

**REAL ESTATE EXCISE TAX**

28014

APR 20 2009

PAID

*exempt*  
*Vickie Belland*  
SKAMANIA COUNTY TREASURER

When recorded return to:

Bill Montecucco, Attorney at Law, P.S.

405 W. 13<sup>th</sup> Street, Vancouver, WA 98662

(360) 735-8555 fax: (360) 693-5783

Grantor: DENNIS BROWN and JUANITA BROWN, husband and wife; TODD MENSENDICK and CYNTHIA MENSENDICK, husband and wife; MALCOLM MORENO and RUTH MORENO, husband and wife

Grantee: LUELLA PATTON

Description: Lots 1, 2, and 3 of Moreno Short Plat, recorded in Book 3 of Short Plats, Page 304, Skamania County Records, and described in attached Exhibit "30" dated March 11, 2009

Tax Parcel #s: 01-05-05-0-0-1001-00; 01-05-05-0-0-1002-00; 01-05-05-0-0-1003-00

Skamania County Assessor  
Date 4/20/09 Parcel# 1-5-5-1001 1-5-5-1002 1-5-5-1003

Reference #s: Excise #22356 Dated 7/10/02 Book 226 Page 356

**DECREE DIVESTING TITLE OF GRANTOR AND VESTING TITLE IN GRANTEE – JUDGMENT NUMBER 02-9-00069-7 OF THE SUPERIOR COURT OF SKAMANIA COUNTY, STATE OF WASHINGTON**

**THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT THE LEGAL DESCRIPTION OF EXCISE #22356 DATED 7/10/02 BOOK 226 PAGE 356**

March 11, 2009

**LEGAL DESCRIPTION  
FOR  
COURT CASE NO. 00-2-00083-1**

**AREA LYING BETWEEN PREVIOUS FENCE LINE AND SURVEY LINE:**

A portion of the Southeast quarter of the Southeast quarter of Section 5, Township 1 North, Range 5 East, Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at a 5/8 inch iron rod marking the Northeast corner of the Southeast quarter of the Southeast quarter of Section 5, as shown in Book 3 of Short Plats, page 304, Skamania County Auditor's Records; thence South  $01^{\circ} 11' 33''$  West, along the East line of said Southeast quarter (Short Plat 3-304), for a distance of 253.00 feet; thence North  $65^{\circ} 11' 00''$  West, for a distance of 405.15 feet; thence North  $56^{\circ} 30' 00''$  West, for a distance of 160.00 feet to the North line of said Southeast quarter of Section 5 (Short Plat 3-304); thence South  $89^{\circ} 23' 17''$  East, for a distance of 506.42 feet to the POINT OF BEGINNING.

LD-2009\Patton-Court Case No. 002000831-REVISED.acb  
01-109

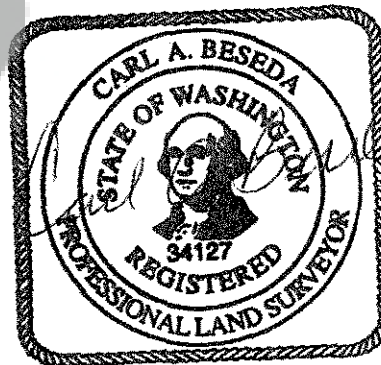


EXHIBIT " 30 "

145226

BOOK 226 PAGE 356

FILED FOR RECORD  
SKAMANIA COUNTY, WASH  
BY *Bill Montecucco*

JUL 11 11 19 AM '02

*P. Lawry*

J. MICHAEL GARVISON

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## REAL ESTATE EXCISE TAX

When recorded return to:

Bill Montecucco, Attorney at Law, P.S. *22356* JUL 10 2002405 W. 13<sup>th</sup> Street, Vancouver, WA 98662 *paid exempt*(360) 735-8555 fax: (360) 693-5783 *Vicki Clelland, Deputy*

SKAMANIA COUNTY TREASURER

Grantor:

DENNIS BROWN and JUANITA BROWN, husband and wife; TODD MENSENDICK and CYNTHIA MENSENDICK, husband and wife; MALCOLM MORENO and RUTH MORENO, husband and wife *1-5-5-1001 ptn of 1002 ptn of 1003 ptn of*  
Gary H. Martin, Skamania County Assessor

Grantee:

LUELLA PATTON Date *7/2/02* Parcel # \_\_\_\_\_

Description:

Lots 1, 2, and 3 of Moreno Short Plat, recorded in Book 3 of Short Plats, Page 304, Skamania County Records, and described in attached Exhibit "A"

Tax Parcel #s:

*ptn of* 01-05-05-0-0-1001-00; *ptn of* 01-05-05-0-0-1002-00; 01-05-05-0-0-1003-00 *ptn of*DECREE DIVESTING TITLE OF GRANTOR AND VESTING TITLE INGRANTEE - JUDGMENT NUMBER 02-9-00069-7 OF THE SUPERIORCOURT OF SKAMANIA COUNTY, STATE OF WASHINGTONSuggested  
by \_\_\_\_\_  
Advised by *7*  
by \_\_\_\_\_  
by \_\_\_\_\_  
by \_\_\_\_\_  
by \_\_\_\_\_  
by \_\_\_\_\_

BOOK 226 PAGE 357

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SKAMANIA COUNTY  
ORIGINAL FILED

JUN 11 2002

Lorena E. Hollis, Clerk

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAMANIA

LUELLA PATTON, individually,

Plaintiff,

v.

DENNIS BROWN and JUANITA  
BROWN, husband and wife, and  
their marital community; TODD  
MENSENDICK and CYNTHIA  
MENSENDICK, husband and wife,  
and their marital community; and  
MALCOLM MORENO and RUTH  
MORENO, husband and wife, and  
their marital community;

Defendants

MALCOLM MORENO and RUTH  
MORENO, husband and wife,

Third-Party Plaintiffs,

v.

JOE ZUMSTEIN, JR. and CHERIL  
ZUMSTEIN, husband and wife,

Third-Party Defendants

Case No. 00-2-00083-1

02-9-00069-7

DECREE DIVESTING TITLE  
TO REAL PROPERTY  
FROM DEFENDANTS AND  
THIRD PARTY DEFENDANTS  
AND VESTING TITLE TO  
REAL PROPERTY IN PLAINTIFF

THIS MATTER having come on for trial before the Honorable E. Thompson

DECREE  
(Patton/P14)

1

Bill Montecucco, Attorney at Law, P.S.  
405 W 13<sup>th</sup> Street  
Vancouver, WA 98660  
Telephone: (360) 735-8555  
Fax (360) 693-5783

BOOK 226 PAGE 358

Reynolds, sitting without a jury, on the 29<sup>th</sup> and 30<sup>th</sup> days of January, 2002, and the Plaintiff, Luella Patton (Patton) being present in person and represented by her attorney, Bill Montecucco; and Defendants, Dennis Brown and Juanita Brown (Brown), Todd Mensendick and Cynthia Mensendick (Mensendick), and Defendants and Third-Party Plaintiffs Malcolm and Ruth Moreno (Moreno) all being present in person and represented by their attorney, Thomas Martin, Jr.; and Third-Party Defendant Joe Zumstein, Jr. (Zumstein) being present and represented by his attorney, Thomas J. Foley, and Cheryl Zumstein being represented by her attorney, Thomas J. Foley; the court having listened to the testimony of the witnesses, reviewed the records and files herein and evidence having been admitted, and the court having been fully advised in the premises, such relief as prayed for in the Complaint and the Court having made its Findings of Fact and Conclusions of Law, NOW, THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered for Plaintiff, Luella Patton, and against defendants and third party defendants herein, and

1) All Defendants' and Third Party Defendants' right title and interest in real property described in the attached Exhibit "2", Exhibit "18" and Exhibit "30" (The Premises) is hereby divested from Defendants and Third Party Defendants herein, and is hereby vested in Plaintiff herein;

2) Title to The Premises is quieted in the name of Plaintiff herein;

3) Plaintiff is hereby entitled to immediate actual possession of The Premises;

4) Defendants and Third Party Defendants shall immediately vacate The Premises and remove all property from the premises;

5) Plaintiff is awarded statutory costs in the amount of One Hundred Twenty Five

**DECREE**  
(Patton/P14)

BOOK 226 PAGE 359

and NO/100 Dollars (\$125.00).

