therefore never offered any testimony regarding the documents prepared by him.

of the section/deed line at all is simply not the evidence presented to the trial court. At best, all the Coffelt survey established was the existence of a short length of fence that was located south of the boundary line that was the issue in this case. However, Coffelt was not called to testify and explain the conclusions that could be drawn from his survey. The existence of his survey alone without supporting testimony certainly cannot be interpreted to cast doubt on the survey prepared by Lloyd, or the opinions expressed by Curtis.

The Lloyd Survey. Blakey then appears to argue that the Lloyd survey establishes that the fence was located “west of the section/deed line”. Mr. Lloyd’s testimony was never intended to establish the location of the historic fence, but instead establishes the location of the 2009 fence, and to establish the location of the section/deed line. RP 136; 143; 144. According to evidence that was uncontroverted, the Lloyd survey accurately located the fence that was installed by Blakey in 2009. RP 144.

Lloyd was engaged to survey the property after Blakey had replaced the fence with a new fence in 2009. Lloyd’s survey does not purport to establish the location of the pre-2009 fence, but instead establishes the relationship between the 2009 fence and the

section/deed line. Clearly, because Lloyd had no knowledge as to the location of the historic fence, he could not have located that fence on his survey.

But even at that, the Lloyd survey does impart some critical information when compared to the other evidence regarding the location of the historic fence. The Lloyd survey shows the 2009 fence as being far from a straight line, which is certainly contrary to all of the other evidence pertaining to the location of the historic fence.

2. *The Huey Declaration and Survey Were Not Considered as Evidence by the Trial Court, and Cannot Be Considered on Appeal.*

Blakey relies upon the Declaration of Robert Huey to establish that the historic fence and 2009 fence are in the same location.<sup>14</sup> It is never explained how Huey could opine that the historic fence and the 2009 fence are in the same location since Huey never saw the historic fence.

First and foremost, even if this evidence was admissible, which it is not, the evidence does not establish the location of the historic fence. Instead, this evidence only establishes the location of a fence that was in existence at the time the survey was performed, which

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<sup>14</sup> Brief of Appellant at 19.

was the fence installed by Blakey in 2009. The fence that is shown on the survey is the same fence that is shown on the Lloyd survey.

More importantly, there is no reason why this evidence should have been considered by the trial court on the motion for reconsideration, or should be considered by this court. Only newly discovered evidence which was not available may be considered on a motion for reconsideration. *Morinaga v. Vue*, 85 Wn. App. 822, 831, 935 P.2d 637 (1997). CR 59(a)(4) provides in pertinent part:

**“Grounds for a New Trial or Reconsideration.** The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any of the following causes materially affecting the substantial rights of such parties:

.....  
(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.”

In *Morinaga*, like this case, new evidence was submitted in support of a motion for reconsideration. Because there was no showing as to why the evidence was not produced in response to the

summary judgment motion, the court refused to consider the evidence. *See Adams v. Western Host, Inc.*, 55 Wn. App. 601, 608, 779 P.2d 281 (1989) [New declaration properly not considered when it was determined that original declaration was insufficient to rebut summary judgment motion.]

One would think that a survey is critical evidence in any action where the location of a boundary line is at issue. Yet Blakey offered no competent survey evidence at the time of trial. Furthermore, there was no showing as to why survey evidence was not introduced at trial.<sup>15</sup>

Blakey argues that the Huey evidence should be considered because they did not know that Wren would be relying on the Lloyd survey as evidence.<sup>16</sup> However, Blakey made this argument on at least three separate occasions prior to or at trial. Blakey moved for a continuance of the trial date based upon the failure to provide discovery, which request was denied. Blakey unsuccessfully responded to a motion to strike an untimely motion for summary

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<sup>15</sup> Evidence was presented by the Blakey from a licensed surveyor, Gerald Painter. However, Mr. Painter did not perform a survey, and in fact had never seen the property at issue.

<sup>16</sup> Brief of Appellant, footnote 14, page 17.

judgment and the imposition of sanctions on the same basis. At trial Blakey made an unsuccessful motion in limine to exclude the Wren's evidence on the same basis.

However, as stated above, at its very best the Huey evidence does not establish the location of the historic fence.

Terry Curtis Testimony. Finally, Blakey argues that the evidence of the expert photogramist, Mr. Curtis, inaccurately establishes the location of the historic fence line on the section/deed line.<sup>17</sup> However, there was no competent evidence presented to the trial court that Mr. Curtis' conclusion that the historic fence was located on the section/deed line was not correct. To the contrary, Mr. Curtis testified in detail as to the manner in which he compared and prepared the photographs that were presented to the trial court. This method included the overlay of the information obtained from the Snohomish County Assessor's office, the 1983 photograph that showed the fence posts, and the Lloyd survey that showed the location of the 2009 fence in relation to the section/deed line. The only testimony regarding Mr. Curtis' method was that, based upon his training, qualifications, experience and examination of the aerial

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<sup>17</sup> Brief of Appellant, page 18.

photographs, and comparison with other data, that Exhibit 28 accurately depicted the location of the historic fence, the section deed line, and the fence installed by Blakey in 2009. RP 206. The historic fence was located on the section/deed line, whereas the 2009 fence was located west of the section/deed line and encroached onto the Wren property. (Ex. 6; Ex. 28)

In sum, the only evidence produced at the time of trial as to the location of the section/deed line and the 2009 fence was the Lloyd survey. Furthermore, the only evidence produced at the time of trial that provided a location of the historic fence in relation to the section/deed line was the evidence of Mr. Curtis. To argue that Mr. Curtis is in error is based upon an incorrect interpretation of both the testimony Lloyd and Curtis, and upon evidence that was not produced at trial.

3. *The Blakey's Evidence fails to Establish Adverse Possession up to any Fence, Wherever the Fence was Located.*

Regardless of the precise location of the historic fence, substantial evidence still supports the conclusion that Blakey has failed to establish adverse possession of any property west of the east line of the hedgerow. In order for Blakey to defeat the Wren's

claim of intentional trespass she must establish that she owned the property upon which the trespass occurred.

The presumption of possession is in the holder of legal title. *Peebles v. Port of Bellingham*, 93 Wn.2d 766, 773, 613 P.2d 1128 (1980), overruled on other grounds in *Chaplin v. Sanders*, supra. No presumption runs in favor of the purported adverse holder. *Id.*

In order to establish a claim for adverse possession, a claimant must prove possession that is (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile. *ITT Rayonier, Inc. v. Bell*, 112 Wash. 2d 754, 757, 774 P.2d 6 (1989). Possession of the property with each of the necessary concurrent elements must exist for the statutorily prescribed period of 10 years. *RCW 4.16.020*. The party claiming to have adversely possessed the property has the burden of establishing the existence of each and every element. *Muench v. Oxley*, 90 Wn.2d 637, 642, 584 P.2d 939 (1978); *Skansi v. Novak*, 84 Wash. 39, 44, 146 P. 160 (1915), overruled on other grounds in *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984); 5 *G. Thompson, Real Property* § 2544 (1957).

The evidence considered by the trial court clearly establishes that the Wren's easterly boundary line is the section/deed line. The

burden of proof then shifted to the Blakey to establish all of the elements of adverse possession in order to defeat Wren's record title. Only by defeating Wren's record title can Blakey justify her trespass and resulting damage to Wren's property.

