

AGREEMENT FOR EASEMENT

This Agreement is made this 27th day of March, 1991, by and between William H. Grund, Grantor, and Roger Nicholson, Grantee.

RECITAL

1. Grantor is the owner of approximately twenty five (25) acres of land located on the east side of State Highway 62 and south of Fort Klamath, Oregon.

2. Grantee is the owner of a parcel of property located easterly of Grantor's said land and containing approximately ten (10) acres. Grantee uses his land for residential and agricultural purposes and said land is currently improved with a single family residence. Grantee's access to his land is provided by a road which crosses Grantor's land.

3. Grantor desires to partition his said property for commercial purposes and has been granted the right by Klamath County to partition said parcel of property into three parcels.

4. Grantee objected to said partition and filed a Notice of Appeal with the Oregon Land Use Board of Appeals. Grantee cited several reasons for objecting to said partition, including concerns about the effect of said partition on the access to Grantee's property and the rights of the Fort Creek Irrigation Canal owners to operate and maintain the Fort Creek Irrigation Canal which traverses Grantor's property.

5. The parties, by entering into this agreement, intend to define the easement rights of Grantee.

WITNESSETH:

1. William H. Grund, Grantor, does hereby grant and convey to Roger Nicholson, Grantee, his heirs, successors and assigns, a perpetual easement across Grantor's real property located in the NW 1/4 of the SW 1/4 of Section 26, Township 33 S., R. 7 1/2, E.W.M., which said easement shall be twenty (20) feet in width, measured ten (10) feet on each side of the center line of the existing road which serves Grantee's property, from the point where the existing road

intersects with State Highway 62 to the point where the existing road completes a turn to the north and starts paralleling the west line of the east half of the west half of said Section 26; at which point the 20 foot width shall be measured from the west line of the east 1/2 of the west 1/2 of Section 26. Attached hereto as Exhibit A is a map which shows said roadway easement. Grantee shall obtain from Albert E. Gastaldi, registered professional land surveyor, a metes and bounds description of said easement. The description of said easement shall be attached to this agreement as Exhibit B and shall, thereafter, describe the easement granted hereby.

2. Grantor does hereby acknowledge the easement for the Fort Creek Irrigation Canal which crosses Grantor's land. Grantor does hereby convey unto Grantee, and to the other people who have a legal right to appropriate water from said canal, easements, thirty (30) feet in width located on each side of said canal, as it now exists, for the purpose of maintaining said canal. The ~~average~~ ^{total} width of the canal and easements shall not increase after this date. Grantor shall have no liability whatsoever for the cost of maintaining said canal.

3. As of the date of this agreement, that portion of Grantor's property lying easterly of said canal is unimproved. The easements granted hereby are granted for the benefit of the Grantees and the other people with a legal interest in the Fort Creek Irrigation Canal. Therefore, until such time as Grantor improves said portion of his property, or changes the current usage of said portion of his property, Grantee shall be responsible for all costs of maintaining, to Grantee's satisfaction, said easements in their current condition.

4. Grantee may install utility services on the roadway easement, provided that said utility lines are buried.

5. Grantor, at his sole expense, may install and maintain an automatic gate at or near the intersection of the easement roadway and Highway 62. In the event Grantor installs such automatic gate, it shall be of construction which will allow the opening of the gate without exiting a motor vehicle and Grantor shall provide to Grantee a remote control device which will allow Grantee to open and close said gate without leaving his motor vehicle. Said gate shall also have the ability to be opened with a key, or other means, without a remote control device. Grantee may provide to other people, a control device which will allow them to open said gate and use the easement granted hereby. No other gates shall be placed across the roadway easement without the prior written consent of both parties.

6. Both parties agree that except for normal operation of the canal and temporary changes in the canal resulting from maintenance thereof, neither party will alter or restrict the flow of water in the canal.

7. Either party may improve the condition of the easement roadway from its current condition, provided that said improvement shall be at the sole expense of the party making the improvements and the other party shall have no liability thereafter for maintaining the roadway in its upgraded status.

8. If either party changes the current usage of their respective parcels of property and the said change in usage alters the usage of the easement roadway to the point where a party's usage of the roadway creates an actionable nuisance, then the person creating the nuisance shall cure the condition causing the nuisance.

9. Notwithstanding any other provision herein to the contrary, neither party shall make such use of the easements granted hereby which unreasonably interferes with the other party's use of the easements and their property. The easements granted herein shall run with the land as to all property burdened and benefited by such easements including the land benefited by the Fort Creek Irrigation Canal. The rights, covenants and obligations contained herein shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees, and other lienholders.

