

RESOLUTION NO. 3841

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Simpson Timber Company

Purpose

This easement is to assure that the Protected Property will be retained forever predominately in its natural, scenic, and open space condition; to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property; and to make such improvements or alterations to the Protected Property as may be necessary or desirable, in the judgement of the City, to enhance the conservation and recreational values of the Protected Property.

WHEREAS, Simpson Timber Company is the owner of certain real property, commonly known as the Simpson Timber Ponds, which consists of approximately 129 acres and is adjacent to Bowman Park along the Willamette River.

WHEREAS, this property has natural, scenic, open space, educational, and recreational value of great importance to Simpson Timber Company and to the people of the greater Albany community.

WHEREAS, it is in the best interest of the citizens of the greater Albany Community to conserve and protect the conservation value of this property for educational and recreational use for the benefit of this generation and generations to come.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement and authorize the City Manager to sign this easement on behalf of the City of Albany.

DATED THIS 13TH DAY OF AUGUST 1997.



Council President

ATTEST:



City Recorder



GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 13th day of August, 1997, by Simpson Timber Company, having an address at 1201 Third Avenue, Suite 4900, Seattle, WA 98101-3045 ("Simpson"), in favor of the City of Albany, a Political Subdivision of the State of Oregon, having an address at 250 Broadalbin, Albany, OR 97321 ("the City").

I. RECITALS

Simpson is the owner in fee simple of that certain real property (hereinafter the "Protected Property") in Oregon, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (site plan), which are attached hereto and incorporated herein by this reference.

The Protected Property possesses natural, scenic, open space, educational, and recreational values (collectively, "Conservation Values") of great importance to Simpson, the people of Linn County and the people of Oregon.

The Protected Property consists of approximately 129.02 acres of property with the Conservation Values as detailed in Exhibit C.

The Conservation Values of the Protected Property include but are not limited to those documented in an inventory of relevant features of the Protected Property on file at the offices of the City and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

Simpson intends that the Conservation Values of the Protected Property be preserved and maintained by uses that do not significantly impair or interfere with those Conservation Values. Current uses which are compatible with the Conservation Values, include fishing, hiking, nature and wildlife observation, and other recreational uses.

Simpson is owner in fee of the Protected Property except as set forth in Exhibit D list of permitted exceptions. Simpson has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to the City.

The City is a publicly supported municipal organization

The City agrees by accepting this grant to honor the intentions of Simpson stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

Return to: City of Albany - Recorder
P.O. Box 450, Albany, OR 97321

II. CONVEYANCE AND CONSIDERATION

For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Simpson hereby voluntarily grants and conveys to the City a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").

This conveyance is a conveyance of an interest in real property under the provisions of ORS 271.725, and is made an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and terms, conditions, and restrictions hereinafter set forth, and for no other consideration whatsoever.

Simpson expressly intends that this Easement runs with the land and that this Easement shall be binding upon Simpson's personal representatives, heirs, successors, and assigns.

III. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever predominately in its natural, scenic, and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Simpson intends that this Easement will confine the use of the Property to such activities that are consistent with this purpose.

IV. RIGHTS CONVEYED TO THE CITY

To accomplish the purpose of this Easement the following rights are conveyed to the City by this Easement.

- A. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.
- B. To enter upon the Protected Property at any time for the purpose of carrying out the requirements of this Easement and to assure compliance with this Easement.
- C. To allow the public access to the Protected Property to conduct recreational activities which are not inconsistent with the conservation values protected by this easement. Examples of permitted recreational activities include, but are not limited to, biking, hiking, bird watching and fishing.
- D. For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational and scientific purposes to observe and study on the Protected Property.

E. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement.

F. To enjoin any use of, or activity on, the Protected Property which is inconsistent with this Easement, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section IX.

G. To assign, convey, or otherwise transfer the City's interest in the Protected Property in accordance with Section XIII herein.

H. To maintain, renovate, expand, or replace existing roads, paths and trails that are necessary for conservation or related recreational purposes which are not inconsistent with the conservation values protected by this easement.

I. To remove construction materials such as rocks, dirt, sand, and gravel. Such materials may be taken from the site identified on Exhibit B, provided that such material is used only to carry out other permitted activities on the Protected Property and will not interfere with the Conservation Values of the Protected Property.

J. To maintain, or alter, existing ditches to protect existing roads, trails or improve water flow to enhance the Conservation Values on the Protected Property.

