

State of Oregon, County of Klamath
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 Linda Smith, County Clerk
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C04-91

AGREEMENT REGARDING EASEMENTS**PARTIES:**

JAMES E. LYNES
 5890 Canyon Ferry Road
 Helena MT 59602

("Lynes")

RODNEY C. METZGER and
 ANNE C. METZGER, Husband and Wife
 209 Carthage Avenue
 Eugene OR 97404

("Metzger")

JACK J. SHUBERT and
 SHARON L. SHUBERT
 209 Carthage Avenue
 Eugene OR 97404

("Shubert")

LANCE M. PIXLER and
 GINA L. PIXLER, Husband and Wife
 PO Box 996
 Chester CA 96020

("Pixler")

In consideration of the representations, warranties, promises, and covenants contained herein, the Parties agree as follows:

1. **Recitals.**

The Parties declare that the following facts are true:

Lynes is owner of two parcels of real property located in Klamath County, Oregon, and described on Exhibit A attached hereto and made a part hereof. The property owned by Lynes consists of Klamath County Tax Lot Number 2407-007CO-1000, and Klamath County Tax Lot Number 2407-007CO-700. The parcel identified as Tax Lot 2407-007CO-1000 is hereinafter referred to as "Tax Lot 1000", and the property identified as Klamath County 2407-007CO-00700 is hereinafter referred to as "Tax Lot 700".

Metzger and Shubert are owners of two parcels of real property located in Klamath County, Oregon, and described on Exhibit B attached hereto and made a part hereof. Metzger and Shubert are hereinafter referred to as "Metzger". The property owned by Metzger consists of Klamath County Tax Lot Number 2407-007CO-00900, and Klamath County Tax Lot Number 2407-007CO-00801. The parcel identified as Tax Lot 2707-007CO-00900 is hereinafter referred to as "Tax Lot 900", and the property identified as Klamath County 2407-007CO-00801 is hereinafter referred to as "Tax Lot 801".

714

Pixler is the owner of a parcel of real property located in Klamath County, Oregon, and described on Exhibit C attached hereto and made a part hereof. The property owned by Pixler consists of Klamath County Tax Lot Number 2407-007CO-00800 and is hereinafter referred to as "Tax Lot 800".

In 1977, Evelyn Reeve, hereinafter referred to as "Reeve", conveyed Tax Lot 1000 to Edward P. Lynes and Joan C. Lynes, by means of a Warranty Deed recorded in Klamath County Deed Records Vol M78, Page 5852 (hereinafter referred to as the "Reeve Deed"). The legal description contained in the Reeve Deed described Tax Lot 1000 and then indicated "save and except the North 60 feet for roadway purposes". The provision "save and except the North 60 feet for roadway purposes" is hereinafter referred to as the "Reeve Deed Provision". The Reeve Deed Provision may have been a reservation of the northerly 60 feet of Tax Lot 1000 by Reeve. Reeve died on June 22, 1987. Her estate was probated as case number 87-PB-0044-JT in the Circuit Court of the State of Oregon for Deschutes County. Any reversionary interest created by the Reeve Deed Provision passed to Lynes as residuary devisee.

The Reeve Deed Provision may have reserved an easement over the northerly 60 feet of Tax Lot 1000. If such easement were in gross, such easement has passed to Lynes as residuary devisee of Reeve's estate. If an easement were created by the Reeve Deed Provision and if said easement were appurtenant to real property owned by Reeve, all property owned by Reeve at the time of the Reeve Deed which could have been reasonably benefitted by such an easement appurtenant consisted of Tax Lots 900, 801, 800, and 700.

Lynes has researched the circumstances surrounding the Reeve Deed Provision and believes that the intent of the Reeve Deed Provision was to reserve an easement across the easterly 60 feet of Tax Lot 1000, rather than the northerly 60 feet of Tax Lot 1000, for the benefit of Tax Lots 900, 801, 800, and 700.

The easement created by the Reeve Deed Provision, if it exists, is hereinafter referred to as the Reeve Deed Easement.

Metzger has constructed a driveway, hereinafter referred to as the Metzger driveway, which crosses Tax Lots 900 and 1000, and is in the approximate location as shown on the map marked as Exhibit D and made a part hereof. Metzger has no easement for construction or maintaining the Metzger driveway across Tax Lot 1000. Pixler has no easement to use the Metzger driveway.