4. *Blakey Cannot Establish the Required Element of Possession.*

The legal principles involved with adverse possession are neither new nor novel, and as such each case turns on its own unique set of facts. As the name of the principle implies, the touchstone of any claim of adverse possession is the element of possession. In the instant case the one essential element that was lacking is the very element of possession itself. As was demonstrated by substantial, if not overwhelming evidence, the boundary line in question was in the middle of a hedgerow between the two properties. Over the years the hedgerow varied in width depending upon the farming activities undertaken by each property owner. As the aerial photographic evidence clearly demonstrated, even when the farming of each parcel was the most intense, the hedgerow was significant in size. Even though there was evidence of a fence in the middle of the hedgerow, it was the hedgerow itself that governed the use of the property on either side of the hedgerow. Neither property owner farmed all the

way to the fence, but rather to the edge of the hedgerow.<sup>18</sup> This is evident from the testimony of Bob Rollins, who was the Plaintiffs' predecessor in title; the testimony of Charles Kroeze, the predecessor to Rollins; and Edwin Tannis, the predecessor to Blakey. In fact, until the late 1990's Rollins farmed both the Wren property, and the property owned by Blakey. No one paid particular attention to the fence, as it was in the midst of, and obscured by, the hedgerow. Instead, they farmed their respective parcels to the edge of the hedgerow without regard to the location of the fence.

It is further telling to examine the evidence gleaned from the aerial photographs both before and after Rollins ceased farming the Defendants' property. Compare the hedgerow on both parties from the year 2000 on. The hedgerow on Wren's property remained a consistently straight line, whereas on Blakey's property the hedgerow continued to march further and further eastward. The only conclusion that can be reached upon consideration of this evidence is that until Blakey tore out the hedgerow in September/October of 2009 there

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<sup>18</sup> The cultivation on the west side of the hedgerow was more intense and closer to the section/deed line than was the cultivation on the east side of the hedgerow, except for the period of time when Rollins farmed the Blakey's property. After Rollins ceased farming Blakey's property, the cultivation on the east side of the hedgerow ceased almost entirely.

was virtually no possession by Blakey anywhere near the section/deed line.

Over the years our courts have been faced with similar fact patterns involving a fence that is in a questionable, if not dilapidated condition, and obscured by the brush and vegetation surrounding the fence.

In *Muench v. Oxley*, 90 Wn.2d 637, 584 P.2d 939 (1978), the court considered a fence that was in a dilapidated condition, and the ground on either side was heavily covered by trees and underbrush. The court held that the adverse claimant had not established possession sufficient to put a person of ordinary prudence on notice of a hostile claim up to the fence that, like this fence, was obscured by trees and brush. The court found that the required element of hostility was not proven by the adverse claimant.

Similarly, in a case in which there was no fence and no defining point of cultivation (apart from a row of pear trees along the purported boundary line), the court held that because no well-defined boundary was established, adverse possession would not be found to exist. *Scott v. Slater*, 42 Wn.2d 366, 368-69, 255 P.2d 377 (1953), overruled on other grounds by *Chaplin v. Sanders*, 100 Wn.2d 853,

862 n.2, 676 P.2d 431 (1984).

An even more telling case is *Anderson v. Hudak*, 80 Wn. App. 398, 907 P.2d 305 (1995). In this case the claimant asserted adverse possession over a line established by a row of trees that she planted. The court rejected her adverse possession claim because she had done nothing on the property other than to plant the trees that she argued formed the line. The court held that the planting of the trees alone did not establish possession of the property at issue. There must be something more than the mere existence of trees. What was found to be lacking was any evidence of possession of the property where the trees had been planted. Accordingly, the court found the element of possession lacking, and denied the claim of adverse possession.

The facts presented in the instant case are even more compelling than those presented in *Anderson*. In the instant case, unlike *Anderson*, no one planted the hedgerow. It was just allowed to grow in its natural state. At least *Anderson* planted the row of trees upon which she laid claim to the property.

In all these cases the court is looking for the required element of possession. As stated by Stoebeck:

"To be adverse, the possession of another's land must be actual: it is not possible to be in adverse possession without physical occupation. [Cartwright v. Hamilton, 111 Wash. 685, 191 P. 797 (1920)] [maintaining a fence on neighbor's land not possession without use up to the fence]. In most cases, the adverse possessor must be in physical possession of every part of the land that he claims." 17 *William B. Stoebuck, Washington Practice Real Estate: Property Law* § 8, 518 (1995) [emphasis added]

The question then is whether the finding that Blakey did not possess any portion of the property west of the deed/section line supported by substantial evidence. Regardless of the location of the fence, it is clear that both parties possessed the property up to the edge of the hedgerow, and neither party possessed the property to the fence, wherever it may have been located. If any party possessed the property to the fence, that possession only lasted only long enough for the blackberry vines to assert their control, rendering any possession to the fence an impossibility. Succinctly stated, substantial evidence supports the finding that there was no possession beyond the edge of the hedgerow. Without possession west of the section/deed line Blakey's claim of adverse possession fails.

5. *Personal Liability Was Properly Imposed upon Blakey.*

Blakey asserts that because the her property was owned by her corporation, that liability was improperly imposed upon Blakey in her individual capacity. Blakey misses the point. Liability upon Blakey was not based upon a corporate disregard theory In fact, corporate disregard was neither plead nor argued by Wren.

Wren's claim against Blakey is based upon the fact that the Blakey actively participated in, and in fact directed trespass upon which liability was based.

An officer of a corporation is liable for a tort committed in the course and within the scope of his official duties to the corporation the same as any other agent or servant is liable for his torts. An agent or servant is not exonerated from the consequences of his torts by the fact that, in committing them, he acted for his principal. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 489 P.2d 923 (1971).

Only where the principal of the corporation takes no part whatever in a tort committed by the corporation is the principal not personally liable to third persons for his or her actions. The immunity of the principal vanishes if the principal knowingly participated in, cooperated in the doing of, or directed that the tortuous acts be done.

*Messenger v. Frye*, 176 Wash. 291, 28 P.2d 1023 (1934) [Liability imposed upon the principal because he directed the trespass (the diversion of surface water onto the neighboring landowner) that was the basis of the trespass.]

In *Johnson v. Harrigan-Peach Land Dev. Co.* liability was imposed upon the principal because the principal participated in the very misrepresentations upon which liability was based.

Finally, in the case of *Dodson v. Economy Equip. Co.*, 188 Wash. 340, 343, 62 P.2d 708 (1936) the principal of the corporation was held personally liable for the conversion of property of another by the corporation where he actively participated in the conversion. The decision in *Dodson* is instructive as liability was imposed notwithstanding the fact that the conversion benefitted the corporation, and not the principal.

The principal of a corporation cannot escape liability for his actions merely because he was acting on behalf of the corporation. Instead, where the principal is an active participant in the actions that give rise to liability, the principal is liable along with the corporation. In the instant case it is clear that Blakey was an active participant. She directed Andrew Floe to undertake the very actions that

constituted the trespass, and when confronted by the Plaintiffs, she did nothing to stop the trespass. In fact, she averred that the actions she directed were appropriate, and instructed her laborer to continue the trespass even after the confrontation. Blakey not only directed the activities that constituted the trespass, she did nothing to halt the trespass. As the actor, even though she now argues that it was the corporation that was acting, she directed those actions. Imposing liability upon her was the correct decision of the trial court.

6. *The Imposition of the Fee Award in its Entirety Was Correct.*

Blakey argues that the trial court should have only made an award of attorney's fees for the portion of Wren's claim that pertained to Blakey's intentional trespass. However, the trial court determined that Wren's intentional trespass claim and quiet title claims were so intertwined that segregation of Wren's attorney's fees was not appropriate.

Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims<sup>19</sup>, the hours spent on the unsuccessful claim should be excluded in considering the amount

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<sup>19</sup> Wrens did not present any unsuccessful claims to the trial court, and therefore no attorney time was spent on unsuccessful claims.

of a reasonable fee. *Hensley v. Eckerhart*, 461 U.S. 424, 440, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983), quoted in *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 548 n.7, 151 P.3d 976 (2007). However, the court is not required to segregate fees if it determines that the various claims are so related that no reasonable segregation of successful and unsuccessful claims can be made. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 620, 224 P.3d 795 (2009).

Where the prevailing claims relate to the same fact pattern but allege different bases for recovery the award of all of the plaintiff's fees is appropriate. *Ethridge v. Hwang*, 105 Wn. App. 447, 461, 20 P.3d 958 (2001).

