

71108

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

1
2
3 In the Matter of Request for)
4 Conditional Use Permit 5-85 for) Klamath County Planning
5 Ken and Valarie Gibson) Findings of Fact and Order

6 A hearing was held on this matter on September 18, 1986,
7 pursuant to notice given in conformity with Ordinance No. 45.2,
8 Klamath County, before the Klamath County Hearings Officer, Jim
9 Spindor. The applicant was present. The Klamath County Planning
10 Department was represented by Kim Lundahl. The Hearings Reporter
11 was Janet Libercajt.

12 Evidence was presented on behalf of the Department and on
13 behalf of the applicant. There were no adjacent property owners
14 present.

15 The following exhibits were offered, received, and made a
16 part of the record:

17 Klamath County Exhibit A, Staff Report
18 Klamath County Exhibit B, Explanatory Letter
19 Klamath County Exhibit C, Plot Plan
20 Klamath County Exhibit D, Final Map, Major Partition 32-83
21 Klamath County Exhibit E, Preliminary Map, Maj. Part. 32-83
22 Klamath County Exhibit F, Assessor's Map
23 Klamath County Exhibit G, F II Zone
24 Klamath County Exhibit H, Order of Approval, EC 13-82
25 Klamath County Exhibit I, Aerial Photo
26 Klamath County Exhibit J, Plot Plan II
27 Klamath County Exhibit K, Proposed Findings
28 Klamath County Exhibit L, Letter from Gibson's

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1 Klamath County Exhibit M, Letter from Environmental Health

2 Klamath County Exhibit N, Photos

3 The Hearing was then closed, and based upon the evidence
4 submitted at the hearing, the Hearings Officer made the following

5 Conclusions of Law:

6 CONCLUSIONS OF LAW:

7 1. The proposed use is conditionally permitted in the zone
8 within which it is proposed to be located.

9 2. The location, size, design, and operating characteristics
10 of the proposed use are in conformance with the Klamath County
11 Comprehensive Plan.

12 3. The location, size, design, and operating characteristics
13 of the proposed use will be compatible with and will not have a
14 significant adverse affect on the appropriate development and use
15 of abutting property and the surrounding neighborhood.

16 4. The granting of this conditional use permit is consistent
17 with the goals of the L.C.D.C.

18 5. The requirments of Section 51.020(D) with regard to non-
19 forest conditional uses has been met in that it will be located
20 on land generally unsuitable for timber management and which is
21 not needed for the other forest uses permitted in Section
22 51.020(E), or upon approval of an exception to Goal 4 pursuant to,
23 ORS 197.732.

24 6. The requirements of Section 51.020(E) with regard to the
25 conditional use permit criteria in the Forestry Zone have been
26 met in that: (a) The use is compatible with forest uses; (b) The
27 use does not interfere seriously with the accepted forestry
28 practices on adjacent lands devoted to forest use and does not

1 significantly increase the cost of forestry operations on such
2 land; (c) The use does not materially alter the stability of
3 the overall land use pattern of the area; (d) The use is situated
4 on generally unsuitable land for the production of forest crops
5 and livestock; (e) The use considers forest site productivity
6 and minimizes the loss of productive forest lands and is limited
7 in size and area suitable and appropriate to the needs of the
8 proposed use; (f) The use meets the standards relating to avail-
9 ability of fire protection as set forth in Article 69 of this
10 Code and other rural services and will not overtax those services.

11 7. This conditional use permit is granted subject to the
12 following conditions: (a) The applicant shall satisfy all
13 requirements of the Klamath County Department of Health Services
14 with regard to the sewage system on the property, and shall
15 obtain an Authorization Notice prior to use of any sewage system;
16 a copy of said notice shall be delivered to the Klamath County
17 Planning Department prior to use of the property; (b) The
18 applicant shall not use the property as a full time residence
19 without prior written approval of the Klamath County Planning
20 Department; (c) The applicant shall not cut more than three trees
21 without prior written approval of the Klamath County Planning
22 Department; (d) The applicant shall make adequate arrangements
23 for fire protection and obtain written approval of the plan from
24 the Klamath County Planning Department prior to occupying the
25 property.

