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The Nature Conservancy  
Northwest Division Legal Office  
217 Pine Street, Suite 1100  
Seattle, WA 98101

State of Oregon, County of Klamath  
Recorded 01/29/2004 1:55 p m  
Vol M04 Pg 05587-05599  
Linda Smith, County Clerk  
Fee \$ 81.00 # of Pgs 13

**DECLARATION AND  
GRANT OF EASEMENTS**

THIS DECLARATION AND GRANT OF EASEMENTS ("Declaration") is made effective as of January 29, 2004, by THE NATURE CONSERVANCY, a District of Columbia non-profit corporation ("the Conservancy") of 4245 North Fairfax Drive, Suite 100, Arlington VA 22203.

**RECITALS**

A. The Conservancy owns three contiguous parcels of real property located in Klamath County, Oregon (individually, a "Parcel" and collectively, the "Parcels"), and more particularly described as "Parcel 1", "Parcel 2", and "Parcel 3" on the attached Exhibit A which is incorporated herein by reference, and on Land Partition 30-02 plat recorded with the Office of the Klamath County Clerk on January 29, 2004 at Book 5, Page 30-02 (the "Plat").

B. The Conservancy owns and manages, and will continue to own and manage, Parcel 1 and Parcel 3 as a land conservation preserve and wetland restoration project. The Conservancy anticipates the sale of Parcel 2 on which is located a single family residence and related outbuildings and desires to facilitate the cooperative management of the Parcels by creating easements over portions of Parcel 2 for various purposes including, but not limited to, access and utilities to benefit the Conservancy and its successors and assigns.

NOW THEREFORE, the Conservancy declares, grants and conveys as follows:

1. Definitions. As used in this Declaration, the following terms shall have the indicated meanings:

"Owner" means the Conservancy and the owner of record of any Parcel, as the same may be shown by the records of Klamath County, Oregon. "Owner" does not include a person who holds an interest merely as security for the performance of an obligation.

"Owners" means all of the persons or entities who are an Owner, taken in the aggregate.

"Parcel 1 Owner" means the Owner of Parcel 1, its successors and assigns.

"Parcel 2 Owner" means the Owner of Parcel 2, its successors and assigns.

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"Parcel 3 Owner" means the Owner of Parcel 3, its successors and assigns.

"Easement Area" or "Easement Areas" means, individually or collectively as appropriate, that portion or those portions of the Parcel(s) on which are located the easement(s) created by this Declaration.

2. Access and Utility Easement to Parcel 3.

a. Grant of Easement. The Conservancy hereby grants and conveys to Parcel 3 Owner, and hereby declares that Parcel 2 shall be encumbered by and subject to a perpetual non-exclusive easement on, over, across, and through that portion of Parcel 2 described on the Plat as the "Access and Utility Easement to Parcel 3" and more particularly described on Exhibit B attached hereto and incorporated herein by reference, for ingress to and egress from, passage of motor vehicles and pedestrians to and between, Parcel 3 and State Highway 427, and for such other purposes as are incident to and consistent with Parcel 3 Owner's use and management of Parcel 3, including, without limitation, placement of utilities.

b. Improvements. Either Parcel 2 Owner or Parcel 3 Owner may, but shall not be obligated to, improve the Access and Utility Easement at such Owner's sole expense, after obtaining the written approval of the other Owner (either Parcel 2 Owner or Parcel 3 Owner), which approval shall not be unreasonably denied or delayed.

3. Interim Access Easement to Parcel 3. Until such time as the Access and Utility Easement described above is improved to allow vehicular access, the Conservancy grants and conveys to Parcel 3 Owner and hereby declares that Parcel 2 shall be encumbered by and subject to, an easement on, over, across, and through that portion of Parcel 2 described as the "Interim Access Easement to Parcel 3" on Exhibit C attached hereto and incorporated herein, for ingress to and egress from, and passage of motor vehicles and pedestrians to and between, State Highway 427 and Parcel 3.