Contrary to Blakey's suggestion, the crux of the Wren's claim was Blakey's intentional trespass upon Wren's property. It was the fact of the trespass that started the snowball rolling down the hill. In response to the Plaintiff's intentional trespass claim, it was Blakey who asserted the only possible defense: there was no trespass because she was the rightful owner of the property upon which the trespass occurred. The only way she could establish the claim of ownership and prevail on this defense would be to establish title by adverse possession. Accordingly, it was Blakey that brought adverse

possession to the forefront of this case in her very first pleading. It was then not just prudent, but required that Wren defeat Blakey's adverse possession defense in order to prevail on their intentional trespass claim.

Of all the cases cited above, especially instructive is the *Ethridge v. Hwang* case. This case involved a claim by a tenant of a mobile home park who claimed that the landlord unreasonably delayed or refused to approve the assignment of her lease in the park. The claim asserted a tortious interference claim as well as a Consumer Protection Act claim. The jury found for the tenant on both claims, and the trial court awarded damages under the CPA claim without segregation. In upholding the decision of the trial court the appellate court reasoned:

"[t]he court is not required to artificially segregate time in a case, such as this one, where the claims all relate to the same fact pattern, but allege different bases for recovery. See *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 572, 740 P.2d 1379 (1987). "Ultimately, the fee award must be reasonable in relation to the results obtained." *Brand v. Dep't of Labor & Indus.*, 91 Wn. App. 280, 294, 959 P.2d 133 (1998), rev'd on other grounds, 139 Wn.2d 659, 989 P.2d 1111

(1999)."<sup>20</sup>

In upholding the decision of the trial court to award Ethridge all of her attorney's fees, the court reasoned:

"Here, Ethridge prevailed on all three theories alleged in the complaint: MHLTA, CPA, and tortuous interference. Each claim involved the same core of facts--Hwang's unreasonable rejection of prospective buyers at the park. Proof of the tortuous interference claim involved the same preparation as the other claims--establishing that Hwang acted unreasonably. Because nearly every fact in this case related in some way to all three claims, segregation of the fee request was not necessary and the trial court did not abuse its discretion in awarding fees as it did."<sup>21</sup>

This is precisely what happened here. In order to prove their intentional trespass claim Wren was required to respond to and defeat Blakey's one and only defense, adverse possession. The proof of both the intentional trespass and disproof of the Defendants' defense to that claim involved the same set of facts which are so intertwined that segregation of fees is not required.

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<sup>20</sup> *Ethridge v. Hwang*, 105 Wn. App. 447, 461, 20 P.3d 958 (2001) [*emphasis added*].

<sup>21</sup> *Id.* at 461

Finally, the cases cited by Blakey do not mandate a different result. In *Manna Funding, LLC v. Kittitas County*, 173 Wn. App. 879, 295 P.3d 1197 (2013) the trial court granted the Petitioners LUPA petition, but denied its claim for damages on all of three theories.<sup>22</sup> On appeal the court of appeals affirmed the dismissal of the damage claims, and awarded the County attorney's fees for defending those claim without requiring the county to segregate from the fee award the fees incurred in the LUPA action, or in defending the tortuous interference claim. The underlying facts that the county was required to establish to defeat the LUPA claim were distinct from the facts related to the damage claims. In general terms, in order to defeat the LUPA claims the county would only have to establish that it was correct in denying the land use approval.

The case of *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 272 P.3d 827 (2012) is likewise distinguishable. In this case the jury decided in favor of the seaman/plaintiff, and made an award of

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<sup>22</sup> The Petitioner brought damage claims under RCW 64.40.020 and 18 USC § 1983, either of which would support a fee claim. It also brought a tortuous interference claim that would not support an award of attorney's fees. These claims, however, involve the establishment of much more than was required to prevail on the Petitioner's LUPA claims. Merely establishing that the county erred in its land use decision, the issue to be resolved in the LUPA action, does not automatically establish liability under these statutes.

attorney's fees under maritime law. The trial court did require segregation of the fees, but the claims involved clearly separate and distinct facts. The only common thread to the claims was that a seaman was injured. The reason that the seaman was injured, however, did raise distinct facts, as did the actions of the employer following the injury. The court held that 90% of the trial time was spent proving the claim for which fees were allowed, and relying upon its adherence to the abuse of discretion standard, the appellate court upheld the limited segregation of the fees.

The instant case is factually distinguishable from either *Manna Funding* or *Clausen*, and is just like *Ethridge*. The instant case was brought to establish the damage to the Plaintiffs' property as a result of the intentional trespass. It is patently unfair that the trespasser can avoid fee liability merely by asserting a defense for which fees are not recoverable. In other words, the Defendant should not be heard to complain about the fees that are assessed against them when it was them who raised the issue that the Plaintiffs were required to defend in order to establish the Plaintiffs claim, a claim for which fees are clearly allowed.

7. *The Record Is Adequate to Review the Trial Court's Award of Wren's Attorneys Fees and Costs*

Wren submitted two detailed declarations in support of their requests for attorney's fees and costs. CP 372-414; CP 22-24. These declarations include a statement of the attorney's qualifications, and a complete description of each and every time and charge upon which the request was made. *Id.* Upon considering the evidence provided to the trial court, the court made the following Finding of Fact:

"The Plaintiffs have incurred the following reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation related costs in the following amounts." CP 92.

Blakey argues that the fee award cannot be upheld because the trial court failed to make adequate findings of fact to permit adequate review. *Citing Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998).

First of all, the above quoted language satisfies the requirement that an attorney's fee award be supported by findings of fact. Implicit if not explicit in the finding made by the trial court is the finding that the fees requested were reasonable.

Secondly, the rationale behind the rule is the existence of a record that allows the review of the award. *Id.* Such a record was

presented here. Included in the information provided to the trial court in conjunction with the request for attorney's fees were: (1) the qualifications of the attorney; (2) a complete list of all time and charges comprising the request; and (3) the suggestion that a portion of the time expended by Wren's prior counsel might be excluded because the time did not actually result in productive effort.<sup>23</sup> Furthermore, the trial court spent over four days in trial with Wren's counsel, and was therefore able to measure the adequacy of counsel's efforts on behalf of Wren. In sum, the information provided to the trial court clearly enabled the trial court, and this court as well, to insure that the attorney's fees requested were consistent with RPC 1.5.

Blakey then argues that more detailed findings are required in order to allow review of the award. The trial court's determination of the fee award should not become an unduly burdensome proceeding for the court or the parties. An explicit hour-by-hour analysis of each lawyer's time sheets is unnecessary as long as the award is made

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<sup>23</sup> Wren's prior counsel had prepared a motion for summary judgment that was never filed. Although Wren's trial counsel argued that the work product generated was useful in preparing for trial, he conceded that a reduction may be warranted because the motion was not filed. The trial court made a reduction. CP 374-75.

with a consideration of the relevant factors and reasons sufficient for review are given for the amount awarded. *Cf. Progressive Animal Welfare Society v. University of Wash.*, 54 Wn. App. 180, 187, 773 P.2d 114 (1989); *Absher Constr. Co. v. Kent Sch. Dist.*, 79 Wn. App. 841, 917 P.2d 1086 (1995).

Even though an hour-by-hour analysis of the time spent by the attorney is not required, that is the very information the court was presented with here. Furthermore, the hourly rates requested are reasonable in the absence of evidence that they are not. *Absher, supra*.

However, even Blakey concedes that if more detailed findings are required, then the remedy is to remand the attorney's fee issue to the trial court. Wren respectfully submits that this court has adequate information in this record upon which it can review the amount of the award, and remand would be a waste of time and resources. It might be different if there was no evidence in support of the award in the record, but that is not the case here. This is especially the case where nowhere does Blakey argue that the amount of fees is excessive.<sup>24</sup>

Blakey cites *In re Marriage of McCausland*, 159 Wn. 2d 607,

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<sup>24</sup> With the exception of her segregation claim.