26 FINDINGS OF FACT:

27 This request has been granted conditionally based on the
28 following Findings of Fact:

1 1. This request is for a non-forest homesite on a 21 acre
2 parcel in the Forestry Zone. The property is one of two such
3 parcels carved out of a 160 acre tract by Major Partition 32-83,
4 which is Exhibit "D" herein. The area is characterized by large
5 timber holdings of the Bureau of Land Management, Winema National
6 Forest, and the Weyerhaeuser Company. The nearest homesites are
7 at the intersection of Clover Creek and Dead Indian Roads, about
8 6½ miles away in a direct line. The road distance is about 10
9 miles. The nearest electrical and telephone services are at Lake
10 of the Woods, about 14 miles away.

11 2. This parcel was created on the basis of Zone Change 13-82
12 from F-I (80 acre minimum) to F-II (20 acre minimum). These
13 zones were in effect from November 25, 1981, to November 29, 1984.
14 The F-II zone allowed homes outright "when in conjunction with
15 permitted uses"; homes "not in conjunction with forest use"
16 required a conditional use permit. (See Exhibit "G", herein.)
17 When the Zone Change was approved in 1979, findings were made that
18 the 20 acre parcels would be leased or sold for Christmas tree
19 farms, that any dwellings would be for individuals engaged in
20 forestry activities, and that winter access would not be required.
21 (See Exhibit "H".)

22 3. However, the State of Oregon did not accept Klamath
23 County's F-II zone as being protective of forest resources under
24 Goal 4. As a result, the County revised it's Land Development
25 Code to contain a single Forestry Zone where dwellings had to be
26 "accessory and necessary to permitted uses". A 20 acre parcel
27 where planting, thinning, and harvesting could only be done
28 during six months of the year or less and where the forest

1 derived income would be small cannot be shown to need a dwelling
2 for effective management. However, the present Forestry Zone
3 does provide for a non-forest dwelling as a conditional use.

4 4. The property was viewed by the Hearings Officer.

5 5. Notice of this hearing was sent to the surrounding
6 property owners, to concerned public agencies, and published in
7 the Herald & News, the Klamath Falls newspaper.

8 6. The area has Class VII soils and is used for timber
9 production. There is seasonal, open range grazing in the area,
10 but this would not be affected by the proposed home.

11 7. The area is in Timber Productivity Site Class V, capable
12 of producing 50 to 85 cubic feet of timber per acre annually.
13 The surrounding area is used exclusively for timber management
14 and related forest uses such as outdoor recreation and grazing.
15 However, testimony from the applicant was that the parcel of land
16 which they own has been clear-cut and in fact has no timber
17 productivity at all.

18 8. The area has a medium fire hazard rating. The property
19 is not within a fire protection district; the Oregon Forestry
20 Department is responsible for fire protection in the area. The
21 Forest Service keeps an engine at Lake of the Woods, approximately
22 18 miles away during the summer. The nearest year-round fire
23 protection services are the fire districts at Rocky Point (24
24 miles away) and Keno (16 miles away). Quick response to a house
25 fire would be hampered by distance, deep winter snows, and lack
26 of telephone lines.

27 9. The area is generally open to outdoor recreation such
28 as fishing, hunting, camping, and snowmobiling. These activities

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1 would be available to the occupants of the home. The present
2 home would not affect recreational opportunities for others.

3 10. There was testimony from the applicant that in spite
4 of the lack of utilities, the lack of winter maintenance on the
5 road, and the lack of police and fire protection, that the
6 purpose for which they were building the homesite would not make
7 these negative aspects.

8 11. The property is reached by a short private road
9 connecting with the Keno Access Road. This is a paved Bureau of
10 Land Management road and is extensively used by logging operations
11 and recreational traffic. There is no snow clearance on the road,
12 and it is blocked from four to six months of the year.