4. Easement to Well & Pump House. The Conservancy grants and conveys to Parcel 1 Owner, and hereby declares that Parcel 2 shall be encumbered by and subject to, a perpetual non-exclusive easement on that portion of Parcel 2 described on the Plat as "Easement to Well & Pump House" and more particularly described on Exhibit D attached hereto and incorporated herein by reference ("Well & Pump House Easement"), for the purpose of access from Parcel 1 to the domestic well located within such Easement Area and for such other purposes as are incident to and consistent with Parcel 1 Owner's use and management of Parcel 1. Parcel 1 Owner shall bear all costs related to the Well & Pump House Easement and shall maintain such Easement Area and any improvements and equipment thereon in good condition and repair.

5. Easement for Access to Irrigation Pump. The Conservancy hereby grants and conveys to Parcel 3 Owner, and hereby declares that Parcel 2 shall be encumbered by and subject to, a perpetual non-exclusive easement on that portion of Parcel 2 described on the Plat as "Easement to Irrigation Pump" and more particularly described on Exhibit E attached hereto and incorporated herein by reference ("Easement for Access to Irrigation Pump") for the purpose of access from Parcel 3 to the irrigation pump and related equipment located on the Easement for

Access to Irrigation Pump and for such other purposes as are incident to and consistent with Parcel 3 Owner's use and management of Parcel 3. Maintenance of the irrigation pump and equipment within the Easement Area is provided for in a separate agreement.

6. Use of Easement Areas. No fence, wall, barricade or any other obstruction, whether temporary or permanent in nature, which materially limits or impairs the free and unimpeded access to or across the Easement Areas shall be constructed or erected. The Owner of a Parcel burdened by an easement created herein may use the Easement Area for purposes incident to ownership of such Owner's Parcel, provided such use does not unreasonably interfere with the benefited Parcel Owner's use and enjoyment of the Easement Area and the rights granted herein. Any damage or destruction caused to an Easement Area by any Owner shall be repaired or replaced at such Owner's sole expense.

7. Default. An Owner shall be deemed to be in default under the terms of this Declaration if such Owner shall fail to (i) perform any obligations of, or (ii) conduct operations on a basis consistent with, this Declaration and such failure continues for a period of thirty (30) days after receipt by such Owner of notice in writing from any other Owner specifying in detail the nature of such failure; provided, however, that in the event of a default of such a nature that it cannot be cured within thirty (30) days, then such default shall not be deemed to continue so long as the defaulting Owner proceeds in good faith to cure such default as soon as reasonably possible and continues to take all steps necessary to complete such cure within a reasonable period of time. Notwithstanding the foregoing, no default shall be deemed to continue if and so long as the defaulting Owner shall be attempting in good faith to cure such default and is prevented from doing so by force majeure, as defined below.

8. Insurance: Indemnification.

a. Liability Insurance. Each Owner shall, at its sole cost and expense, maintain the following policies of insurance in full force and effect:

General liability insurance insuring against claims on account of loss of life, personal injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of each Owner's Parcel, building, and the Easement Areas of such Parcel by each Owner and its invitees and having limits for bodily or personal injury to or death of any person, or more than one person, or for damage to property, in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) combined single limit per occurrence/aggregate, such coverage to be in a general liability form.

b. Indemnification by Owners. Each Owner shall defend, indemnify and hold every other Owner and its invitees harmless for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) incurred by an Owner in connection with (i) the loss of life, personal injury and/or damage to property arising from or out of the indemnifying Owner's use of or exercise of rights granted herein, and (ii) the failure to comply with the provisions of this Declaration.

9. **Remedies.** In the event of a default by any Owner, any other Owner shall be entitled to cure such default and obtain reimbursement from the Owner in default of all reasonable costs incurred.

10. **No Waiver.** The failure of an Owner to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies available to such Owner, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other Owner.

11. **Integration; Modification.** This Declaration contains the entire agreement with respect to the matters set forth herein. This Declaration and any easement created herein may be terminated, extended, modified or amended as to each Parcel or all Parcels, with the consent of the Owners which consent shall not be unreasonably withheld or delayed, and any such termination, extension, modification or amendment shall be effective upon proper recordation of a written document evidencing the same, executed and acknowledged by all of the Owners then existing, in the Office of the Klamath County Clerk.