620, 152 P.3d 1013 (2007) for the proposition that conclusory findings of fact are insufficient. However, nothing in *McCausland* supports that interpretation. Although the appellate court remanded in *McCausland* on the attorney's fee issue, the facts presented in *McCausland* are clearly distinguishable. *McCausland* involved an attorney fee award based upon the financial need of the party claiming an entitlement to fees under RCW 26.09.140. Here, the award of fees is based upon RCW 4.24.630, and is not dependent upon the financial need of the party claiming fees.

Blakey also cites *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004) for the proposition that the findings entered by the trial court in this case are insufficient. However, the findings in *Horner* that were lacking were findings that pertained to the substantive issues presented to the trial court, and did not pertain to the court's award of attorney's fees.

Because the record includes sufficient evidence in the record from which review of the award of fees can be made, nothing further is required. Fee decisions are entrusted to the sound discretion of the trial court. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987). Because there is sufficient information in the record to

permit the appellate court to determine if the court abused its discretion, more explicit findings are not required.

8. *Wren is Entitled to an Award of Attorney's Fees on Appeal.*

RCW 4.24.630 authorizes the trial court to award "the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs." Under the plain reading of the statute, the trial court correctly awarded Wrens their reasonable attorneys fees. Because the attorney fee award is authorized by statute, RAP 18.1 authorizes the award of attorney's fees on appeal. *Mannington Carpets v. Hazelrigg*, 94 Wn. App. 899, 973 P.2d 1103 (1999). Accordingly, Wrens are entitled to an award of reasonable attorney's fees on appeal.

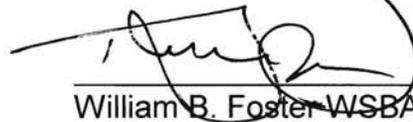
F. CONCLUSION

The decision of the trial court on Blakey's claim of adverse possession is supported by substantial, if not overwhelming evidence, and should be affirmed. Furthermore, the decision to impose liability upon Blakey, was appropriate as directed and participated in the actions which constituted the intentional trespass. Finally, the trial court made the findings required based upon the evidence in the

record to support its award of attorney's fees, and did not abuse its discretion in this regard.

The decision of the trial court should be affirmed in all respects, and attorney's fees awarded to Wren.

Respectfully submitted,

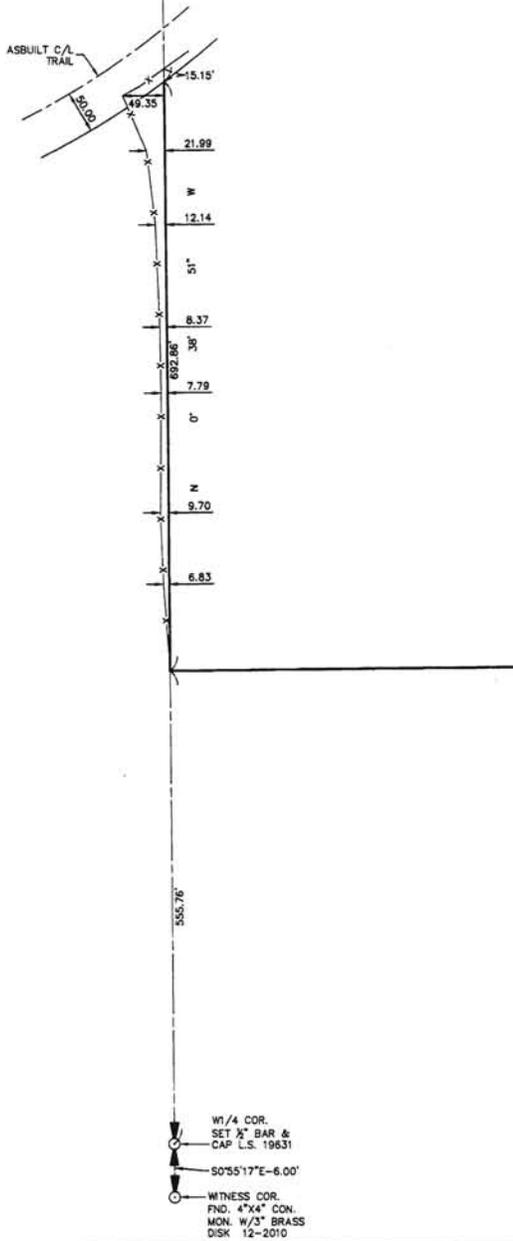
A handwritten signature in black ink, appearing to read 'W. B. Foster', written over a horizontal line.

William B. Foster WSBA #8270  
of Hutchison & Foster  
Attorneys for Wren

# **TRIAL EXHIBIT NO. 6**

NW SEC. COR.  
 FND. 1-1/2" IRON  
 PIPE 1972

LEGAL DESCRIPTION:



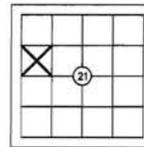
W1/4 COR.  
 SET 1/2" BAR &  
 CAP L.S. 19631

WITNESS COR.  
 FND. 4"x4" CON.  
 MON. W/3" BRASS  
 DISK 12-2010

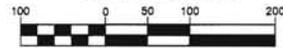


NOTE:  
 FOR ADDITIONAL SUBDIVISION INFORMATION, SEE  
 SURVEY RECORDED UNDER AUDITOR'S FILE No.  
 200704235134, RECORDS OF SNOHOMISH COUNTY,  
 WASHINGTON.

NOTE:  
 BOUNDARIES ESTABLISHED PER THIS SURVEY MAY  
 NOT CONFORM TO EXISTING LINES OF OCCUPATION  
 AND FENCE LINES AND COULD RESULT IN POSSIBLE  
 BOUNDARY DISPUTES.



GRAPHIC SCALE



1 inch = 100 ft.

BASIS OF BEARINGS: LINE BETWEEN W1/4 COR. & NW  
 SEC. COR. PER SURVEY A.F. NO. 200704235134

THIS SURVEY DOES NOT PURPORT TO SHOW ALL  
 EASEMENTS OF RECORD OR OTHERWISE.  
 SURVEY INSTRUMENT USED: 6" TRIMBLE 56050R200+  
 SURVEY PROCEDURE: CLOSED TRAVERSE  
 SURVEY PRECISION: THIS SURVEY EXCEEDS FIELD  
 TRAVERSE REQUIREMENTS OF WAC 332-130-090

LEGEND:

— X — ~ DENOTES FENCE LINE

SKETCH FOR:  
**REGINALD WREN**

**CASCADE SURVEYING & ENGINEERING, INC.**

Engineers  
 Surveyors  
 Planners

100 E. Duwamish Pkwy. Box 200  
 Tukwila, WA 98163  
 PHONE: 206-835-8888  
 FAX: 206-835-4012

PORTN. SW1/4, NW1/4, SEC.21, TWP.32N, R2E.6E, W14  
 JOB# 10041 DRAWN BY: LAF FIELD BOOK # SN. 813  
 DATE: 12/23/2010 REVISION: CHECKED BY: WML

# **TRIAL EXHIBIT NO. 7**



Wren

(BRUNTON BRUSH)

