

1 BEFORE THE JEFFERSON COUNTY COMMISSION

2 STATE OF OREGON

3 **IN THE MATTER OF**
4 **E.H. SPARKS ROAD**

THREE RIVERS LANDOWNERS
ASSOCIATION'S
PETITION TO VACATE

7 **I. PETITION**

8 Three Rivers Landowners Association (“Association”) petitions to vacate that
9 part of E.H. Sparks Road (“Sparks Road”) that was dedicated in 1896 but never
10 opened across what is now Three Rivers’ common areas. Here Petitioner uses the
11 word “open” to mean the act of actually creating a road for public travel on the
12 ground within the 1896 surveyed road right of way after road dedication.

13 Because Sparks Road was not actually constructed for public travel, no
14 actual public reliance on the road could or did arise and no public purpose is served
15 by maintaining this paper road in the county’s road registry.

16 This Petition also seeks vacation of any public road whenever or however
17 called that is shown entering Three Rivers Recreational Area (“TRRA”), on any
18 county assessor map, or on any other survey or map at or near the surveyed location
19 of Sparks Road depicted on the attached Trial Ex. 7, a retracement survey of the
20 original centerline of Sparks Road.

21 **II. STANDING**

22 Three Rivers Landowners Association is a duly formed and existing Oregon
23 non-profit corporation. The Association through its board of directors governs
24 TRRA, which has been a private gated residential and recreational subdivision
25 existing in Jefferson County since 1970. TRRA covers nearly 3,922 acres that have
26 been subdivided into 687 home, recreational lots and common area parcels.

1 TRRA members’ sole access into TRRA is by Lakeview Drive, which is gated
2 near its intersection with Graham Road. Lakeview Drive is a private road with an
3 aggregate base and asphalt lift that exists entirely on the Association’s common
4 area, which is a strip of land 100-feet-wide. Only TRRA members have a right to
5 use the roads and exercise the privilege to use amenities within TRRA.

6 In 1978, the developer of TRRA turned over the common area and
7 administration of TRRA to the Association. Since 1978, TRRA lot owners have paid
8 dues to the Association that were used to improve and maintain its private roads
9 within TRRA. In addition, dues have been used to construct and maintain private
10 amenities including a boat launch ramp, a beach area, a recreational building, an
11 office, and a gated entrance on Lakeview Drive.

12 III. REASONS FOR VACATION

13 A decision granting the Petition of Three Rivers LOA is in the public interest
14 because:

15 (1) The original E.H. Sparks Road was dedicated in 1896, but never
16 opened after its dedication date because no road was constructed or cleared
17 for public travel. The road law in Oregon until 1903 was clear: “*If any part*
18 *of any road in this state shall not be opened for four years after or from the*
19 *time of its location, the same shall become vacated.*” § 4101, Hill’s Ann. Laws
20 (1892).

21 Thus, under the self-executing effect of Section 4101, Sparks Road
22 passed by operation of law “from the state of legal existence to non-
23 existence.” *Hislop v. Lincoln County*, 249 Or 259, 265, 437 P2d 847 (1968);
24 *accord, Gentner v. Kern*, 164 Or 645, 663, 103 P2d 721 (1940) (holding that
25 plaintiff had not satisfied its burden of proof that county road established by
26 order was ever opened up or used within the statutory time period).

1 (2) Whether or not Sparks Road legally exists is now before the Oregon
2 Court of Appeals. Association maintains that the trial court erred by
3 declaring the legal existence of Sparks Road. A grant of Three Rivers'
4 petition to vacate, however, will eliminate the current appeal and will finally
5 end this long-running road controversy of DeMonte's making.

6 This petition should be granted for the additional reason that there is
7 no public benefit to be derived from spending more money defending Three
8 Rivers' meritorious appeal without a corresponding public benefit.

9
10 (3) Sparks Road does not travel through, terminate at or end at any
11 public land. Instead, Three Rivers has always been a private gated
12 community.

13
14 (4) Sparks Road is surrounded by TRRA common area. See survey map
15 attached as Exhibit 7. Persons who are not TRRA members cannot enter
16 TRRA common area without permission. Thus, neither the public, developer
17 DeMonte, nor buyers of DeMonte's lots can leave the Sparks Road right of
18 way without committing trespass. Again, no public purpose will be served
19 by keeping Sparks Road on the county's road registry.