DATED this 11<sup>th</sup> day of June, 2002.

/s/ E. THOMPSON REYNOLDS  
THE HONORABLE E. THOMPSON REYNOLDS

Presented by:

Bill Montecucco  
BILL MONTECUCCO, WSBA #25852  
Attorney for Plaintiff

Copy received and form approved this  
7 day of May, 2002.

Copy received and form approved this  
16<sup>th</sup> day of May, 2002.

Thomas Martin, Jr.  
Thomas Martin, Jr., Attorney for  
Defendants Moreno  
WSBA # 14804

Thomas J. Foley  
Thomas J. Foley, Attorney for  
Defendants Zumstein  
WSBA # 17054

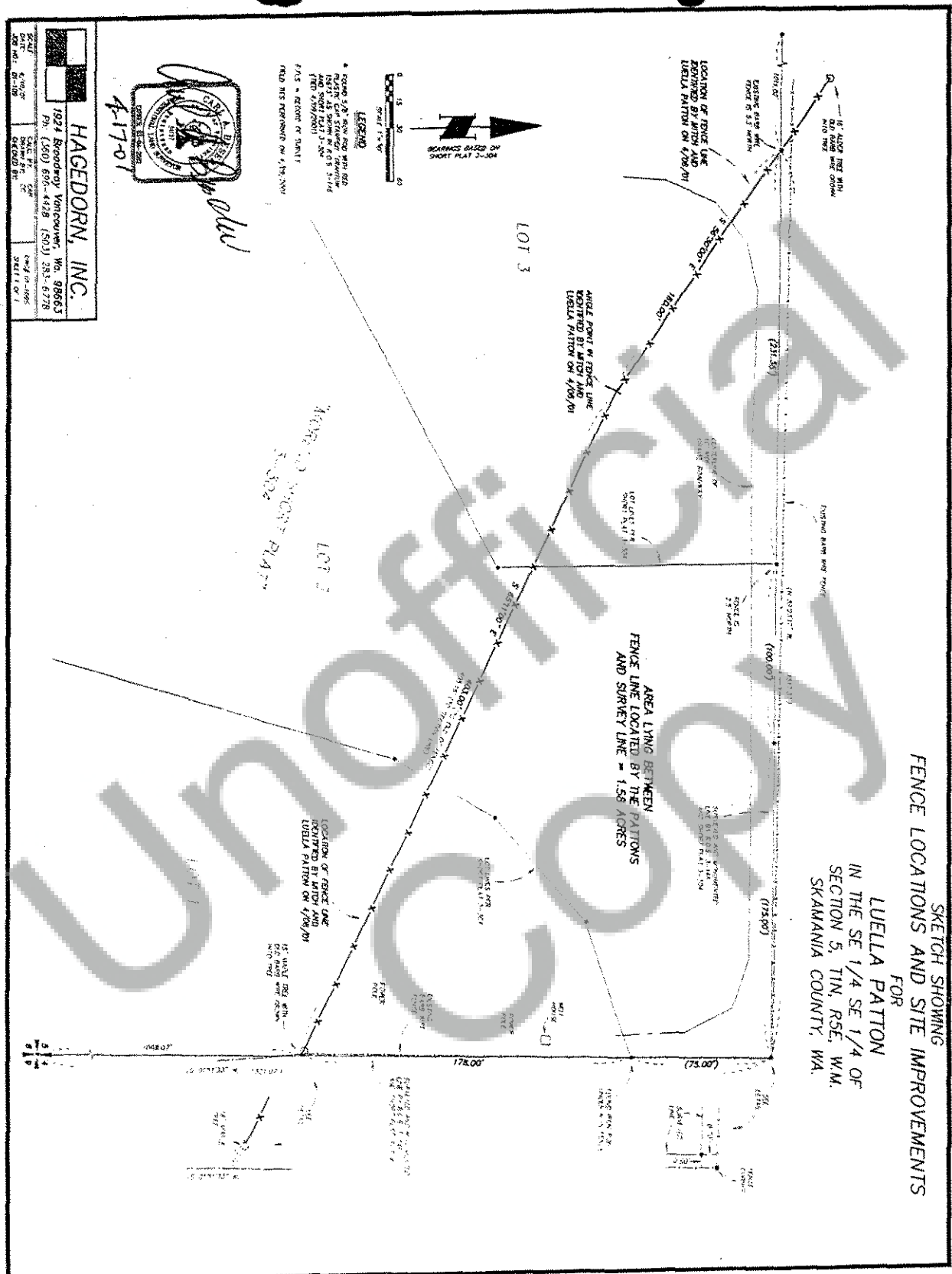
Copy received and form approved this  
16<sup>th</sup> day of May, 2002.