Disputed Line

Flying T. Ranch

BRUNTON NORTH SECTION

# **TRIAL EXHIBIT NO. 8**



**July 1976**



# **TRIAL EXHIBIT NO. 9**



**July 1976**



# **TRIAL EXHIBIT NO. 10**



**June 1978**

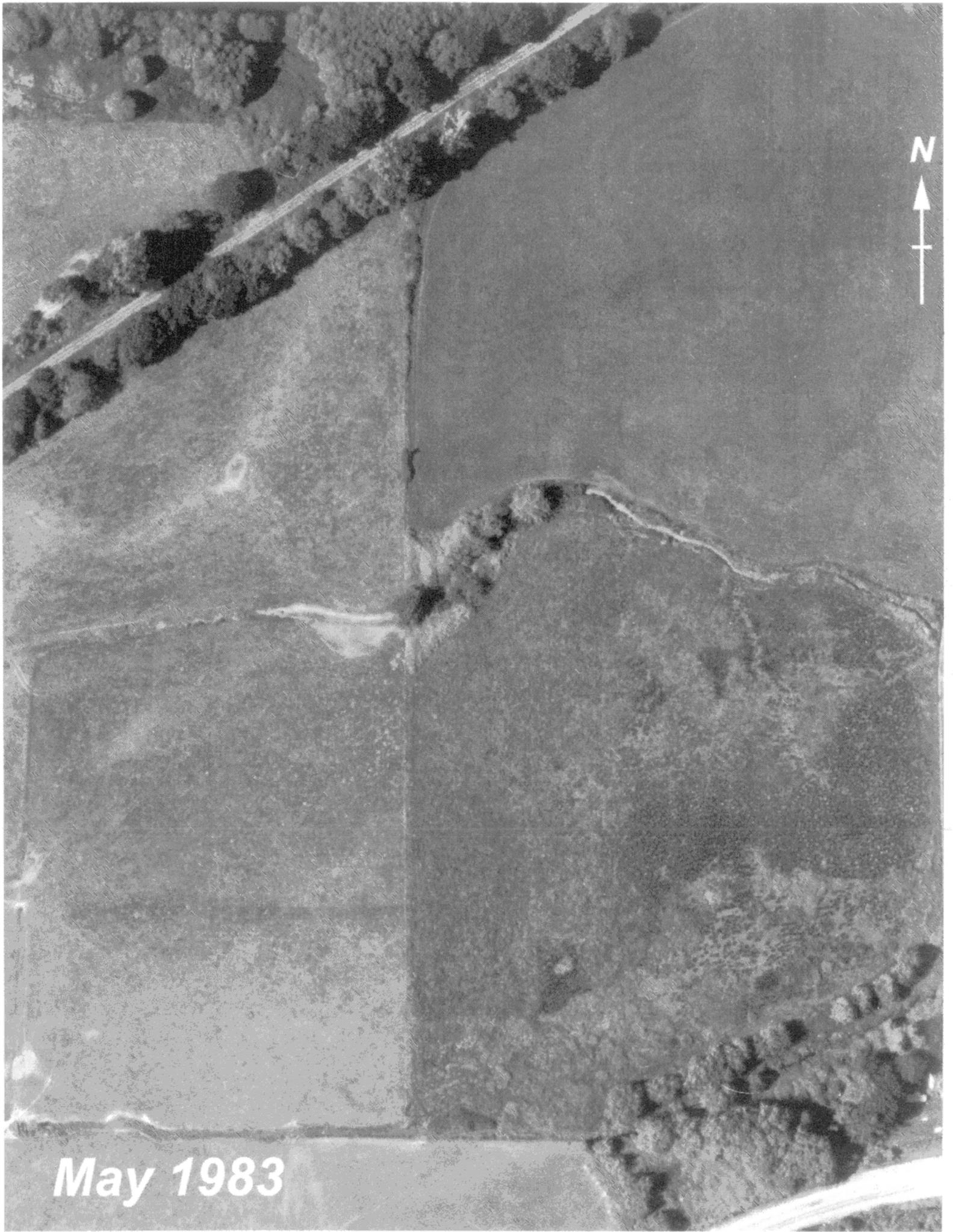
# **TRIAL EXHIBIT NO. 11**



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↑  
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**June 1978**