12. **Not a Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Parcels to or for the general public or for any public purposes whatsoever, it being the intention of the Owners that this Declaration be strictly limited to and for the purposes expressed in this Declaration.

13. **Mutuality; Easements Run With the Land.** The easements, rights and obligations granted or created in this Declaration hereby are appurtenances to the Parcels and none of the easements, rights or obligations may be transferred, assigned or encumbered except as an appurtenance to such Parcels. For the purposes of the easements and rights set forth herein, the Parcel benefited thereby shall constitute the dominant estate, and the Parcel burdened thereby shall constitute the servient estate. Each of the easements and rights contained in this Declaration (whether affirmative or negative in nature) (i) shall constitute covenants running with the land; (ii) shall bind every person having a fee, leasehold or other interest in any portion of a Parcel at any time or from time to time to the extent such portion is affected or bound by the easement or right in question, or to the extent that easement or right is to be performed on such portion; and (iii) shall inure to the benefit of and be binding upon the Owners and their respective successors and assigns as to their respective Parcels.

14. **No Partnership.** The Owners do not by this Declaration, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.

15. **Force Majeure.** Each Owner shall be excused for the period of any delay in the performance of any obligation hereunder when prevented from so doing by any cause or causes beyond such Owner's control, including labor disputes, civil commotion, riot, war, acts of terrorism, governmental regulations or controls, fire, or other casualty, inability to obtain any material or services, or acts of God.

16. Further Action. Each Owner shall execute and deliver all documents, provide all information, take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Declaration.

17. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws in the State of Oregon, excluding any conflict of law principles that would require application of the law of another jurisdiction.

18. Severability. In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Declaration and shall in no way affect any other condition, covenant or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such condition, covenant or other provision shall be deemed invalid to the extent of the scope and breadth permitted by law.

19. Attorneys' Fees. In the event it becomes necessary for any Owner to employ the service of an attorney in connection herewith, either with or without litigation, the losing Owner of such controversy shall pay to the successful Owner reasonable attorneys' fees and, in addition, such costs and expenses as are incurred in enforcing this Declaration.

Dated to be effective as of the date first above written.

THE NATURE CONSERVANCY,

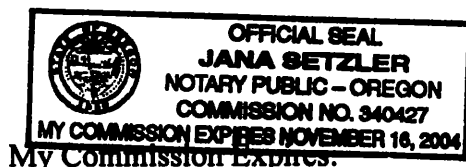
a District of Columbia non-profit corporation

By: [Signature]

Its: Vice President

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF MULTNOMAH        )

The foregoing instrument was acknowledged before me this 1st day of December, 2003, by Russell Hoeflich, the Vice President and Oregon Director of The Nature Conservancy.



Jana Setzler  
NOTARY PUBLIC  
Address: 821 SE 14th, Portland

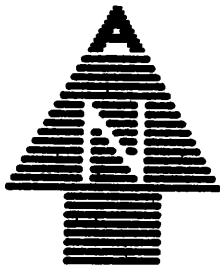
**Exhibit A****The Parcels**

All that certain real estate situated in Klamath County, Oregon, more particularly described as follows:

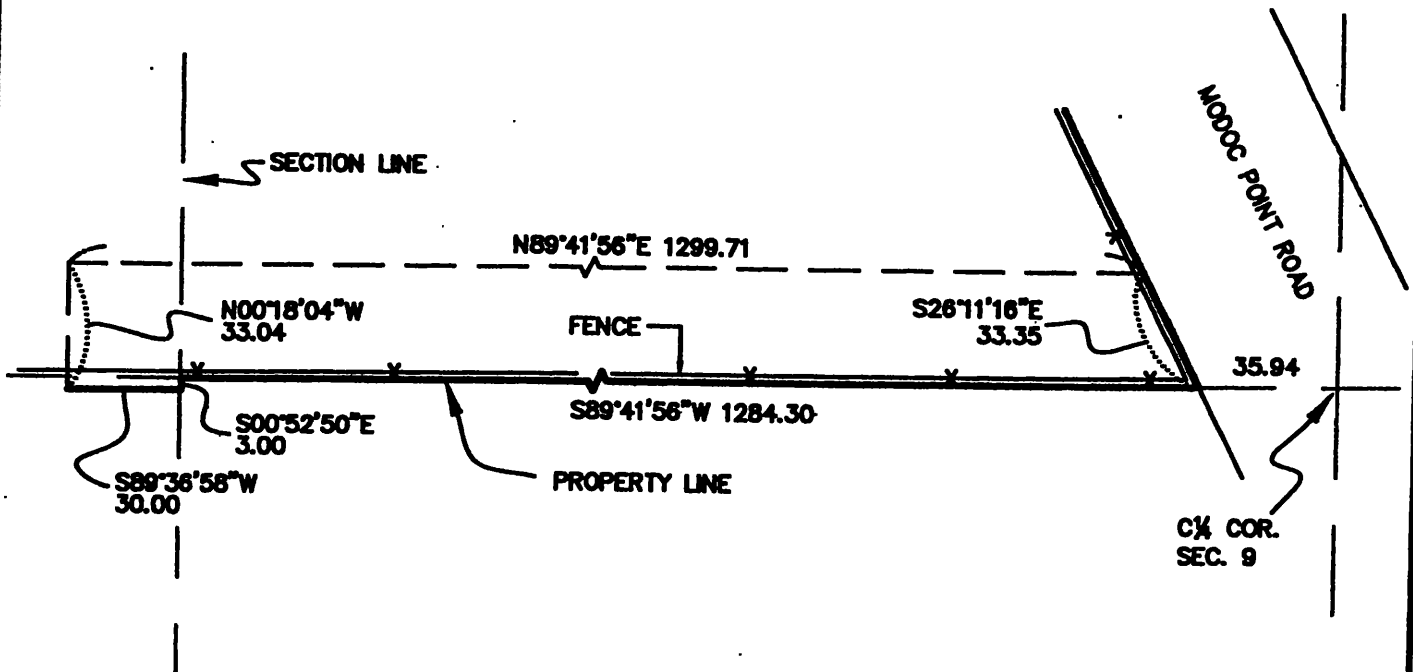
Parcel 1, Parcel 2, and Parcel 3 of Land Partition 30-02 recorded with the Office of the Klamath County Clerk on January 29, 200~~4~~<sup>7</sup> at Book 5, Page 30-02.

# ACCESS AND UTILITY EASEMENT TO PARCEL 3

S½ NW¼ & NW¼ SW¼ SEC. 9, T36S, R7EWM



SCALE: 1" = 50'



## ADKINS

CONSULTING  
ENGINEERS, INC.

Engineers ▲ Planners ▲ Surveyors

2950 Shasta Way · Klamath Falls, Oregon 97603 · (541) 884-4888 · FAX (541) 884-5335  
Klamath Falls, OR · Medford, OR · Alturas, CA

FEB, 2003

EASEMENTS-C-B&N

1816-0701

**DESCRIPTION FOR  
ACCESS AND UTILITY EASEMENT FOR PARCEL 3**

**A parcel of land situated in the S½ NW¼ and the NW¼ SW¼ of Section 9, Township 36 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:**