K. To charge such fees for access to or use of the Protected Property as the City may deem necessary to defray the costs of capital improvements or other expenditures made to protect, preserve, or enhance the Protected Property.

L. To make such improvements or alterations to the Protected Property as may be necessary or desirable, in the judgment of the City, to enhance the conservation and recreation values of the Protected Property which are not inconsistent with the conservation values protected by this easement.

V. LIMITATIONS ON DUTY TO FUND

It is recognized that limitations in available funding, community resources, and personnel may limit the City's ability to make any particular improvements or enhancements to the Protected Property at any particular time. The City shall retain complete discretion concerning the expenditure of public funds for any purpose relative to the Protected Property including those enumerated in paragraph IV.

VI. PROHIBITED USES

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and Simpson and the City acknowledge and agree

that they will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below:

- B. Subdivision. The legal or “de facto” subdivision of the Protected Property.
- C. Feedlots. The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as deemed necessary by the City to preserve, or promote the Conservation Values of the Protected Property.
- E. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as deemed necessary by the City to preserve or protect the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the purpose of the Easement.
- F. Signs. The placement of signs, billboards, or other advertising material on the Protected Property. This restriction shall not, however, preclude the placement of signs, notices or other informational writings which, among other things, acknowledge the contributions of individuals, governments, or enhancement of the Protected Property.

VII. PERMITTED USES

General. Simpson reserves for itself and its heirs, successors, and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the Easement and which is not prohibited herein. Without limiting the generality of the foregoing, Simpson specifically reserves for itself and its heirs, successors, and assigns, the following uses and activities:

- A. Fences. To construct and maintain fences within or around the property provided that the design and location shall not interfere with the Conservation Values and the Protected Property.
- B. Emergencies. To undertake other activities necessary to protect public health or safety of the environment on the Protected Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such

activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property will be minimized.

C. Testing. To conduct surface or subsurface testing as deemed necessary by Simpson.

D. Remediation and Restoration. To conduct any remediation or restoration as deemed necessary by Simpson.

VIII. NOTICE AND APPROVAL

Whenever notice is required under this Agreement the City shall notify Simpson in writing not less than thirty (30) days prior to the date the City intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Simpson to make an informed judgment as to its consistency with the purpose of this Easement.

Where Simpson's approval is required, Simpson shall grant or withhold its approval in writing within thirty (30) days of receipt of Simpson's written request for approval.

If Simpson or the City must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Simpson or the City may proceed with such action without the City's approval.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed to as follows:

To: Simpson Timber Company
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3045

To: City of Albany
PO Box 490
Albany, OR 97321

or to such address as either party from time to time shall designate by written notices to the other.

IX. SIMPSON PARTICIPATION IN PRESERVATION PLANNING

The City shall plan for the preservation, enhancement, and improvement of the Protected Property in time intervals not to exceed 10 years. Each such plan shall be submitted to Simpson for approval. Simpson will review and respond to the plan within 90 days of receipt. Simpson's approval of the City's preservation plan shall not be unreasonably withheld. The review and approval of the City's preservation plan as referred to above shall satisfy all consultation and coordination obligations referred to in the body of this Easement.

X. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation or arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request and acceptance by the other party, the parties shall select a single mediator or arbitrator to hear the matter.

XI. THE CITY'S REMEDIES

A. Notice of Failure. If the City determines that Simpson is in violation of the terms of this Easement or that a violation is threatened, the City shall give written notice to Simpson of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement.

B. Simpson's Failure to Respond: If Simpson:

1. Fails to cure the violation within (30) days after receipt of notice thereof from the City; or

2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or to continue diligently to cure such violation until finally cured;

C. The City's Action. The City may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of the Easement or injury to any Conservation Values protected by this Easement, and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

D. Nature of Remedy. The City's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Simpson agrees that the City's remedies at law for any violation of the terms of this Easement are inadequate and that the City shall be entitled to the injunctive relief described in this

section both prohibitive and mandatory, in addition to such other relief to which the City may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. The City's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

In the event the City must enforce the terms of this Easement, the costs of restoration and the City's reasonable enforcement expenses, including attorney's fees, shall be borne by Simpson or those of its heirs, successors, or assigns, against whom a judgment is entered. If Simpson prevails in any judicial proceeding initiated by the City to enforce the terms of the Easement, Simpson's cost of suit, including attorney's fees, shall be borne by the City.