10. Grantee shall promptly cause the pending appeal to the Land Use Board of Appeals to be dismissed at Grantee's sole cost and expense.

11. Grantee shall be solely responsible for the payment of any fees owing to William M. Ganong, Attorney for the Grantee, for the preparation of this Agreement. Grantor does hereby acknowledge that William M. Ganong, Attorney at Law, represented Grantee in the negotiations and preparation of this easement, that Grantor was advised that he should have this agreement reviewed by legal counsel prior to executing it; and, that Grantor had the opportunity to exercise said right.

12. In the event that a suit or action is filed to enforce the terms of this Agreement, the prevailing party shall be entitled to a Judgment against the other party for his actual attorney's fees and costs of suit, including attorney's fees and costs incurred on appeal.

13. This Agreement supersedes and replaces the easement required by Klamath County Commissioners' Order No. 91-085

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in duplicate, as of the date first herein written.

William H. Grund
William H. Grund

Roger Nicholson
Roger Nicholson

STATE OF OREGON)
) ss
County of Klamath)

The foregoing instrument was acknowledged before me this 27 day of March, 1991, by William H. Grund.

PEGGY R. REYNOLDS
NOTARY PUBLIC - OREGON
My Commission Expires _____

Peggy R. Reynolds
Notary Public for Oregon
My commission expires: 12-5-92

STATE OF OREGON)
) ss
County of Klamath)

The foregoing instrument was acknowledged before me this 27 day of March, 1991, by Roger Nicholson.

PEGGY R. REYNOLDS
NOTARY PUBLIC - OREGON
My Commission Expires _____

Peggy R. Reynolds
Notary Public for Oregon
My commission expires: 12-5-92



GASTALDI AND ASSOCIATES

LICENSED IN OREGON, CALIFORNIA AND NEVADA

SURVEYING AND MAPPING

18619

503-882-8581

6091 REEDER RD., KLAMATH FALLS, OREGON 97603

APRIL 5, 1991
DESCRIPTION FOR ROGER NICHOLSON
GRUND PARCEL

A PARCEL OF LAND SITUATED IN THE NW/4 AND THE SW/4 OF SECTION 26, T33S R07 1/2E WM, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST R/W OF OREGON STATE HIGHWAY 62, FROM WHICH THE WEST ONE QUARTER CORNER OF SAID SECTION 26 BEARS N52 27 00W 1177.40 FEET MORE OR LESS, THENCE FROM SAID POINT OF BEGINNING N60 09 40E 322.69 FEET TO THE BEGINNING OF A CURVE, THENCE ALONG THE ARC OF A CURVE TO THE LEFT (DELTA = 60 20 30, RADIUS = 237.00 FEET, CHORD N29 59 25E 238.22 FEET) 249.60 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF THE W/2 OF THE SW/4 OF SAID SECTION 26, THENCE ALONG THE EAST LINE OF THE SAID W/2 OF THE SW/4 AND THE EAST LINE OF THE W/2 OF THE NW/4 OF SAID SECTION 26 N00 10 50W 689.50 FEET, THENCE CONTINUING ALONG SAID LINE N00 10 40W 76.14 FEET, THENCE LEAVING SAID LINE S20 51 17W 31.58 FEET TO THE BEGINNING OF A CURVE, THENCE ALONG THE ARC OF A CURVE TO THE LEFT (DELTA = 21 02 07, RADIUS = 130.00 FEET, CHORD = S10 20 13W 47.46 FEET) 47.73 FEET TO THE END OF THE CURVE, THENCE S00 10 50E 689.50 FEET TO THE BEGINNING OF A CURVE, THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (DELTA = 60 20 30, RADIUS = 217.00 FEET, CHORD = S29 59 25W 218.12 FEET) 228.54 FEET TO THE END OF THE CURVE, THENCE S60 09 40W 319.02 FEET TO A POINT ON THE EASTERLY R/W OF SAID OREGON STATE HIGHWAY 62, THENCE ALONG SAID EASTERLY R/W OF SAID HIGHWAY S19 26 26E 20.33 FEET MORE OR LESS TO THE POINT OF BEGINNING, CONTAINING 0.59 ACRES MORE OR LESS. BEARINGS ARE BASED ON ROS 3069. IT IS THE INTENT OF THIS DESCRIPTION TO ENCOMPASS AN EXISTING ROAD AND TO BE 20 FEET IN WIDTH MEASURED AT RIGHT ANGLES.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