13 12. No one testified in opposition to the granting of this
14 permit and no evidence was presented that there would be any
15 adverse affects to the abutting property or to the surrounding
16 area by the granting of this permit.

17 The Hearings Officer, based on the foregoing Findings of
18 Fact, accordingly orders as follows:

19 That real property described as

20 "being generally located on the Keno Access Road, ±10 miles
21 northwest of Highway 66, and more particularly described
22 as the N½ NE¼ NE¼ of Section 30, Township 38, Range 6,
Klamath County, Oregon,"

23 is hereby conditionally granted a conditional use permit in
24 accordance with the terms of the Klamath County Zoning Ordinance
25 No. 45.2, and, henceforth, will be allowed a non-forest homesite
26 on a 21 acre parcel in the Forestry Zone.

27 Entered at Klamath Falls, Oregon, this 24th Day of December, 1987
28

KLAMATH COUNTY HEARINGS DIVISION

Jim Spindor
Jim Spindor, Hearings Officer

Filed With Clerk: 2-5-87

In effect 11/25/81 to 2/29/84

SECTION 51.020 - FORESTRY II (F-II)

1878

- A. PURPOSE: The purpose of this zone is to preserve and maintain forest lands with I-VI Timber Site Productivity for small-scale silvicultural operations along with agricultural uses and a limited range of compatible open space, civic, commercial and industrial uses. Preexisting lots of less than 80 acres are classified in this zone.
- B. PERMITTED USES: The following uses are further defined in Chapter 10 of this Code:
1. Residential - Single-family, individual mobile home and worker residential uses are permitted for the owner, family members or employees when in conjunction with permitted uses.
 2. Animal Sales and Services - Stockyard
 3. Horticulture
 4. Tree Crops
 5. Row and Field Crops
 6. Forestry
 7. Large Animal Raising
 8. Small Animal Raising
 9. Essential Services
 10. Public Utility Facilities - provided said facilities are resource-oriented and are required to obtain either a Federal or State License, and have addressed the State LCDC Goals at their hearings.
- C. CONDITIONAL USES: The following uses are further defined in Chapter 10 of this Code:
1. Civic Use Types - Extensive impact use types, limited to public utility facilities, solid waste disposal sites, sewage treatment plants, communication structures, golf courses, campgrounds, fire stations, public research areas limited to forestry, agriculture, and wildlife topics, and electrical generating facilities. Resource-Oriented Public Utility Facilities excluded.
 2. Participant sport use types, limited to hunting and fishing preserves, firearm and archery ranges, parks and picnic areas, riding and hiking trails.
 3. Wholesaling, Storage and Distribution - Limited to agriculture and forestry related uses.
 4. Animal Sales and Services - Auctioning.
 5. Industrial Uses - Limited to the processing of forest and agricultural products.
 6. Specialty Animal Raising
 7. Airports and Heliports (personal use)

8. Administrative Services in conjunction with forestry uses.
 9. Cemeteries
 10. Single-family residence not in conjunction with forest use.
 11. Mineral Exploration and Extraction.
- D. NON-FOREST USES: The non-forest uses conditionally permitted above shall be subject to review in accordance with the following criteria. The review authority must find that each such use:
1. Is compatible with forest uses;
 2. Does not interfere seriously with the accepted forestry practices on adjacent lands devoted to forest use;
 3. Does not materially alter the stability of the overall land use pattern of the area;
 4. Is situated on generally unsuitable land for the production of forest crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location, and size of tract;
 5. Considers forest site productivity and minimizes the loss of productive forest lands;
 6. Meets the standards relating to the availability of fire protection as set forth in Article 69 of this Code and other rural services and will not overtax those services; and
 7. Complies with such other conditions as the governing body of the County considers necessary.

E. PROPERTY DEVELOPMENT STANDARDS:

1. Minimum Lot Area - The minimum lot area for the F-II zone shall be twenty (20) acres.
2. Minimum Lot Area (Nonforest Use) - Nonforest use lots shall not be less than twenty (20) acres and shall be land that is generally unsuitable for forestry use as defined in this Code, and as determined in Subsection "D" of this Section. If the adjoining land has potential for forestry use, a one hundred (100) foot buffer shall be maintained in pasture, trees or general landscaping, separating the building site from the potential forestry use land.