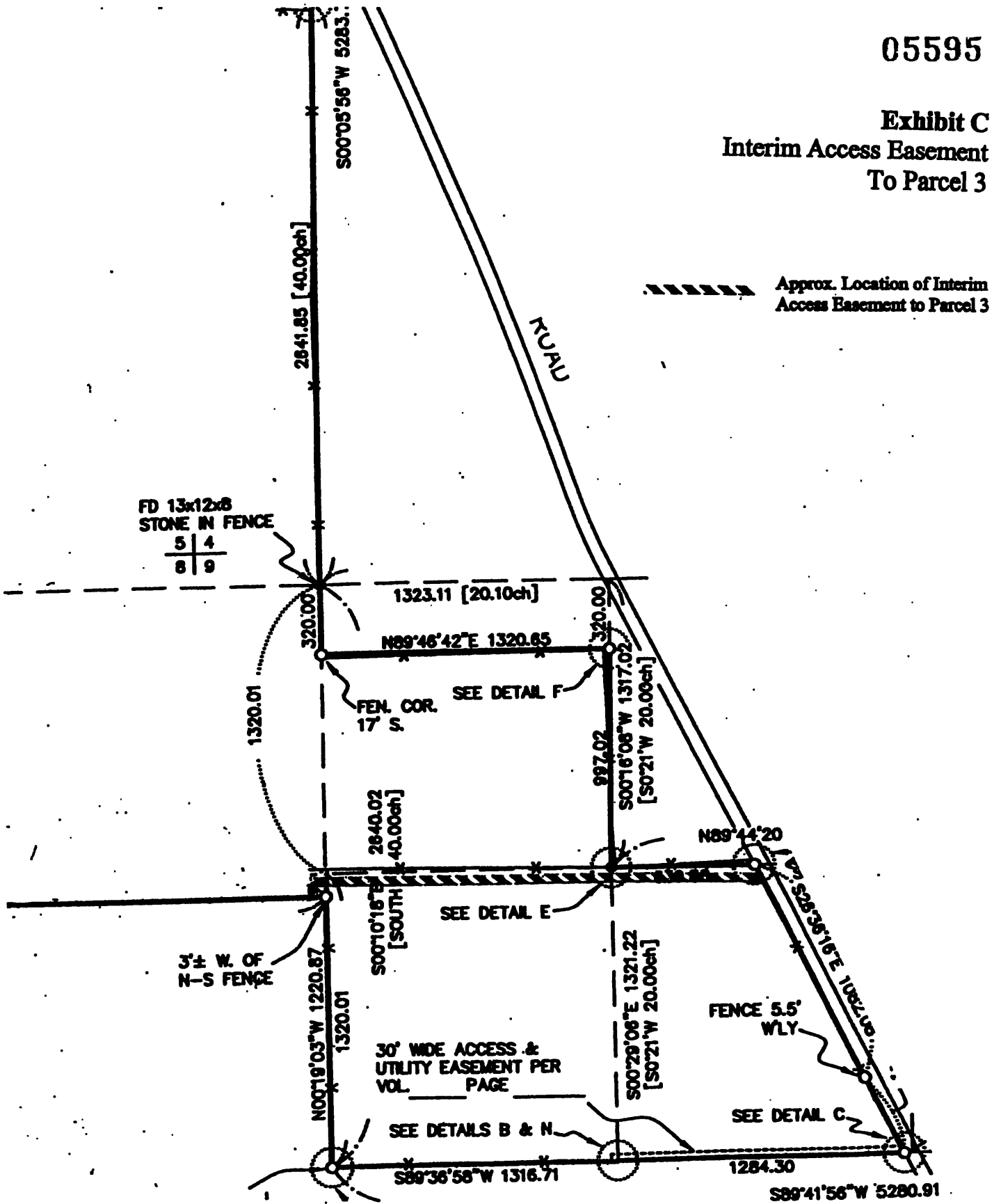
**Beginning at a point on the westerly line of Modoc Point Road, said point being the intersection of said westerly line with the south line of the SE¼ NW¼ of said Section 9, from which the center ¼ corner of said section bears North 89°41'56" East 35.94 feet; thence South 89°41'56" West 1284.30 feet on said south line to the southwest corner of the SE¼ NW¼; thence South 0°21' West 3.00 feet on the east line of the NW¼ SW¼ of Section 9; thence South 89°36'58" West 30.00 feet; thence North 0°18'04" West 33.04 feet to a point that is 30.00 feet distant, when measured at right angles, from the westerly extension of the south line of the SE¼ NW¼ of said Section 9; thence North 89°41'56" East 1299.71 feet to the westerly line of Modoc Point Road; thence South 26°11'16" East 33.35 feet on said westerly line to the point of beginning.**