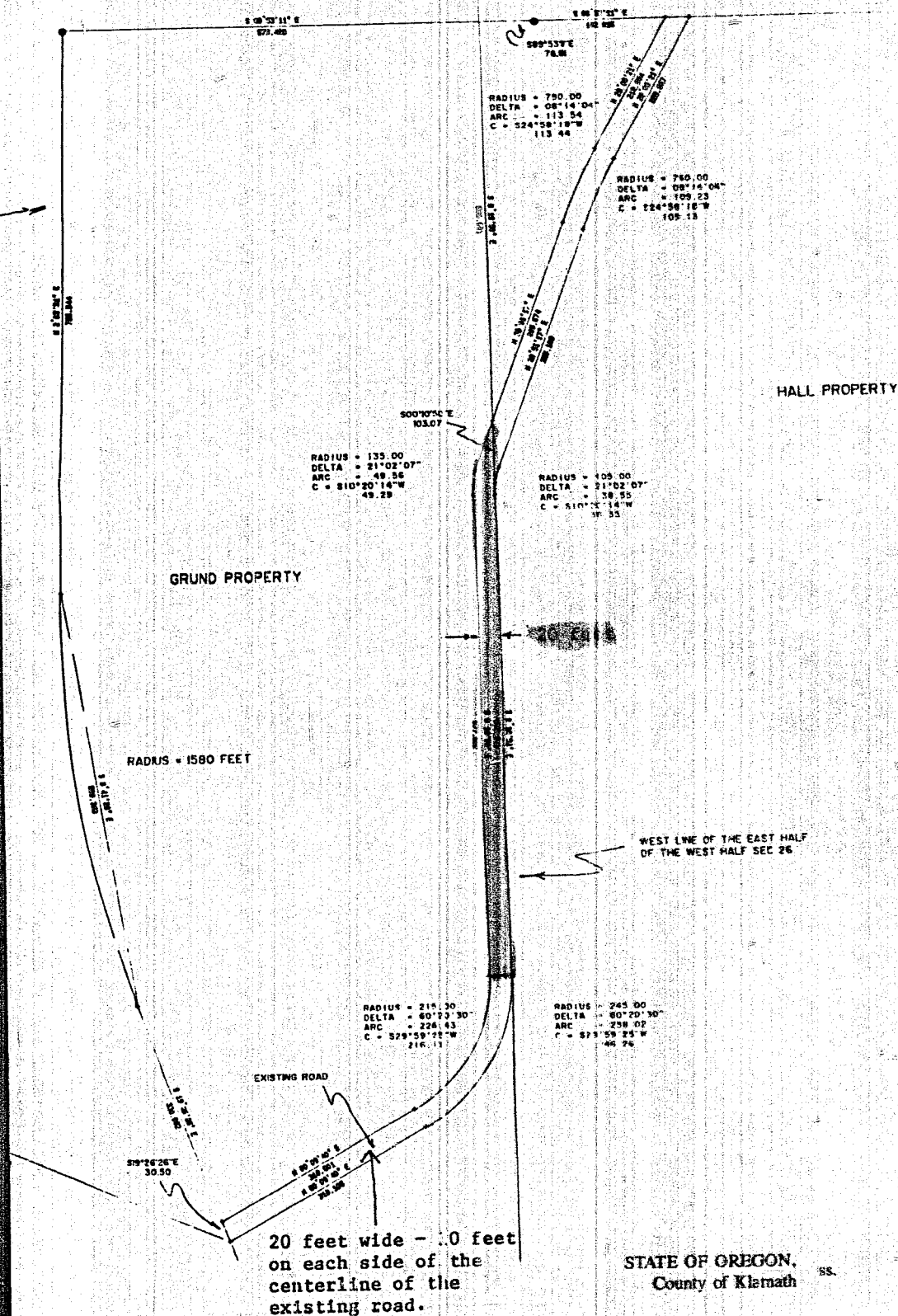
Albert H. Gastaldi

OREGON
JULY 17, 1976
ALBERT H. GASTALDI
828

EXHIBIT A
GRUND - NICHOLSON
ROAD WAY EASEMENT

N/2 N/2 S 1/4
NICHOLSON

18620



20 feet wide - 10 feet
on each side of the
centerline of the
existing road.

Return: Wm. H. Grund
Hc 30, Box 132
Chiloquin, Or. 97624

STATE OF OREGON,
County of Klamath ss.

Filed for record at request of

Wm. H. Grund
on this 16th day of Sept. A.D. 19 91
at 3:19 o'clock P. M. and duly recorded
in Vol. M91 of Deeds Page 18615
Evelyn Biehn County Clerk
By *Pauline Kullander* Deputy.

Fee, \$53.00