3. Building Setbacks and Yards - See Chapter 6, Article 62
4. Fences, Hedges and Walls - See Chapter 6, Article 64
5. Distance Between Buildings - See Chapter 6, Article 62
6. Building Heights - See Chapter 6, Article 63
7. Signs - See Chapter 6, Article 66
8. Access - See Chapter 7, Article 71
9. Parking - See Chapter 6, Article 68
10. Landscaping - See Chapter 6, Article 65.

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19 1/4 cor.

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MAJOR PARTITION (32-83) & Survey for Jerry Scarborough and Ken Gibson

N.E. 1/4 Sec. 30, T.38S., R.6E., W.M., Klamath Co., Ore.
June 1983

Parcel 1.

Reviewed and approved by

Paul E. Kueh

10-20-83

Date

County Engineer

[Signature]

8-22-83

Date

County Surveyor

Ken R. Schubert

Oct 20, 83

Date

County Planning Director

Recorded and filed with the County Clerk this
21 day of Oct, 1983.

[Signature]

County Clerk

2641.65

S 0°30'37" E

Legend=

County Surveyor

Kay R. Suber
County Planning Director

Oct 20, 83

Date

Recorded and filed with the County Clerk this
21 day of Oct, 1983.

Paul D. Lewis
County Clerk

S 0°30'37"E

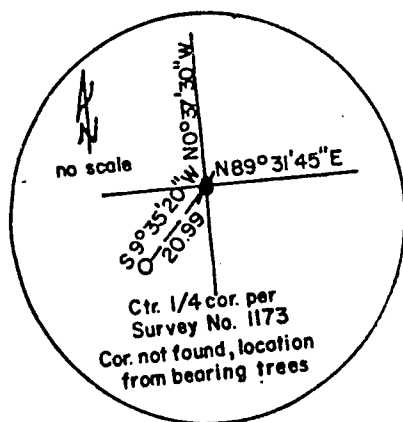
1882

Legend=

- Fd. 2" pipe with standard BLM brass cap & bearing trees
- ✱ Set 1"x 24" iron pipe with brass cap stamped "L.S.1644"
- ✱ Set 5/8"x 24" square pin stamped "L.S.1644" on side of pin

BASIS OF BEARINGS= Solar observation

SCALE: 1"=200'



DETAIL

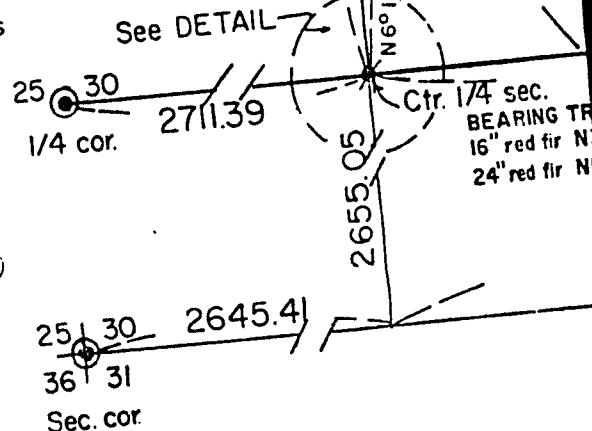
Notes=

Set 5/8"x24" square pins, stamped "L.S.1644" on side of pin, at right angles to and 15.00' each side of the C of Ingress-Egress Easement at all P.T.s and P.C.s.

All distances to bearing trees are to the center of the tree.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Paul D. Lewis
OREGON
JULY 14, 1978
PAUL D. LEWIS
1644



1 19 1/4 cor.
30

S 89°08'39" W

1883

2633.9

Parcel 1.

Parcel 2.

S 0°37'06" E 662.52

563.07

-497.33

N 4°42'14" E
R-97.71 L-56
Δ-33°11'45"

Parcel 3.