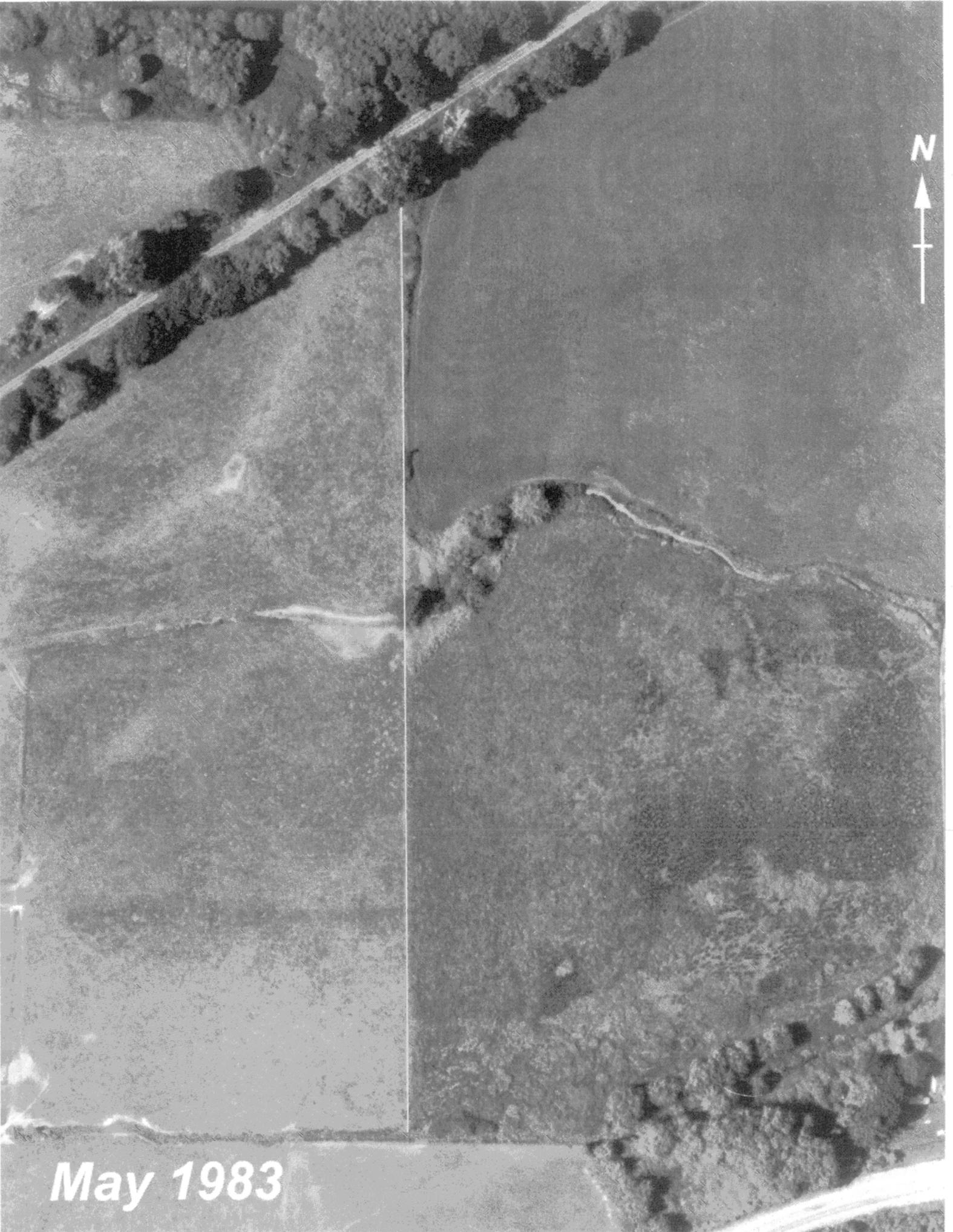
# **TRIAL EXHIBIT NO. 12**



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*May 1983*

# **TRIAL EXHIBIT NO. 13**



*May 1983*

# **TRIAL EXHIBIT NO. 14**



N  
↑  
|  
+

**August 1987**

# **TRIAL EXHIBIT NO. 15**



**August 1987**

**TRIAL EXHIBIT NO. 16**



**August 1991**

**TRIAL EXHIBIT NO. 17**



**August 1991**



# **TRIAL EXHIBIT NO. 18**



**April 1995**



**TRIAL EXHIBIT NO. 19**



**April 1995**



**TRIAL EXHIBIT NO. 20**



**July 1996**

**TRIAL EXHIBIT NO. 21**



**July 1996**

**TRIAL EXHIBIT NO. 22**



N

*August 2001*

# **TRIAL EXHIBIT NO. 23**



N

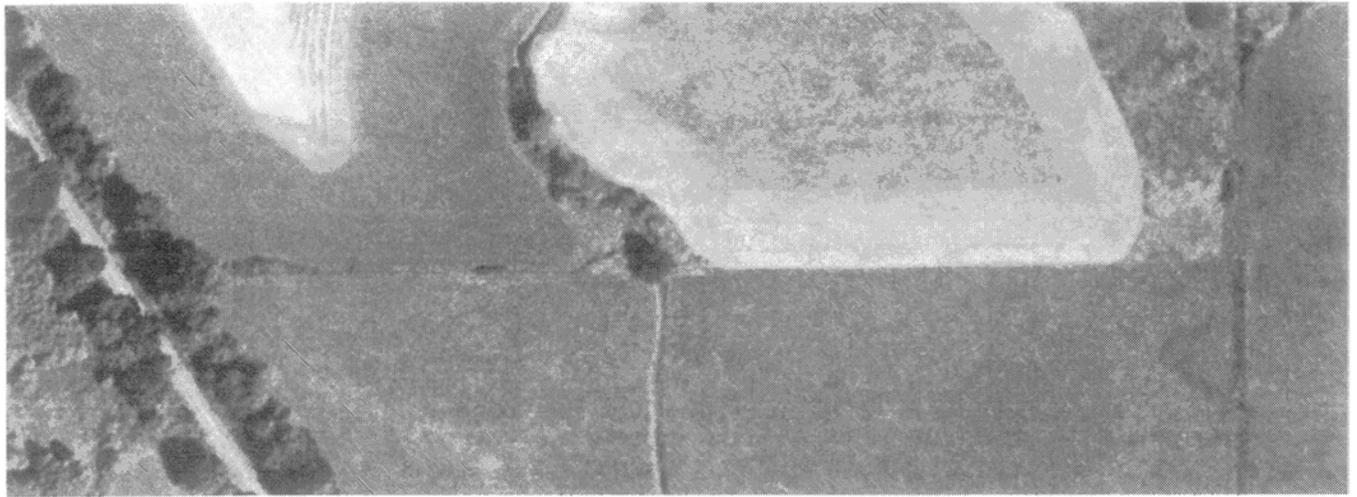
**August 2001**

**TRIAL EXHIBIT NO. 24**



**TRIAL EXHIBIT NO. 25**

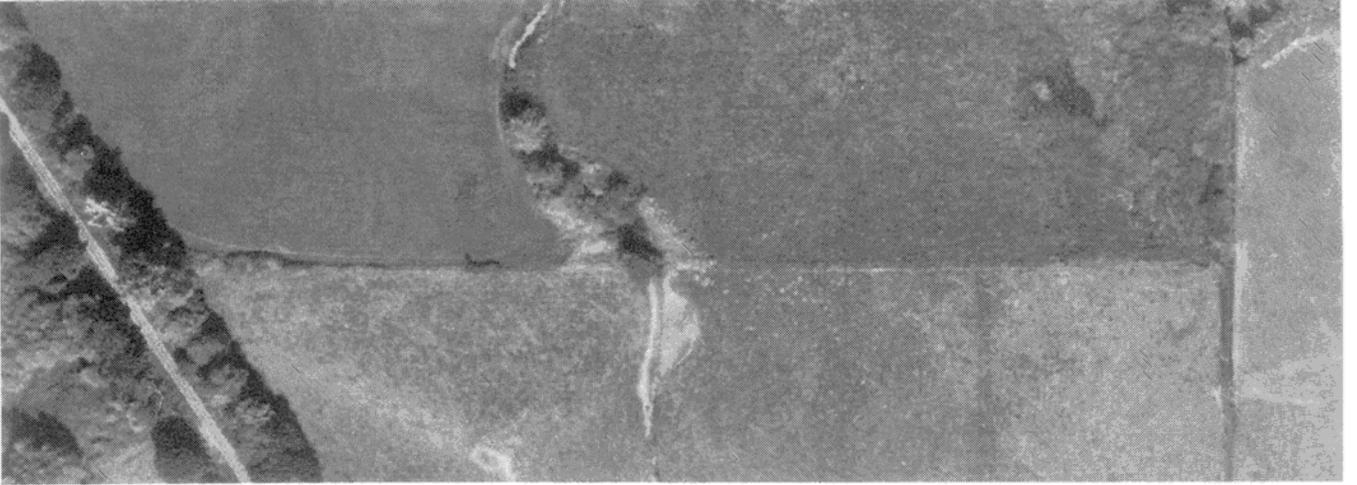
Comparison 1976 - 1987



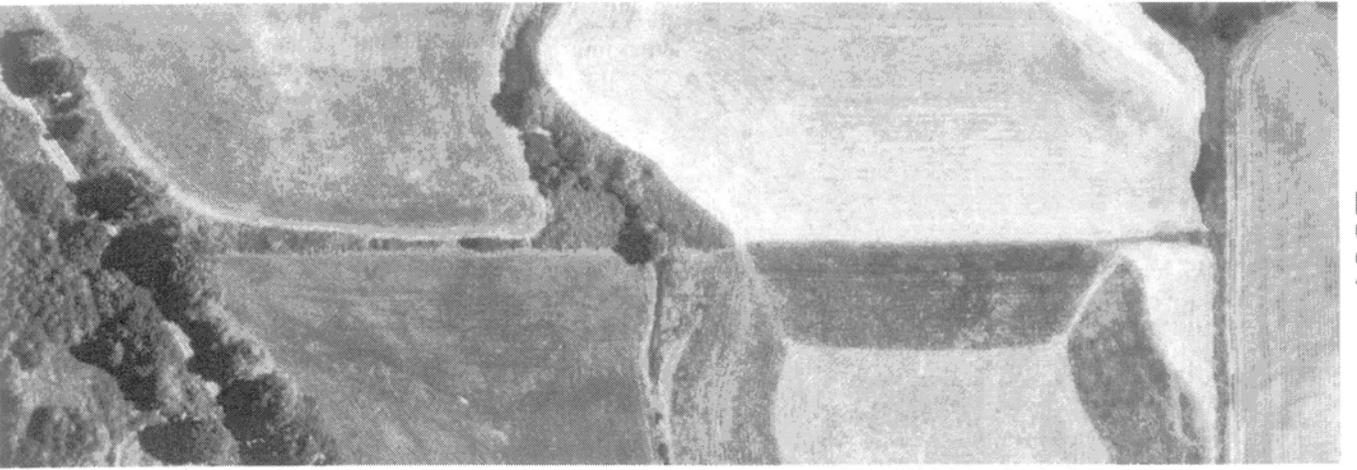
1976



1978



1983



1987