Nothing contained in this Easement shall be construed to entitle the City to bring any action against Simpson to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Simpson's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Simpson under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

Upon request by Simpson, the City shall within thirty (30) days execute and deliver to Simpson any document, including an estoppel certificate, which certifies Simpson's compliance or lack thereof with any obligation of Simpson contained in this Easement and otherwise evidences the status of this Easement as requested by Simpson.

XII. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

If circumstances arise under which the Protected Property incurs a casualty (as defined by section 165(c)(3) of the Internal Revenue Code of 1986, as amended) all casualty loss proceeds, whether from insurance tax benefits, or some other source, resulting from such loss and attributable to destruction of the Conservation Values of the Protected Property shall be applied to restore those Conservation Values of the Protected Property to their condition immediately preceding the casualty. If the Protected Property's post-casualty value and economic utility are diminished to an extent which renders such use of the proceeds towards restoration futile or economically impractical, the City shall have the option to terminate or extinguish the Easement in accordance with Section XI herein. Exercise by the City of the option herein provided shall not be determined a relinquishment of any claim to the casualty loss proceeds which would have gone towards restoration of the Protected Property of the City had not exercised such option.

Simpson shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish the City with satisfactory evidence of payment upon request. The City is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Simpson, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Simpson at the maximum rate allowed by law.

XIII. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the City shall be entitled shall be the proceeds remaining after the satisfaction of prior claims to any proceeds from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property. The City shall use all such proceeds in a manner consistent with the conservation purposes of this Easement. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, the City shall be entitled to compensation in accordance with applicable law.

Simpson agrees (1) to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself in all or a portion of the Protected Property, including without limitation a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Simpson further agrees to give written notice to the City of the transfer of any interest of at least thirty (30) days prior to the date of such transfer. Such notice to the City shall include the name, address, and telephone number of the prospective transferee

of his or her representative. The failure of Simpson to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XIV. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Simpson and the City are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of the City under any applicable laws, including ORS 271 or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the City, County, State, and any other jurisdiction in which such recording is required.

XV. ASSIGNMENT

A. Assignment. This Easement is transferable, but the City may assign its rights and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under ORS271 (or any successor provision then applicable). As a condition of such transfer, the City shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out by the transferee. The City shall notify Simpson in writing at Simpson's last known address, in advance of such assignment.

B. Succession. If at any time it becomes impossible for the City to ensure compliance with the covenants contained herein and the City has not named a successor organization, or the City shall cease to exist, then its rights and duties hereunder shall become vested and fall upon the State of Oregon.

Provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Oregon law and the Internal Revenue Code of 1986 and with due regard to the purposes of this Easement.

XVI. RECORDATION

The City shall record this instrument in a timely fashion in the official records of Linn County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVII. GENERAL PROVISIONS

The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of ORS 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XII herein. Nothing contained herein will result in a forfeiture or reversion of Simpson's title in any respect.

The term "Simpson" and "the City," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Simpson, and its personal representatives, heirs, successors, and assigns, and the above-named the City, its successors and assigns.

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original

instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

The obligations imposed by this Easement upon Simpson shall be joint and several.

SIGNATURE AND ACKNOWLEDGMENTS

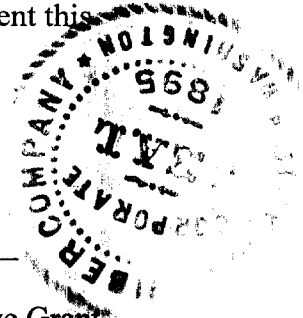
- Signed and acknowledged by Simpson and the City

TO HAVE AND TO HOLD unto the City, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Simpson has executed this instrument this 16th day of Sept., 1997.

Simpson Timber Company

R.P. Simpson
PRESIDENT



THE City of Albany does hereby accept the above Grant Deed of Conservation Easement.

City of Albany, Oregon

Dated: 9/16/97

Gary Holliday, Finance Director

By [Signature]

Its Finance Director

[include acknowledgments for all SIGNATORIES]

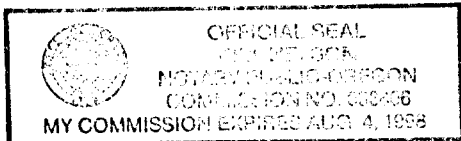
STATE OF OREGON,

County of Linn } ss.