S 0°37'06" E 662.63

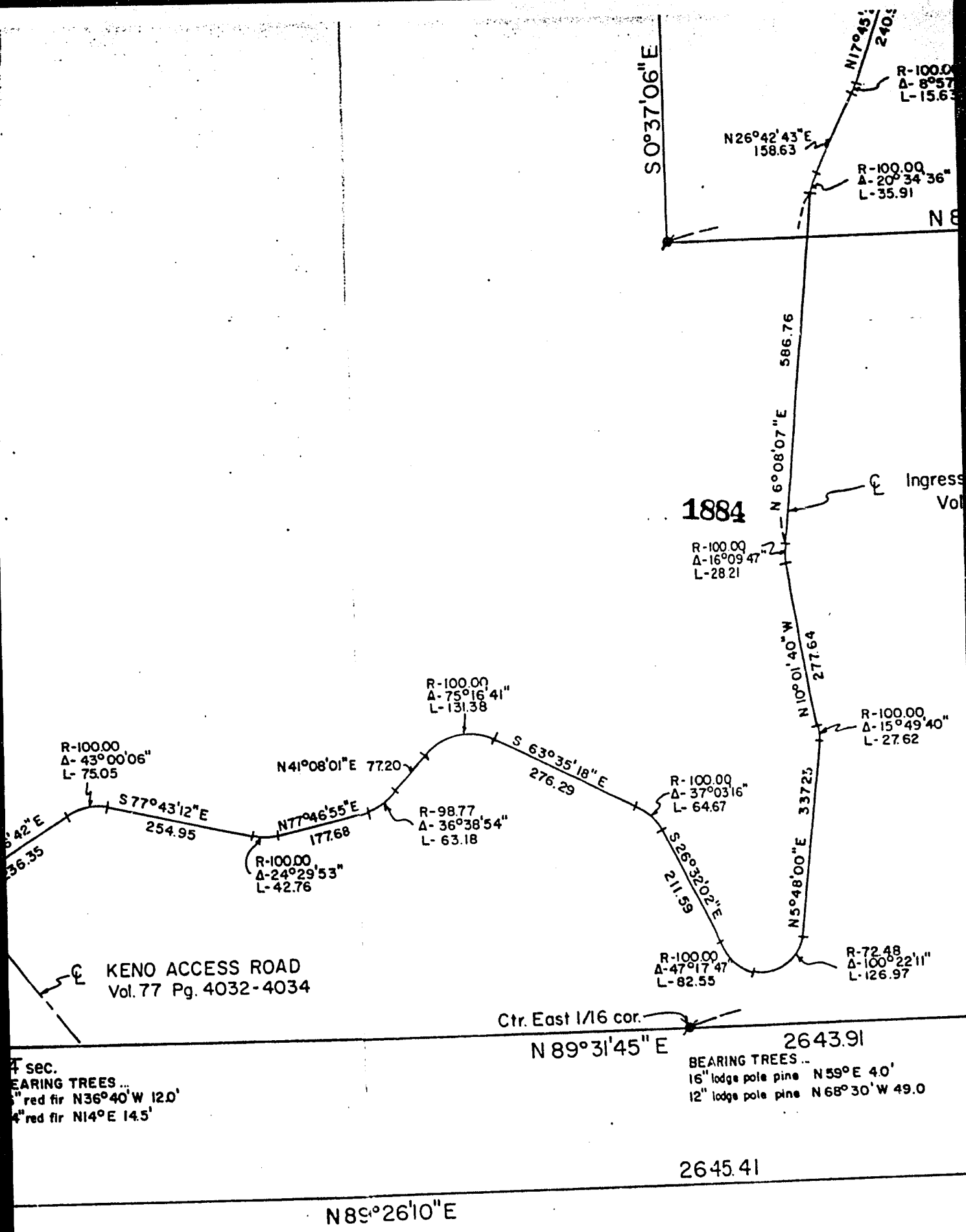
N 26°42'43" E
158.63

586.76

N 6°08'07" E