Mid-State Electric Co-operative owns a power line which crosses tax lots 1000, 900, 801, 800, & 700, in the approximate location shown on exhibit "D". There is a road located under the Mid-State Electric Co-operative line. That portion of the road located under the Mid-State Electric Co-operative line and crossing Tax Lots 900 and 801 is hereinafter referred to as the Mid-State Road. The Mid-State Road is shown on Exhibit "D" attached hereto and made a part hereof.

The intent of this document is to terminate the Reeve Deed Easement, and to create a new easement appurtenant across Tax Lots 1000, 900, and 801, in favor of Tax Lots 900, 801, and 800.

2. Termination of Easement.

All Parties, on behalf of themselves individually, and as owners of the real property described in this agreement, for themselves, their heirs, devisees, successors, and assigns, hereby terminate the Reeve Deed Easement, together with all rights, duties, obligations, and liabilities created by the Reeve Deed Easement.

3. Driveway Easement.

Lynes and Metzger, as owners respectively of Tax Lots 1000, 900 and 801 grant to Metzger and Pixler, as owners respectively of Tax Lots 900 and 801, and 800, for the benefit of Tax Lots 900 and 801, and 800, a non-exclusive perpetual easement for the Metzger driveway, and for the existing Mid-State Road, for the purposes of ingress and egress for residential purposes to Tax Lots 900 and 801, and 800. Such right of ingress and egress shall include the right to construct, improve, and maintain a roadway and the right to bury and maintain utility pipes and lines. The easement created by this Paragraph is hereinafter referred to as the driveway easement. Maintenance of the driveway easement road shall be shared as follows: Thirty-three and one-third percent (33 1/3%) by Lynes, sixty-six and two-thirds percent (66 2/3%) by Metzger. Maintenance shall include, but shall not be limited to, leveling and scraping of the road to reduce low spots, and addition of gravel as reasonably necessary to allow for winter use and to prevent unreasonable dust in the summer. In the event any responsible party refuses to pay his share of the maintenance, the other party or parties may, after thirty (30) days' written notice to the party refusing to pay, terminate the rights of the party refusing to pay in the easement created in this Paragraph. All parties shall use the easement in such a manner as to avoid unreasonable interference with the use and enjoyment of each of the other parcels. The parties acknowledge that the easements created pursuant to the terms of this agreement may be subject to easement rights in favor of Mid-State Electric Co-operative. In the event Pixler uses the driveway easement, then maintenance of the driveway easement shall thereafter be shared as follows: Twenty-five percent (25%) by Lynes, fifty percent (50%) by Metzger, and twenty-five percent (25%) by Pixler. For purposes of this document, Pixler shall be deemed to have "used" the driveway easement if Pixler (including Pixler's agents, invitees, and licensees) drives a motor vehicle on any portion of the driveway easement more than five times in any month, or more than 25 times in any 12-month period.

4. Preparation of Agreement.

This document has been prepared by Jerry M. Molatore, Attorney at Law, on behalf of Lynes. Metzger and Pixler acknowledge that Jerry M. Molatore does not and cannot represent them regarding this agreement and that they have the right to have this agreement reviewed by an attorney of their choice.

5. Complete Agreement.

This writing is intended by the parties as a final and complete expression of this agreement and of all matters relating to this agreement. No prior course of dealing or negotiations between the parties, and no oral or extrinsic evidence of any nature shall be used to supplement or modify any term of this agreement.

6. Counterparts.

This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

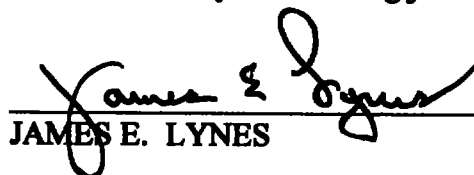
7. Attorneys' Fees.

In the event suit, action, or arbitration is instituted by either party to enforce any rights under this agreement or for any other matter arising out of this agreement, including appeals to any appellate court, and including any action in bankruptcy court, it is agreed that the prevailing party in such suit, action, or arbitration shall recover from the other party, in addition to costs and disbursements, such further sums as the court or arbitrator may be deemed reasonable as attorney's fees at trial, on appeal, in arbitration, or in bankruptcy proceedings.