20
21 (5) No legal access to a public road will be lost if Sparks Road is vacated.
22 The County in 1960 relocated public roads in the Cove-Palisades area as part
23 of Lake Billy Chinook creation, but did not vacate or relocate any part of
24 Sparks Road that would be submerged once Round Butte Dam impoundment
25 occurred. The county's actions and inactions are recognition that Sparks
26 Road did not exist or did not serve any public purpose.

1 (6) The County does not have any obligation to provide secondary access
2 to adjacent properties across TRRA lands. *See, State ex rel. Dept. of Transp.*
3 *v. Alderwoods*, 358 Or 501 (2015) (holding that an abutting owner is not
4 legally entitled to a second access to a highway, even if the second access is
5 more convenient for owner). DeMonte has legal access to his subdivision. He
6 is not entitled to more.

7
8 (7) Jefferson County Planning Commission did not and could not give
9 DeMonte access rights over TRRA land without condemning Association's
10 land—an act, if taken, that would be unconstitutional because such a
11 condemnation would not advance a public purpose; it would only serve to
12 enrich one California developer.

13
14 (8) Jefferson County should act consistently with past land use
15 approvals. Neither Sparks Road nor any other public road was shown on the
16 recorded subdivision plat maps that created Three Rivers. Instead, each
17 Three Rivers plat map was approved and duly recorded in county's records.
18 The public purchased lots and improved lots with homes based on the status
19 of Three Rivers as an approved platted subdivision.

20
21 (9) Jefferson County took actions including the following that led to
22 reliance by Association and TRRA members that no public road enters or
23 burdens TRRA:

24 A. In 1979, the County mandated the siting of a house to be constructed
25 on Tract 21, 3rd Addition to TRRA with a certain setback from Lake
26 Bill Chinook rimrock. The County's requirement meant that the

1 house was constructed within what is now known as the Sparks Road
2 right of way. The site plan and the approval were reasonable because
3 in January 1976, the Plat for the 3rd Addition to TRRA was amended
4 and recorded in the Jefferson County Clerk’s Office. The 1976 Plat did
5 not show any county road burdening Tract 21, or individual TRRA lots
6 or TRRA common areas.

7 B. In 1986, the County (through its hearing director, surveyor, assessor,
8 and road official) approved and accepted for recording a “Minor Land
9 Partition” of Tract 20, 3rd Addition to TRRA without any public road
10 burden.

11 C. In 1997, the developer of TRRA applied for and received a conditional
12 use permit (CU-97-06) to expand the private marina in TRRA. The
13 expansion was approved, in part, on the staff report finding that
14 “[p]rimary access [secondary access is by boat] to the Three Rivers
15 Marina is Lakeshore [Lakeview] Drive, a private drive that passes
16 through the Three Rivers Recreation Area subdivision”.

17 D. In 2005, the County in conjunction with Oregon Department of
18 Transportation, initiated a study of the County’s transportation
19 system to implement Goal 12 (Transportation) of the County’s
20 Comprehensive Plan. The transportation study was concluded in 2007
21 at which point the County adopted Ordinance O-135-07, which
22 established Jefferson County Transportation System Plan (“TSP”).
23 The TSP at page 12 reads in part: “The Three Rivers Recreational
24 Area and a few subdivisions have access from private roads. Private
25 roads are maintained by the property owners who use the road or by
26 a homeowner’s association.”

1 E. The County surveyor did not include Sparks Road in his record of
2 survey in 2003 as he was required to do if the road existed.

3

4 (10) If a road were to be built within the right of way for Sparks Road, the
5 road would not meet County road design standards at the Lakeview Drive
6 intersection, would not be safe for vehicular traffic and could not be made
7 safe. Therefore, vacation is in the public interest.

8

9 (11) Opening Sparks Road will significantly increase safety risks within
10 Three Rivers and will require County Sheriff to patrol TRRA because Three
11 Rivers will no longer be a private gated community if Sparks Road is opened
12 for public travel for the first time after 124 years from the date the road was
13 first dedicated by Crook County.

14

15 (12) Issuance of a road improvement permit for Sparks Road within the
16 1896 right of way would result in an unconstitutional taking of an approved
17 and permitted house built within the Sparks Road right of way. The County
18 taxpayers should not have to pay for the cost to condemn the Brant house.