**1816-0701  
2/7/03**



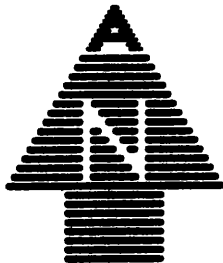
05595

**Exhibit C**  
**Interim Access Easement**  
**To Parcel 3**

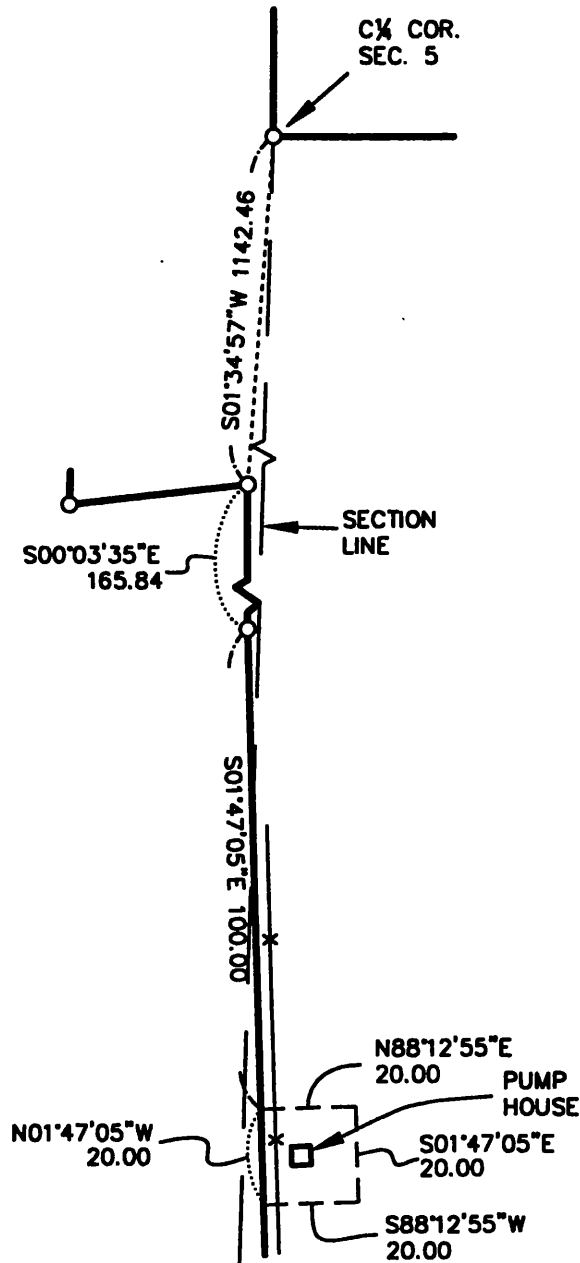


# EASEMENT TO WELL & PUMP HOUSE

SE¼ SEC. 5, T36S, R7EWM



SCALE: 1" = 40'



## ADKINS

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Klamath Falls, OR · Medford, OR · Alturas, CA