FORM No. 23—ACKNOWLEDGMENT.
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BE IT REMEMBERED, That on this 16th day of September, 1997, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named Gary Holliday / [Signature] known to me to be the identical individual.... described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



[Signature]
Notary Public for Oregon
My commission expires Aug 4, 1998

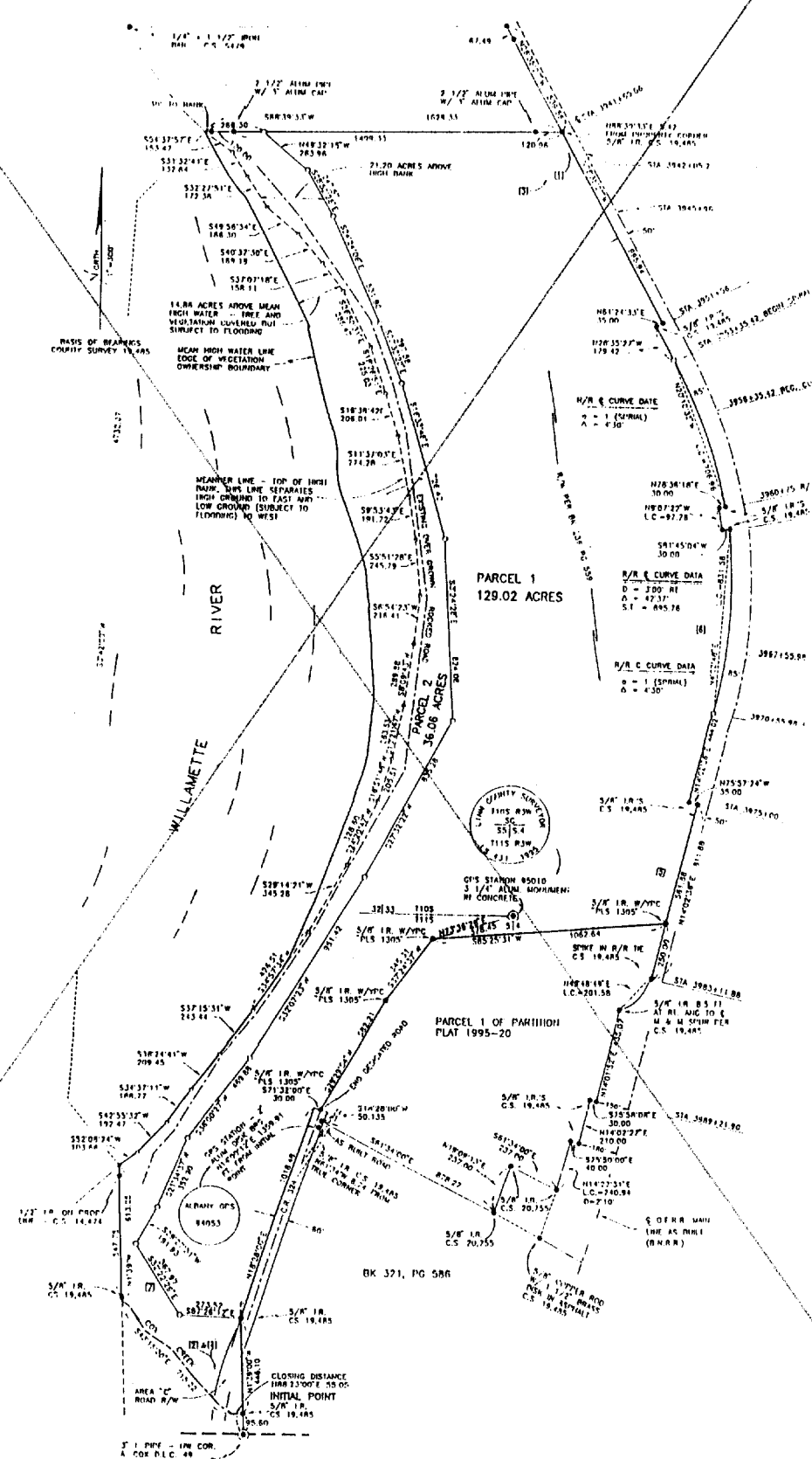
SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Site Map
- C. Conservation Values

EXHIBIT A

Legal Description of Property Subject to Easement

Parcel 1 of Partition Plat No. 1996-02 recorded in City of Millersburg, Linn County, Oregon.



Resolution No. 3841

Recorded Document Recorder File No. 3032