19

20 **IV. REQUIRED ORS 368.341 INFORMATION**

21 This petition is supported by the following information provided pursuant to
22 ORS 368.326 to 368.366 and incorporates the Petition of Fuchs *et al.*

23 A. *Description of the Property to be Vacated:*

24 That portion of Sparks Road within Three Rivers common areas beginning
25 at Tract 21, 3rd Addition to TRRA Tract, then through TL 100 and TL 500. See
26 Exhibit "1" attached.

1 *B. Reasons for Requesting Vacation:*

2 See the reasons stated above.

3 *C. Abutting Owners:*

4 There are no abutting owners adjacent to Sparks Road right of way subject
5 of this Petition as surveyed in 1896, except for the Brants who have petitioned for
6 vacation of Sparks Road that burdens their property. The members of TRRA
7 support this Petition by more than an 80% affirmative vote. Upon an order granting
8 this Petition, Sparks Road right of way will vest in the Association as part of Three
9 Rivers common area per ORS 368.366(d).

10 *D. Names and Addresses of All Persons Holding Any Recorded Interest*
11 *in the Property Proposed to be Vacated:*

12 Three Rivers Landowners Association
13 President: Randy Panek
14 12468 SW Graham Road
15 Culver, Oregon 97734

16 Lennie and Sharlotte Brant
17 21495 Young Avenue
18 Bend, OR 97701

19 Gerald and Carol Fuchs
20 20244 S Ferguson Road
21 Oregon City, OR 97045

22 Allen Trust Co.
23 Trustee of the Herbert H. Anderson and Barbara B. Anderson
24 Revocable Trust
25 121 SW Morrison Suite 875
26 Portland, OR 97204

27 *E. Names and Addresses of Any Persons Owning Any Improvements*
28 *Constructed on Public Property Proposed to be Vacated:*

29 ///

30 ///

1 Three Rivers Landowners Association
Owner of SW Lakeview Drive
2 President: Randy Panek
12468 SW Graham Road
3 Culver, Oregon 97734

4 Lennie and Sharlotte Brant
5 21495 Young Avenue
6 Bend, OR 97701

7 Gerald and Carol Fuchs
20244 S Ferguson Road
8 Oregon City, OR 97045

9 *F. Names and Addresses of All Persons Owning Real Property Abutting*
10 *Public Property Proposed to be Vacated:*

11 Under ORS 368.336 where a property proposed to be vacated under ORS
12 386.326 to 368.366 is a public road, a person owning property that abuts either side
13 of the road is an abutting property owner for the purposes of ORS 368.326 to
14 368.366.

15 From the border of the DeMonte property (TL 2000) to the intersection with
16 SW Lakeview Drive, the abutting landowners are the Fuchs, Brants and Allen
17 Trust. The Association owns SW Lakeview Drive, which is constructed within a
18 100' wide common area property. The Association is the only abutting landowner
19 for the remaining part of Sparks Road right of way that runs through TL 500 and
20 ends at the lakeshore as shown on Exhibit 7.

21 The addresses of the adjacent abutting landowners are:

22 Lennie and Sharlotte Brant
21495 Young Avenue
23 Bend, OR 97701

24 Gerald and Carol Fuchs
20244 S Ferguson Road
25 Oregon City, OR 97045
26

1 Three Rivers Landowners Association
2 President: Randy Panek
3 12468 SW Graham Road
4 Culver, Oregon 97734

5 Allen Trust Co.
6 Trustee of the Herbert H. Anderson and Barbara B. Anderson
7 Revocable Trust
8 121 SW Morrison Suite 875
9 Portland, OR 97204

10 *G. Consents to Vacation by Abutting Landowners*

11 See Petition to Vacate submitted by Fuchs *et al.* No other consents are
12 required.

13 **V. CONCLUSION**

14 For all of the above reasons, vacation of Sparks Road as requested is in the
15 public interest and should be ordered by the Jefferson County Board of
16 Commissioners.

17 **DATED:** October 16, 2020.