Denise Lukins  
Denise Lukins, Attorney for  
Defendants Brown and Mensendick  
WSBA # 24688

DECREE  
(Patton/P14)



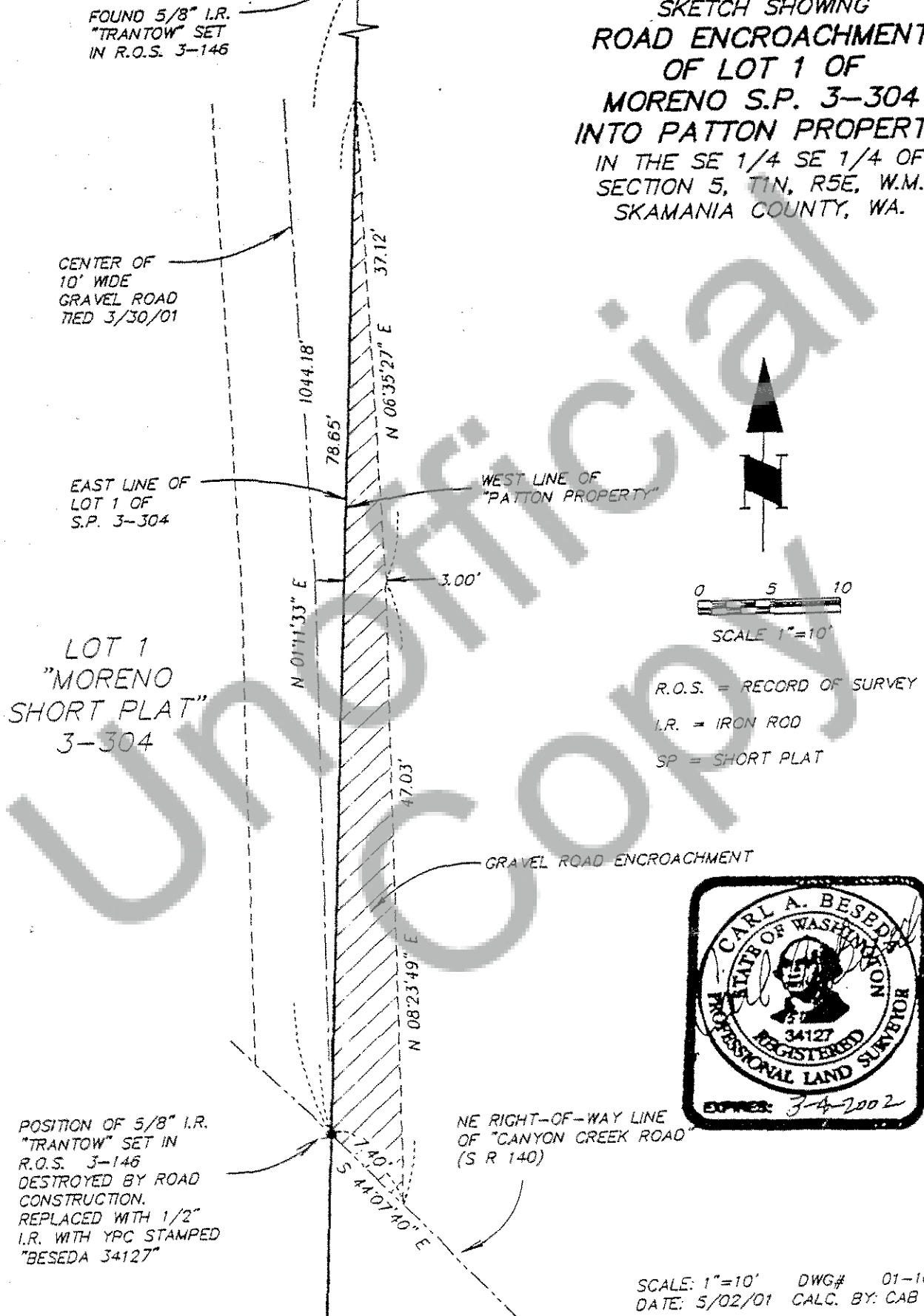
BOOK 226 PAGE 360



**EXHIBIT :**

BOOK 226 PAGE 361

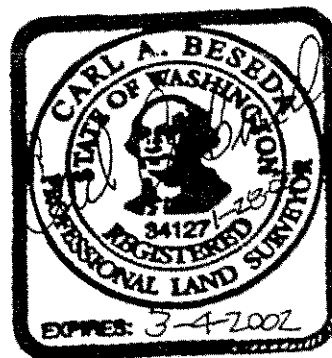
SKETCH SHOWING  
ROAD ENCROACHMENT  
OF LOT 1 OF  
MORENO S.P. 3-304  
INTO PATTON PROPERTY  
IN THE SE 1/4 SE 1/4 OF  
SECTION 5, T1N, R5E, W.M.  
SKAMANIA COUNTY, WA.





A portion of the Southeast quarter of the Southeast quarter of Section 5, Township 1 North, Range 5 East, Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at a 5/8 inch iron rod marking the Northeast corner of the Southeast quarter of the Southeast quarter of Section 5, as shown in Book 3 of Short Plats, page 304, Skamania County Auditor's Records; thence South  $01^{\circ} 11' 33''$  West, along the East line of said Southeast quarter (Short Plat 3-304) for a distance of 253.00 feet; thence North  $65^{\circ} 11' 00''$  West, for a distance of 405.15 feet; thence North  $56^{\circ} 30' 00''$  West, for a distance of 160.00 feet to the North line of said Southeast quarter of Section 5 (Short Plat 3-304); thence South  $89^{\circ} 23' 17''$  East, for a distance of 1517.37 feet to the POINT OF BEGINNING.



BOOK 226 PAGE 363

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SKAMANIA COUNTY  
ORIGINAL FILED

JUN 11 2002

Lorena E. Hollis, Clerk

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAMANIA

LUELLA PATTON, individually,

Plaintiff,

v.

DENNIS BROWN and JUANITA  
BROWN, husband and wife, and  
their marital community; TODD  
MENSENDICK and CYNTHIA  
MENSENDICK, husband and wife,  
and their marital community; and  
MALCOLM MORENO and RUTH  
MORENO, husband and wife, and  
their marital community;

Defendants

MALCOLM MORENO and RUTH  
MORENO, husband and wife,

Third-Party Plaintiffs,

v.