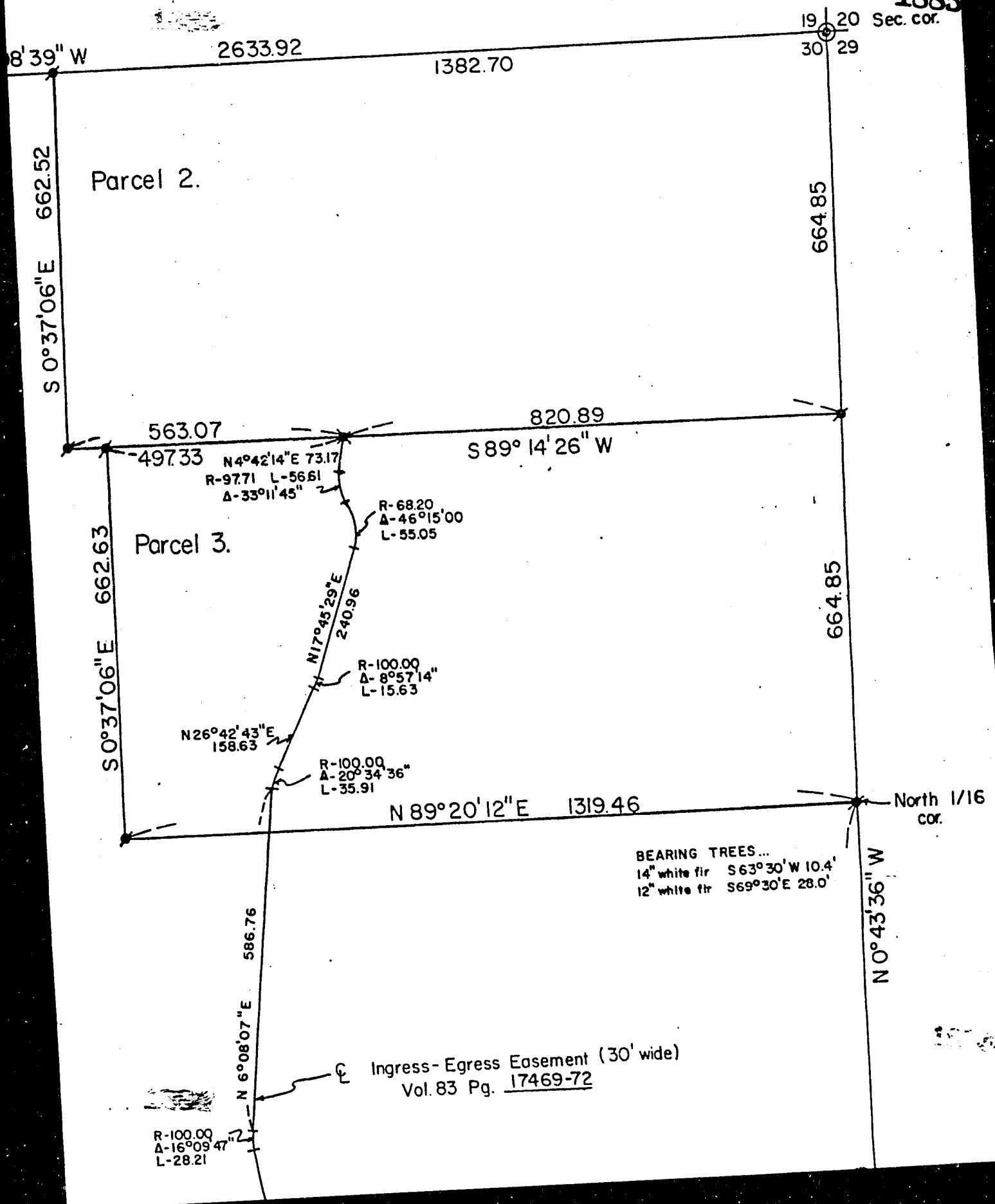
R-100.00
Δ-16°09'47"
L-28.21

2641.65



1885

Sec. cor.