PETERKIN BURGESS

s/ Michael W. Peterkin
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*Of Attorneys for Three Rivers
Landowners Association*

PLAINTIFF'S EXHIBIT
 1115 ON BIRCH
 10002227

WHPacific
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 503-626-0495 Fax 503-626-0775
 www.whpacific.com

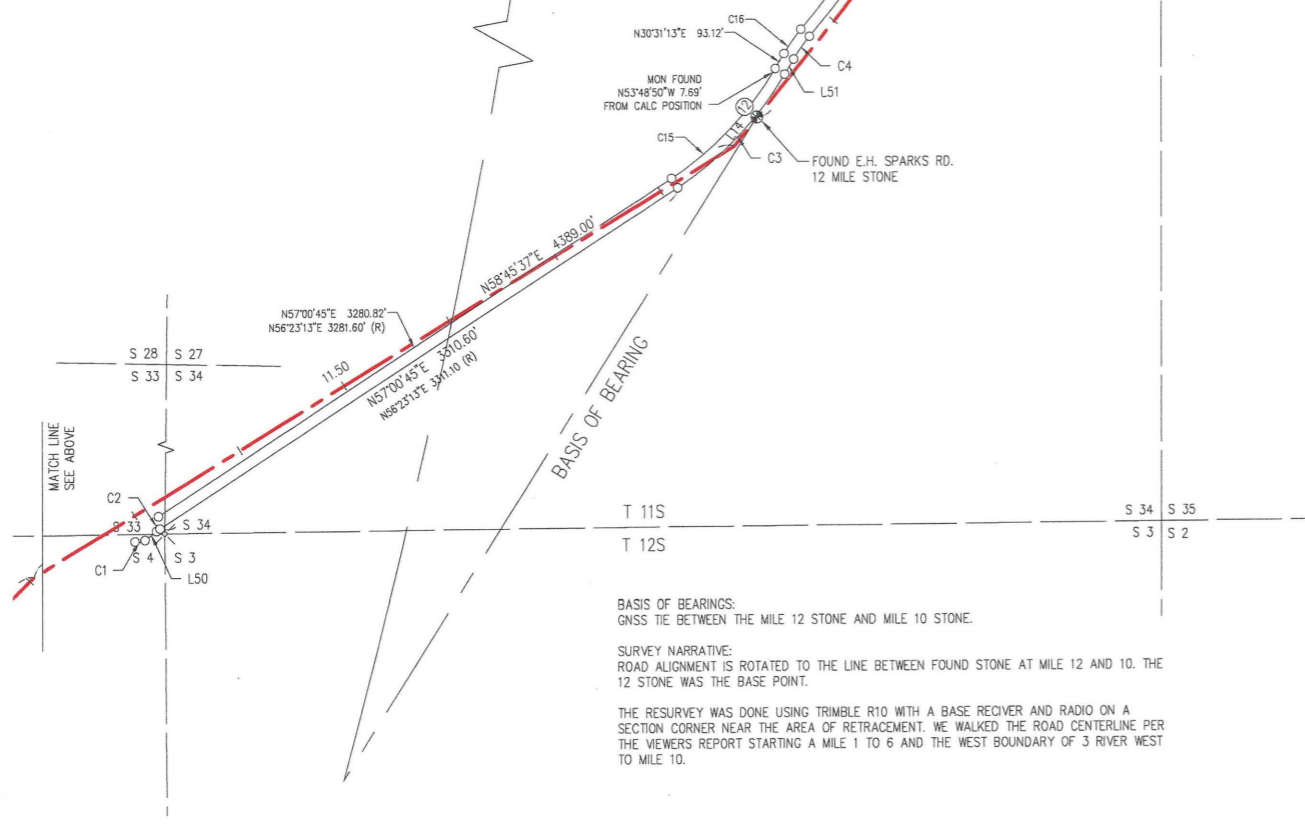
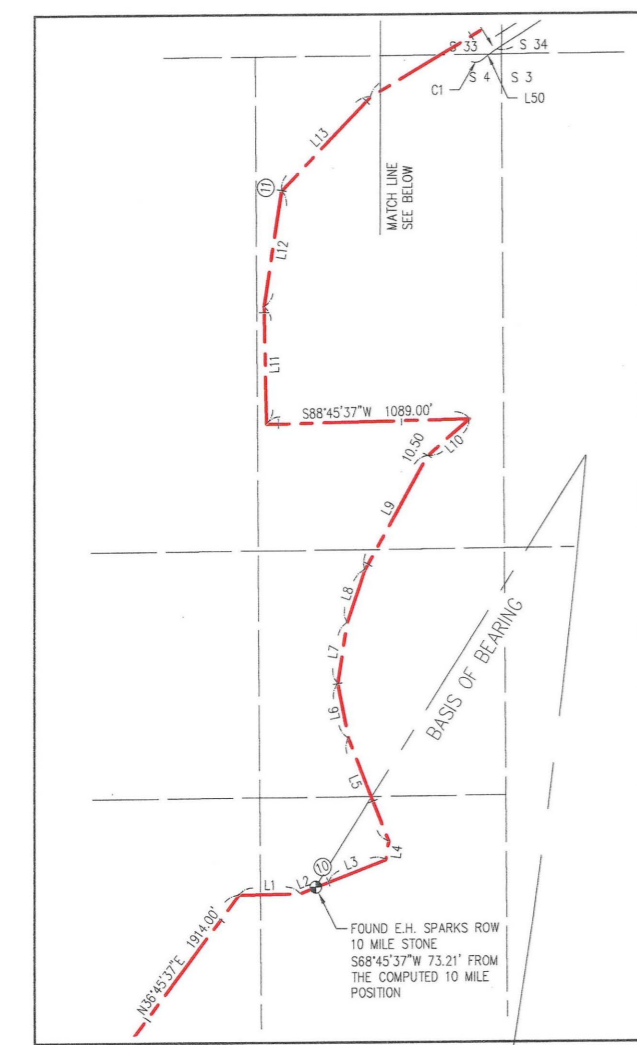
REGISTERED PROFESSIONAL LAND SURVEYOR
 OREGON
 JULY 13, 2004
 CHRISTOPHER F. BROWN
 04348
 EXPIRES: 12/31/2019