JOE ZUMSTEIN, JR. and CHERIL  
ZUMSTEIN, husband and wife,

Third-Party Defendants

Case No. 00-2-00083-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

(Patton/P13)

1

Bill Montecucco, Attorney at Law, P.S.  
405 W 13<sup>th</sup> Street  
Vancouver, WA 98660  
Telephone: (360) 735-8555  
Fax (360) 693-5783

BOOK 226 PAGE 364

THIS MATTER having come on for trial before the Honorable E. Thompson Reynolds, sitting without a jury, on the 29<sup>th</sup> and 30<sup>th</sup> days of January, 2002, and the Plaintiff, Luella Patton (Patton) being present in person and represented by her attorney, Bill Montecucco; and Defendants, Dennis Brown and Juanita Brown (Brown), Todd Mensendick and Cynthia Mensendick (Mensendick), and Defendants and Third-Party Plaintiffs Malcolm and Ruth Moreno (Moreno) all being present in person and represented by their attorney, Thomas Martin, Jr.; and Third-Party Defendant Joe Zumstein, Jr. (Zumstein) being present and represented by his attorney, Thomas J. Foley, and Cheryl Zumstein being represented by her attorney, Thomas J. Foley; the court having listened to the testimony of the witnesses, reviewed the records and files herein and evidence having been admitted, and the court having been fully advised in the premises, the court does now, therefore, enter the following:

#### FINDINGS OF FACT

The court finds according to the evidence most credible that:

1. Patton and her husband purchased real property located within Skamania County, Washington, by real estate contract in 1956 and took possession at that time.
2. The recorded legal description of the real property titled to Patton when the real estate contract was paid off in 1960 was accurately set forth by deed in Plaintiff's trial Exhibit "1" as:

The Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter, and the South half of the Southwest quarter, all in Section 4, Township 1, North Range 5, East of the Willamette Meridian.

ALSO:

The Northeast quarter of the Southeast quarter of Section 5, Township 1 North, Range 5, East of the Willamette Meridian; with the appurtenances together with any water rights attaching to or going along with said property.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

2

(Patton/P13)

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3. There currently exists a logging road which encroaches on property titled to Patton and belonging to Patton. The encroachment is accurately depicted by Plaintiff's attached Exhibit "18". Defendants and Third-Party Defendants concede that Patton is entitled to exclusive possession of said area of encroachment.

4. The disputed area (disputed area) is a roughly triangular shaped area and is accurately depicted by Plaintiff's attached Exhibit "2" and accurately described in Plaintiff's attached Exhibit "30".

5. When Patton purchased her property in 1956, there was a fence line (fence line) running along the line of the bluff bordering the disputed area.

6. The fence line remained until some time in early 1994.

7. The fence line connected into Patton's other boundary lines.

8. Patton remained in possession of her entire parcel and was in possession of the disputed area up to the fence line from 1956 until 1994.

9. On the disputed area, Patton regularly raised cattle; grazed cattle; harvested hay; cut firewood; the cattle used the disputed portion for shade to get out of the heat of the day; and the cattle used the disputed portion of the property to have their calves, and Patton kept the fence line maintained from 1956 until 1994.

10. The purpose of the fence was to keep the cattle on the Plaintiff's property.

11. Patton's use of the disputed area was such as a true owner would exhibit under the circumstances and given the nature of the real property from 1956 until 1994.

12. In 1956, if there were any trees along the fence line in the disputed area, they

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

(Patton/P13)

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were very small.

13. The fence line and Patton's use of the disputed area would have been readily known and would have been able to have been seen by the owner of the title to the property from 1956 through and including at least 1966.

14. Zumstein obtained a survey on or about April 8, 1994.

15. Jim Hoffman, a neighboring property owner, was leasing the pastures, including the disputed area, from Patton in 1994 for haying and grazing cattle.

16. After the fence line was removed in 1994, a temporary fence (temporary fence) was erected by Jim Hoffman and Lee Scheel, in the same location as the fence line.

17. Jim Hoffman observed that a roadway was being built up to the disputed area after placement of the temporary fence, and observed that the location of the roadway would cross the temporary fence.