8. Arbitration.

Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of the Arbitration Service of Portland, Inc., or the American Arbitration Association, whichever organization is selected by the party which first initiates arbitration by filing a claim in accordance with the filing rules of the organization so selected, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

Dated: April 26, 2004


JAMES E. LYNES

STATE OF MONTANA)
) ss.
County of MADISON)

Personally appeared before me on the 26th day of April, 2004, the above named JAMES E. LYNES and acknowledged the foregoing instrument to be his voluntary act and deed.


Notary Public for Montana
My Commission Expires: 9-10-2004

36867

Dated: March 29, 2004

STATE OF OREGON)


County of Lane)

) ss.


RODNEY C. METZGER

Personally appeared before me on the 29 day of March 2004, the above named RODNEY C. METZGER and acknowledged the foregoing instrument to be his voluntary act and deed.




Notary Public for Oregon
My Commission Expires: March 3, 2006

Dated: March 29, 2004

STATE OF OREGON)

County of Lane)

) ss.


ANNE C. METZGER

Personally appeared before me on the 29 day of March 2004, the above named ANNE C. METZGER and acknowledged the foregoing instrument to be her voluntary act and deed.




Notary Public for Oregon
My Commission Expires: March 3, 2006

SIGNATURES CONTINUED ON NEXT PAGE

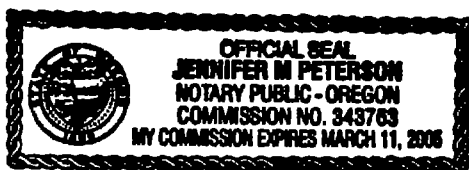
36868


Dated: March 29, 2004


JACK J. SHUBERT

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared before me on the 29th day of March 2004, the above named JACK J. SHUBERT and acknowledged the foregoing instrument to be his voluntary act and deed.



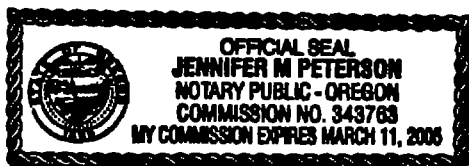

Notary Public for Oregon
My Commission Expires: 03/11/05

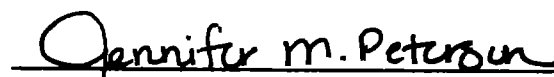
Dated: March 29, 2004


SHARON SHUBERT

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared before me on the 29th day of March 2004, the above named SHARON SHUBERT and acknowledged the foregoing instrument to be her voluntary act and deed.




Notary Public for Oregon
My Commission Expires: 03/11/05

SIGNATURES CONTINUED ON NEXT PAGE

36869

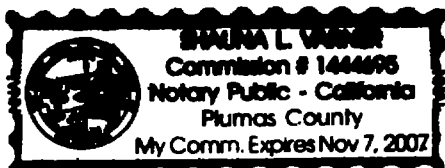
Dated: April 14, 2004

Lance M. Pixler
LANCE M. PIXLER

STATE OF CALIFORNIA)

County of Plumas) ss.

Personally appeared before me on the 14 day of April, 2004, the above named LANCE M. PIXLER and acknowledged the foregoing instrument to be his voluntary act and deed.



Shauna L. Varner
Notary Public for California
My Commission Expires: 11-7-2007

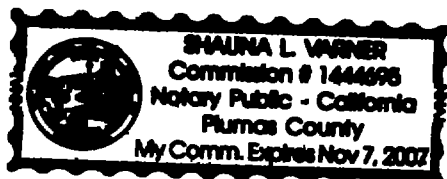
Dated: April 14, 2004

Gina L. Pixler
GINA L. PIXLER

STATE OF CALIFORNIA)

County of Plumas) ss.

Personally appeared before me on the 14 day of April, 2004, the above named GINA L. PIXLER and acknowledged the foregoing instrument to be her voluntary act and deed.