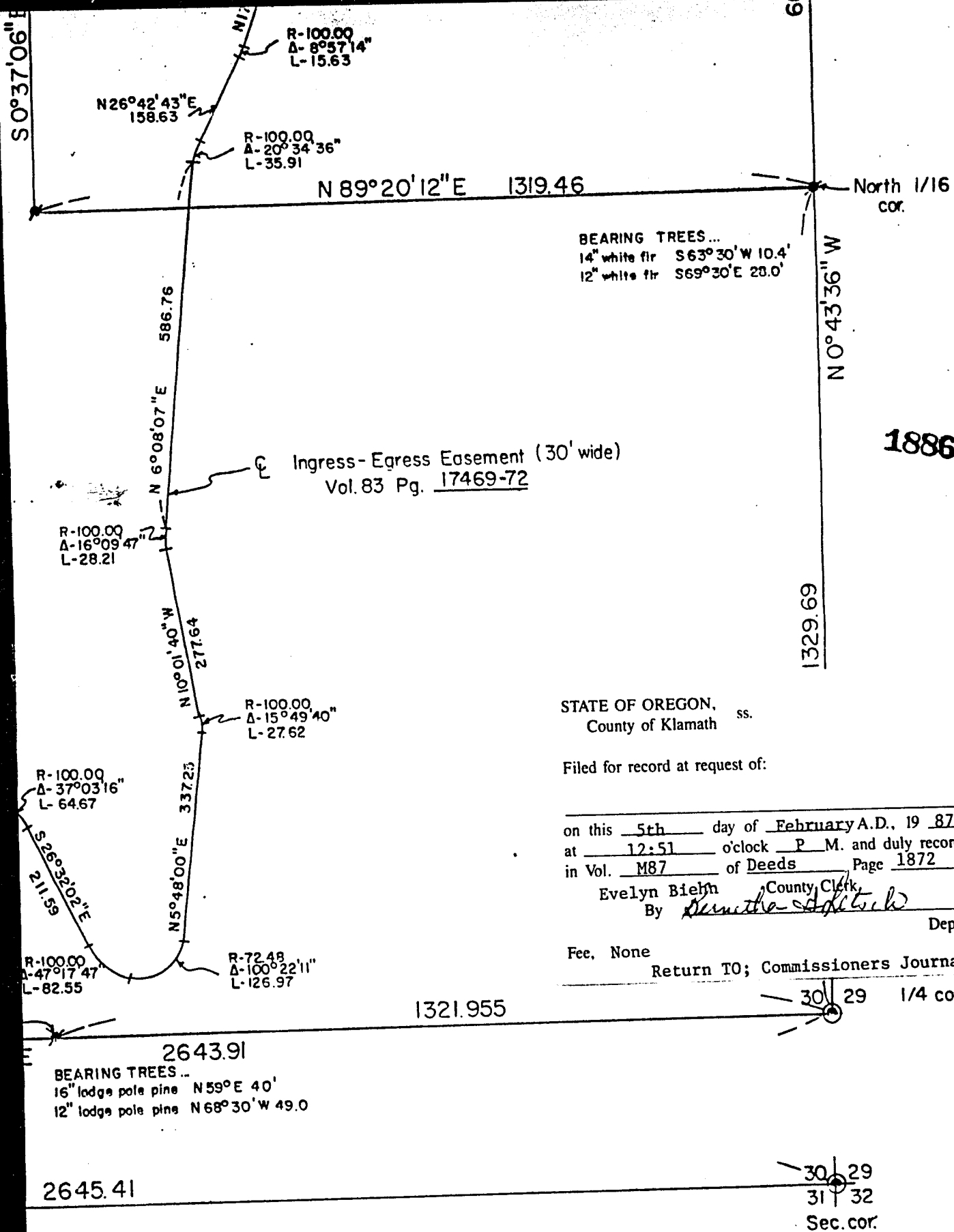


Exhibit D CUP 5-85