18. Jim Hoffman and Lee Scheel, and with the agreement of Patton, placed a fence generally along the survey line (survey fence).

19. Placement of the fence generally along the survey line was done, not in recognition of the survey line as a boundary by Ms. Patton, but was done to make sure that the fence would stay up so that the cattle would at least not go down over the hillside.

20. Plaintiff's trial Exhibit "2" accurately depicts the location of the survey fence as compared to the survey line.

### CONCLUSIONS OF LAW

1. Jurisdiction and venue are properly before this court because claims involve

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1  
2  
3 quieting title to real property located within Skamania County.

4 2. Plaintiff has timely moved for judgment as a matter of law regarding  
5 road encroachment depicted by Plaintiff's trial Exhibit "18".

6 3. Plaintiff is entitled to judgment in Plaintiff's favor as a matter of law regarding  
7 logging road encroachment depicted by Plaintiff's attached Exhibit "18". Title to said area of  
8 encroachment is quieted in the name of Plaintiff herein. Plaintiff is entitled to immediate actual  
9 possession of such real property.

10 4. Patton's use of the disputed area was open and notorious from 1956 until 1994.

11 5. Patton's use of the disputed portion of the property was uninterrupted from  
12 1956 until 1994.

13 6. Patton's use of the disputed portion of the property was exclusive from 1956  
14 until 1994.

15 7. Patton continued to satisfy each of the requirements for obtaining title through  
16 adverse possession from 1956 until 1994.

17 8. Patton has proven by competent evidence that she obtained title through  
18 adverse possession in 1966.

19 9. The defense of estoppel has not been proven in this case by clear, cogent and  
20 convincing evidence.

21 10. RCW 7.28.085 does not apply to any adverse claim where title was acquired  
22 prior to June 11, 1998 under the laws then in effect. RCW 7.28.085 does not apply here  
23 because title to the disputed property was acquired by Patton in 1966, well before June 11,  
24 1998.

25 **FINDINGS OF FACT AND**  
26 **CONCLUSIONS OF LAW**  
(Patton/P13)



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11. Plaintiff is entitled to immediate actual possession of the disputed area, as defined by Plaintiff's attached Exhibits "2" and "30".

12. Title to the disputed area is quieted in the name of Plaintiff herein. Plaintiff is entitled to immediate actual possession of the disputed area.

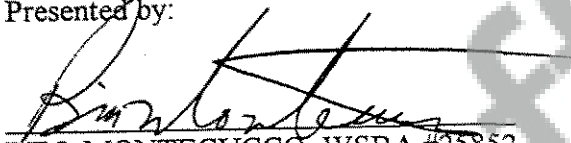
13. Plaintiff is entitled to statutory costs in the amount of \$125.00.

DATED this 11<sup>th</sup> day of June, 2002.

/s/ E. THOMPSON REYNOLDS

THE HONORABLE E. THOMPSON REYNOLDS


Presented by:

  
BILL MONTECUCCO, WSBA #25852  
Attorney for Plaintiff

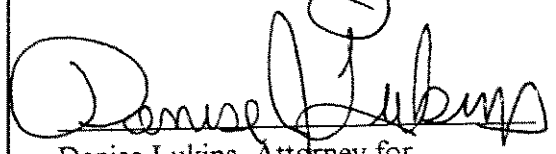
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Thomas Martin, Jr., Attorney for  
Defendants Moreno  
WSBA # 14804

  
Thomas J. Foley, Attorney for  
Defendants Zumstein  
WSBA # 17054

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Denise Lukins, Attorney for  
Defendants Brown and Mensendick  
WSBA # 24688

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
(Patton/P13)



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SKETCH SHOWING  
ROAD ENCROACHMENT  
OF LOT 1 OF  
MORENO S.P. 3-304  
INTO PATTON PROPERTY  
IN THE SE 1/4 SE 1/4 OF  
SECTION 5, T1N, R5E, W.M.  
SKAMANIA COUNTY, WA.