Shauna L. Varner
Notary Public for California
My Commission Expires: 11-7-2007

36870

LYNES
EXHIBIT A

Tax Lot 1000

A parcel of land situate in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7 Township 24 South, Range 7 E.W.M., more particularly described as follows:

Beginning at the Northwest corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$; thence South along the West line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$ a distance of 230 feet to the true point of beginning; thence continuing South along said line 100 feet to a point; thence East parallel to the North line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$ to a point on the West line of Highway 58; thence Northwesterly along said highway right of way to the Southeast corner of parcel 1 of deed from Evelyn Smutz to Leisure Lodge recorded in Vol. M77, page 1484; Deed Records of Klamath County, Oregon, which point is 230 feet South of and at right angles to the North line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$; thence West along the South line of said parcel to the point of beginning.

Tax Lot 700

A parcel of land situated in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, Township 24 South, Range 7, E.W.M., described as follows:

Beginning at a point on the West line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$ which is North a distance of 500 feet from the Southwest corner thereof, said point being the Southwest corner of parcel described in deed from M. M. Culver, et ux to Harry H. Smutz, et ux, recorded in Volume M-78, page 15469, microfilm records of Klamath County, Oregon; thence continuing North along said West line a distance of 130 feet to a point; thence East, parallel with the South line of said NE $\frac{1}{4}$ SW $\frac{1}{4}$ to the Westerly right-of-way line of Highway #58; thence S. 16°21'06" E. along said right-of-way line a distance of 139.3 feet, more or less, to the Southeast corner of said parcel described in Volume M-78, page 15469; thence West along the South line of said parcel to the point of beginning; said parcel containing 2.25 acres, more or less.

EXHIBIT A

36871

METZGER AND SHUBERT
EXHIBIT B

Tax Lots 801 and 900

PARCEL 1:

A PARCEL OF LAND SITUATED IN THE NE $\frac{1}{4}$ SW $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 24 SOUTH, RANGE 7 E.W.M., DESCRIBED AS FOLLOWS:

THE NORTH 82 FEET (MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) OF THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT A POINT ON THE WEST LINE OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$ WHICH IS 630 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE EAST, PARALLEL WITH THE SOUTH LINE OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$ TO THE WESTERLY RIGHT OF WAY LINE OF HIGHWAY #58; THENCE N. 16°21'06" W. ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 268.7 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF PARCEL DESCRIBED IN DEED TO CLARENCE W. REEVE, RECORDED IN VOLUME M84 PAGE 19845 DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE WEST

ALONG THE SOUTH LINE OF LAST MENTIONED PARCEL TO THE WEST LINE OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$; THENCE SOUTH ALONG SAID WEST LINE A DISTANCE OF 255.5 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 2:

A PARCEL OF LAND SITUATED IN THE NE $\frac{1}{4}$ SW $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 24 SOUTH, RANGE 7 E.W.M., KLAMATH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$ WHICH IS A DISTANCE OF 330 FEET FROM THE NORTHWEST CORNER THEREOF, SAID POINT BEING THE SOUTHWEST CORNER OF PARCEL CONVEYED TO EDWARD LYNES, ET UX, BY DEED RECORDED IN VOLUME M78 PAGE 5852, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE CONTINUING SOUTH ALONG THE WEST LINE OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$ A DISTANCE OF 100 FEET TO A POINT; THENCE EAST, PARALLEL WITH THE NORTH LINE OF SAID NE $\frac{1}{4}$ SW $\frac{1}{4}$ TO THE WESTERLY RIGHT OF WAY OF HIGHWAY #58; THENCE N. 16°21'16" W. ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 104.96 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID PARCEL DESCRIBED IN VOLUME M78 PAGE 5852; THENCE WEST ALONG THE SOUTH LINE OF AFOREMENTIONED PARCEL TO THE POINT OF BEGINNING.

Sec 7 T24S R7E TL#'s 801 & 900 OR

EXHIBIT B

**PIXLER
EXHIBIT C**

36872

Tax Lot 800

A parcel of land situated in the NE1/4 SW1/4 of Section 7, Township 24 South, Range 7 East of the Willamette Meridian, in Klamath County, Oregon, described as follows:

Beginning at a point on the West line of said NE1/4 SW1/4 which is 630 feet North of the Southwest corner thereof; thence East, parallel with the South line of said NE1/4 SW1/4 to the Westerly right of way line of Highway #58, thence North 16° 21' 06" West along said right of way line a distance of 268.7 feet, more or less, to Southeast corner of parcel described in Deed to Clarence W. Reeve, recorded in Volume M84, page 19845, Deed Records of Klamath County, Oregon; thence West along the South line of last mentioned parcel to the West line of said NE1/4 SW1/4; thence South along said West line a distance of 255.5 feet, more or less, to the point of beginning; SAVE AND EXCEPT a strip of land 82 feet wide running parallel to the Northern boundary of above described property.