NO.	BY	DATE	REMARKS

SHEET INFO	JG	DAC	CWB	DATE	DATE	DATE	DATE
SURVEYED				7/1/2019	7/1/2019	7/1/2019	7/1/2019
DRAWN							
CHECKED							
APPROVED							
LAST EDIT							
PLOT DATE							
SUBMITTAL							

THREE RIVERS RECREATION AREA
 E.H. SPARKS ROAD
 SEC 25, 26, 27, 34, 35 & 36 T. 11S., R. 11E. AND
 SEC 3 & 4 T. 12S., R. 11E., W.M.
 PROJECT NUMBER: P0015140W
 DRAWING FILE NAME: P0015140W-V-RB00
 SCALE: 1" = 500'

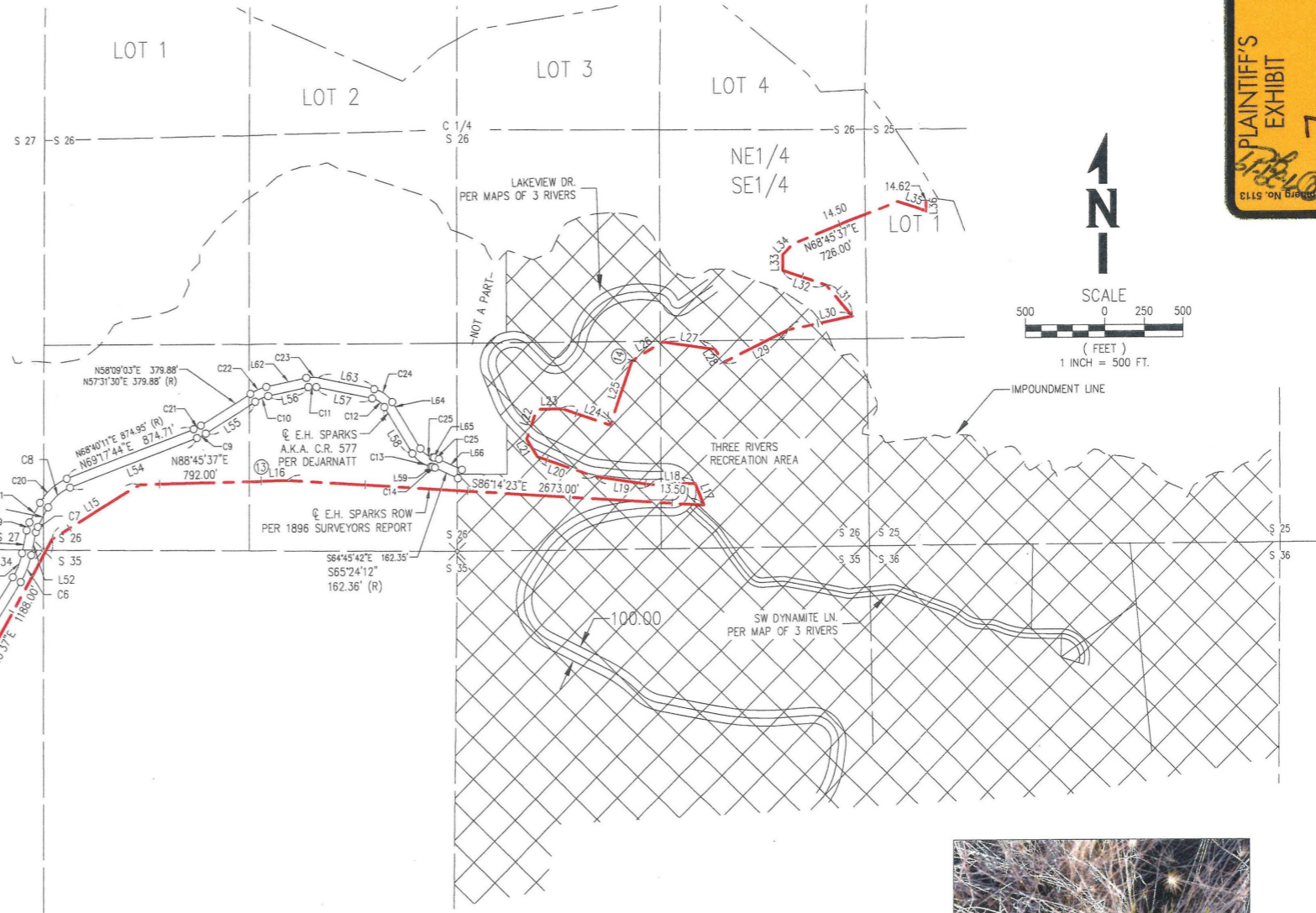
SHEET NUMBER
ONE
 1 of 2



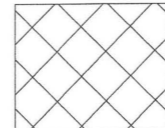
BASIS OF BEARINGS:
 GNSS TIE BETWEEN THE MILE 12 STONE AND MILE 10 STONE.

SURVEY NARRATIVE:
 ROAD ALIGNMENT IS ROTATED TO THE LINE BETWEEN FOUND STONE AT MILE 12 AND 10. THE 12 STONE WAS THE BASE POINT.