NOV, 2003

EASEMENTS-K

1816-0701

**DESCRIPTION FOR EASEMENT TO PUMP HOUSE**

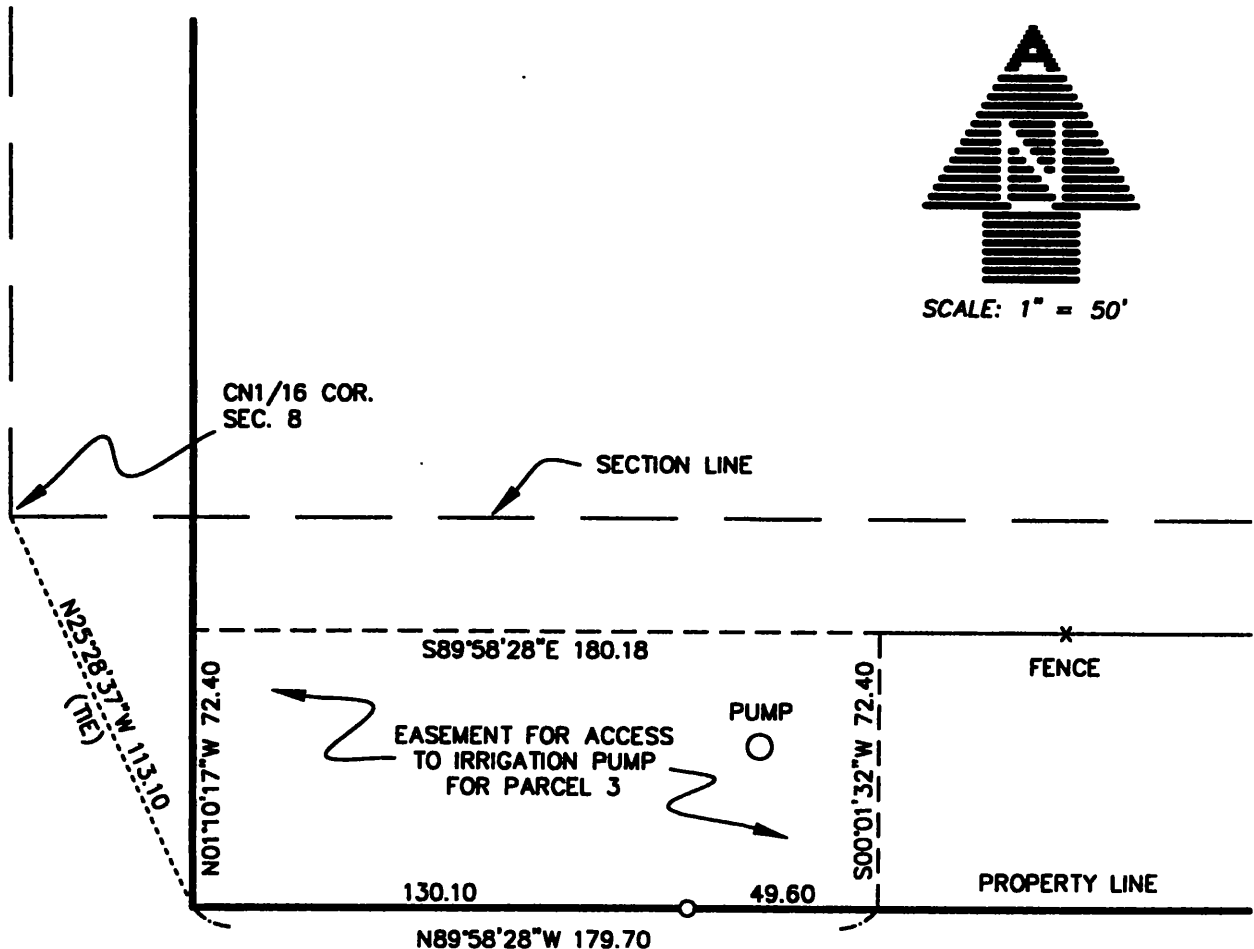
A parcel of land situated in the SE¼ of Section 5, Township 36 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at the center ¼ corner of said Section 5; thence South 01°34'57" West 1142.46 feet; thence South 00°03'35" East 165.84 feet; thence South 01°47'05" East 100.00 feet to the True Point of Beginning for this description; thence North 88°12'55" East 20.00 feet; thence South 01°47'05" East 20.00 feet; thence South 88°12'55" West 20.00 feet; thence North 01°47'05" West 20.00 feet to the point of beginning.

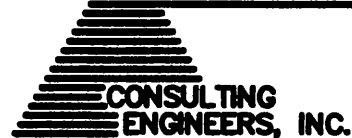
1816-0701  
11/24/03

# EASEMENT FOR ACCESS TO IRRIGATION PUMP

SW¼ NE¼ SEC. 8, T36S, R7EWM



## ADKINS



Engineers ▲ Planners ▲ Surveyors

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Klamath Falls, OR · Medford, OR · Alturas, CA

NOV, 2003

EASEMENTS-M

1816-0701

**05599**

**DESCRIPTION FOR EASEMENT  
TO IRRIGATION PUMP**

**A parcel of land situated in the SW¼ NE¼ of Section 8, Township 36 South,  
Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more  
particularly described as follows:**

**Beginning at a point from which the CN 1/16 corner of Section 8 bears North  
25°28'37" West 113.10 feet; thence North 01°10'17" West 72.40 feet; thence  
South 89°58'28" East 180.18 feet; thence South 00°01'32" West 72.40 feet;  
thence North 89°58'28" West 179.70 feet to the point of beginning.**

**1816-0701  
2/7/03**