EXHIBIT C

1'-200'

AP 24 07 07B

NOTE 2700.78 —

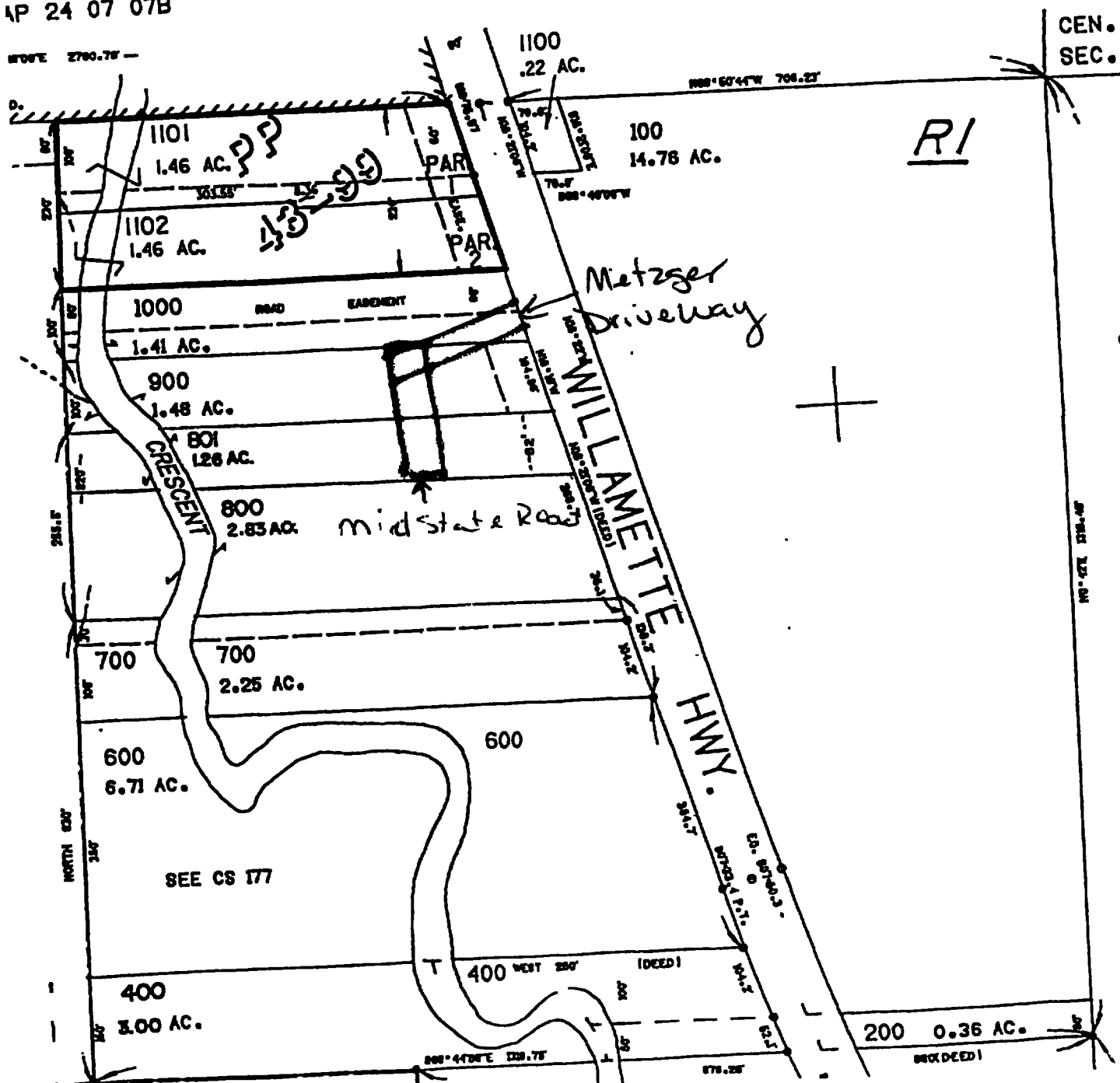


EXHIBIT D