THE RESURVEY WAS DONE USING TRIMBLE R10 WITH A BASE RECEIVER AND RADIO ON A SECTION CORNER NEAR THE AREA OF RETRACEMENT. WE WALKED THE ROAD CENTERLINE PER THE VIEWERS REPORT STARTING A MILE 1 TO 6 AND THE WEST BOUNDARY OF 3 RIVER WEST TO MILE 10.



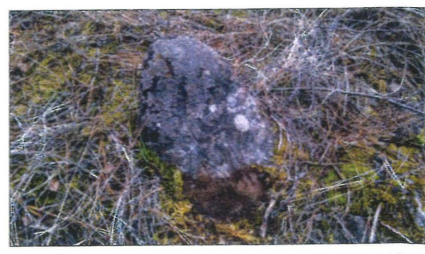
- LEGEND:
- IMPOUNDMENT LINE
 - ROADS PER 3 RIVERS MAP
 - E.H. SPARKS SURVEY 1896
 - ROAD PER CS# 15-027
 - PLSS LINES
 - RIVER MEANDER LINE
 - FOUND MILE STONE
 - ⊗ FOUND PLSS CORNER
 - CS# JEFFERSON COUNTY SURVEY NUMBER
 - (R) RECORD PER CS#15-027
 - L1 LINE TABLE CALL SEE SHEET 2
 - C1 CURVE TABLE CALL SEE SHEET 2
 - ① MILE ALONG THE E.H. SPARKS ROW



3 RIVERS LANDS



12 MILE MARKER STONE PHOTO



10 MILE MARKER STONE PHOTOS

DATE: 7/1/2019 6:24 PM [AUTHOR: wally] [PLOTTER: AutoCAD PDF (High Quality Print).pc3] [STYLE: Monochrome.ctb]
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