**TRIAL EXHIBIT NO. 26**

Comparison 1990-1996



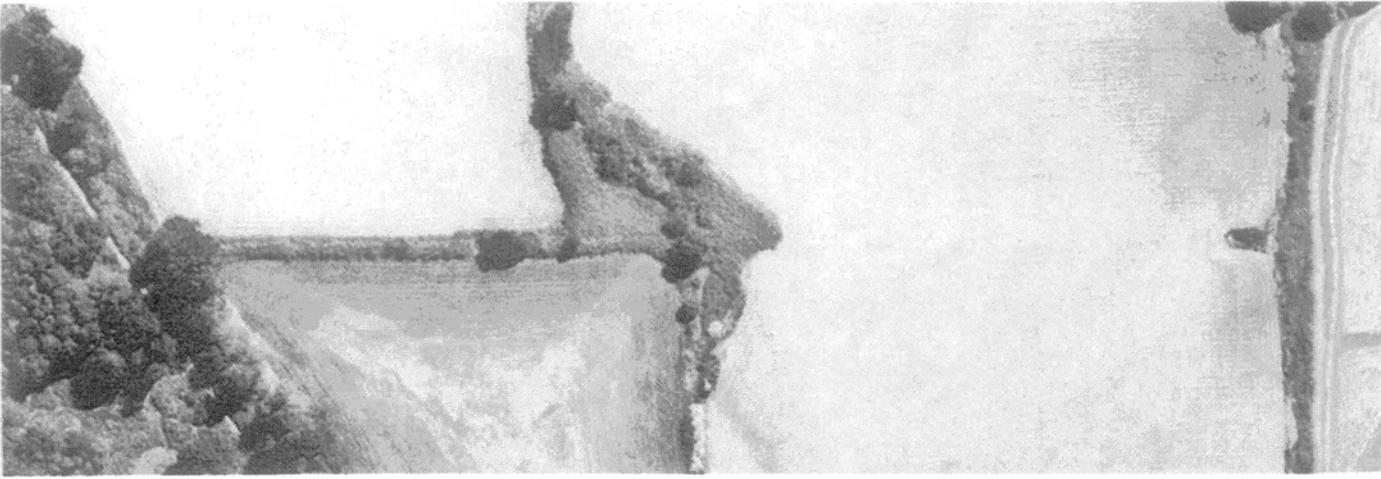
1990



1991



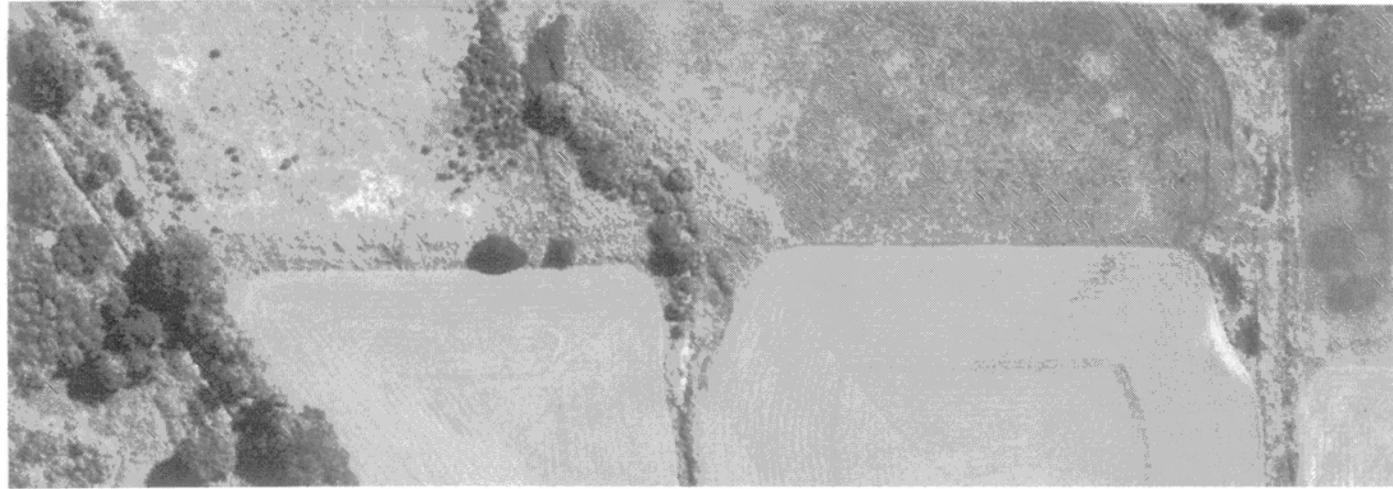
1995



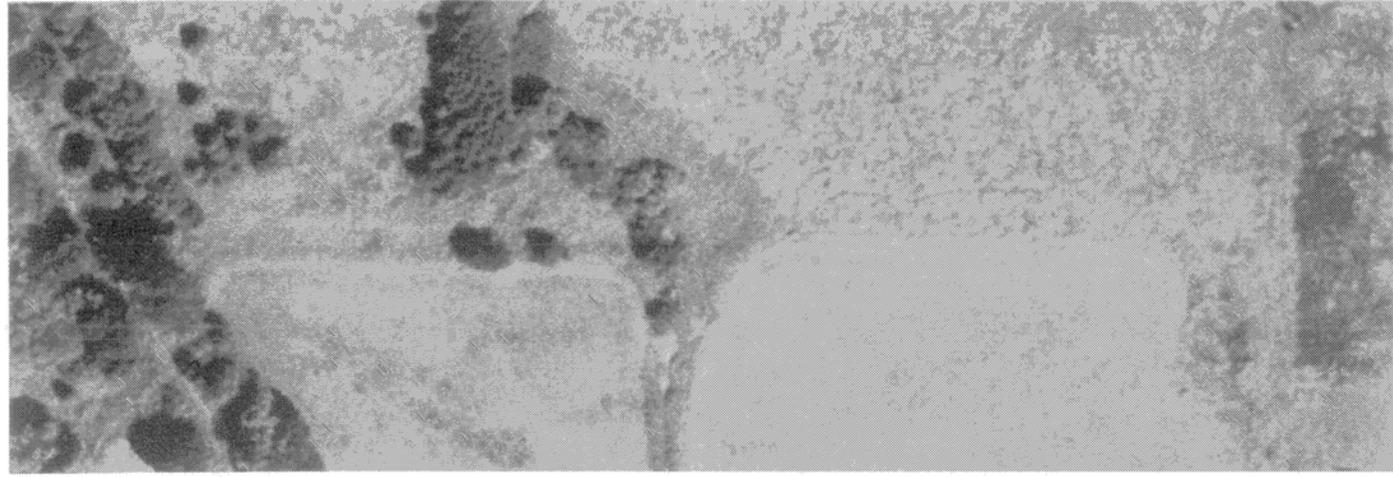
1996

**TRIAL EXHIBIT NO. 27**

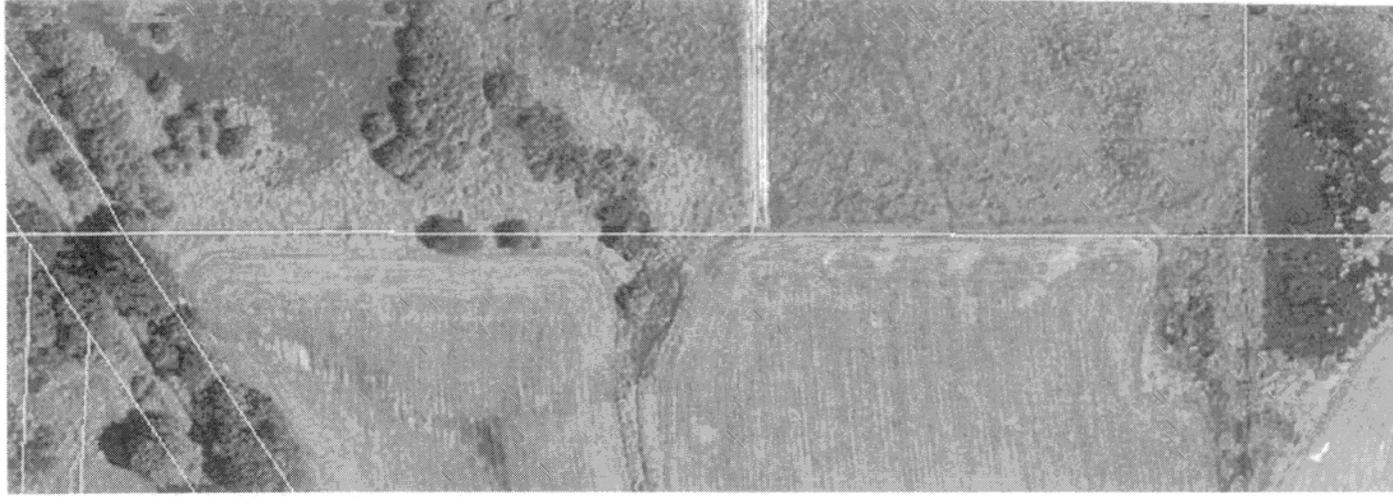
Comparison 2001-2009



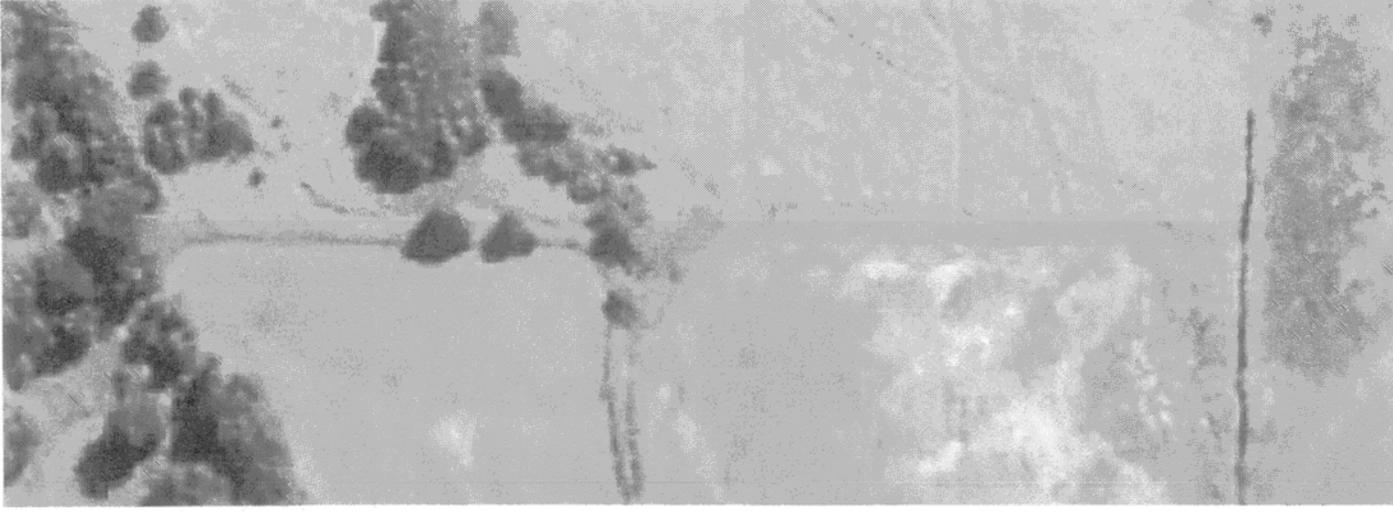
2001



2006

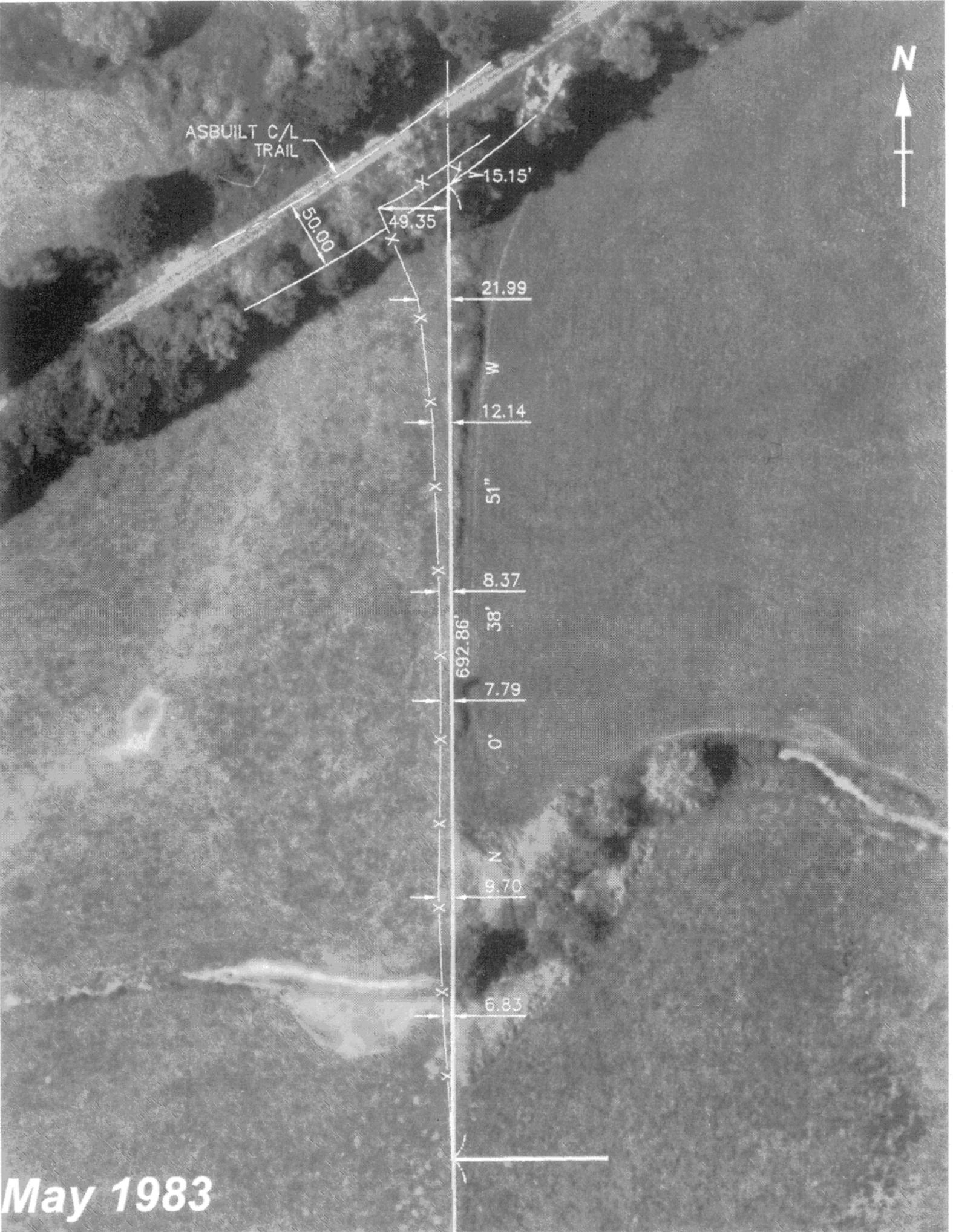


2007



2009

**TRIAL EXHIBIT NO. 28**



ASBUILT C/L TRAIL

50.00

49.35

15.15'

21.99

12.14

51"

8.37

38'

692.86'

7.79

0'

9.70

6.83

May 1983

2014 FEB 19 PM 3:59

NO. 70691-8-1  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

---

REGINALD K. WREN and BRENDA M. WREN, husband and wife,

Respondents,

v.

TAMMY S. BLAKEY, an unmarried person, and  
FLYING T RANCH, a Washington corporation,

Appellants.

---

CERTIFICATE OF SERVICE

---

HUTCHISON & FOSTER  
By: William B. Foster  
WSBA #8270  
P.O. Box 69  
Lynnwood, Washington 98046  
(425) 776-2147  
Attorney for Respondents

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I caused a true and correct copy of the Respondents' Reply Brief to be delivered to the counsel of record listed below in the manner described:

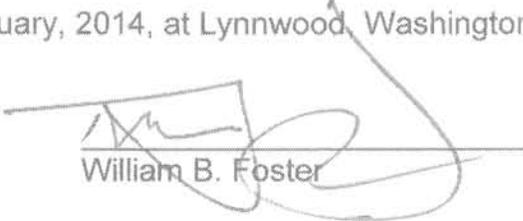
Ms. Emmelyn Hart  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, WA 98188-4630

- Via first-class U.S. Mail
- Via Certified Mail
- Via Overnight Courier
- Via Legal Messenger
- Via Email [emmelyn@talmadgefitzlaw.com](mailto:emmelyn@talmadgefitzlaw.com)

Mr. Steven James Peiffle  
Attorney at Law  
P.O. Box 188  
Arlington, WA 98223-0188

- Via first-class U.S. Mail
- Via Certified Mail
- Via Overnight Courier
- Via Legal Messenger
- Via Email [steve@snolaw.com](mailto:steve@snolaw.com)

DATED this 17<sup>th</sup> day of February, 2014, at Lynnwood, Washington.

  
William B. Foster