

Restoration of Donation Land Claim Boundaries

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This Presentation Will ...

- Build on last years presentation
- Provide lots of information relating to DLC and other types of boundary resolution
- Provide general concepts to enable you to analyze each situation and make professional defensible decisions

The Presentation Will Not ...

- Provide a single solution or rule
- Serve as a cookbook for DLC boundary resolution

*Every survey should be
studied and resolved
on its own merit*

Prior to 1785

- 2 systems of surveying land and assigning right of ownership:
- The New England township plan
 - Survey first
 - Claims permitted only on contiguous property
 - No conflicts or wasted land
- The Virginia practice
 - Before land was surveyed
 - Chaotic and confusing
 - Difficult and expensive to sort out and administer

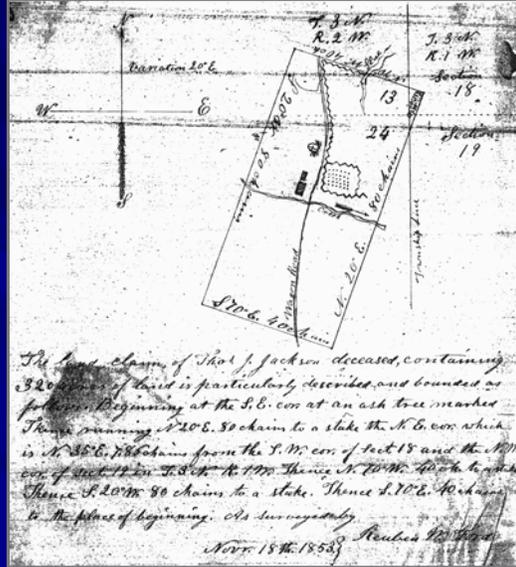
Metes and Bounds Description

System of describing land

The land claim of Tho J. Jackson, deceased, containing 320 acres of land is particularly described and bounded as follows:

Beginning at the S.E. cor at an ash tree marked — Thence running N20°E 80 chains to a stake the N.E. cor which is N35°E 7.86 chains from the S.W. cor of Sect 18 and the N.W. cor of Sect. 19 in T3N R1W. Thence N70°W 40 ch to a stake. Thence S20°W 80 chains to a stake. Thence S70°E 40 chains to the place of beginning.

As surveyed by Reuben W. Ford
Novr. 18th 1853.



Survey Principles

The location of a boundary line is determined as of the time of its creation

Metes and Bounds System

- Used in England for centuries
- Used in the original 13 colonies in the United States
- Based on English common law
- Uses physical features of local geography along with distances and directions

Metes and Bounds System

- The boundary is described from a point of beginning, working around the property boundary in sequence and returning to the point of beginning
- Boundary angle points may have been marked on the ground by monuments
- Utilized extensively in DLC claims

Land Ordinance of 1785

- Thomas Jefferson on Committee
- Congress did not have the power to tax
- Goal was to raise money through the sale of land
- Established a rectangular system of survey
- Township, Sections, and its Subdivisions
- Allowed claims up to 640 acres

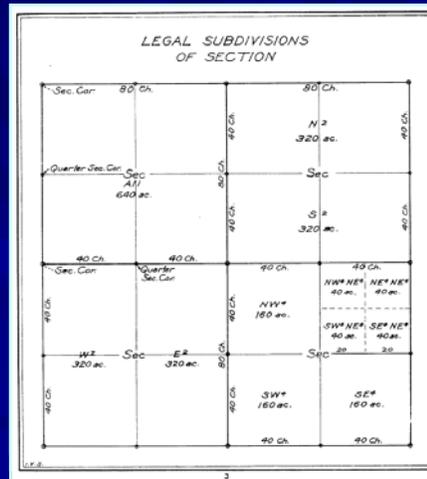
Land Ordinance of 1785

- Portion of mineral resources reserved for Government
- Established a mechanism to fund public education
- Section 16 reserved for schools
- Oregon was not part of the United States

Public Land Survey System

System of
describing land

- Townships
- Sections
- Subdivision of Sections
- Fractional Lots



PLSS in Oregon

- Started on June 1851
- Under the supervision of John B. Preston - Surveyor General of Oregon
- Extended over most of the fertile valley by 1856

Pop Quiz

- Question: What is an “aliquot part”?
- Answer: An aliquot part of a Section is some subdivision portion of that Section, usually described in terms of “halves” and “quarters” of each other. For example, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22 is the Northwest Quarter of the Northeast Quarter of Section 22

Aliquot Part



Did You Know?

- *There are no public lands in the States that comprised the original 13 colonies!*

Lot and Block System

System of describing land



Lot and Block System

- Most recent of the 3 main systems
- Used in densely populated metropolitan area
- Also known as a Recorded Plat Survey System
- A Tract of land would be subdivided into a series of smaller lots and a plat created
- The original tract of land is typically defined by the PLSS or Metes and Bounds system

Lot and Block System

- The subdivision survey generally uses the metes and bounds system to describe each individual lot within its boundary
- Each lot is issued a identifier
- The officially recorded plat of the new subdivision becomes the legal description of all the lots in the subdivision
- A simple reference to the individual lot is sufficient for a legal description

Legal Descriptions

- Metes and Bounds
- Bounded by
- Aliquot part of the PLSS
- Lot and Block
- Strip

Survey Principles

When lands are granted according to an official plat of the survey, the plat itself with all its notes, lines, descriptions, and landmarks, becomes as much a part of the grant or deed by which they are conveyed

Function of BLM

- BLM has complete jurisdiction of the survey and resurvey of public lands of the United States
- After title of land is granted by the United States, jurisdiction over the property passes to the State
- The Federal government retains its authority over public lands in Federal ownership

Function of BLM

- Lands passed into private ownership may be resurveyed by BLM, if:
 - There is extensive obliteration
 - Very unsatisfactory conditions
 - Survey is beyond scope of ordinary practice
 - Cost is borne by landowners

Survey Principles

The intent of the original grantor, as expressed and is inferred from the deed, is the paramount consideration in determining the location of property lines and corners

Function of the Local Surveyor

- Surveying lands that have passed from government to private ownership
- Lands in private ownership are surveyed by County or private surveyors
- If a surveyor cannot restore a PLSS corner with ample certainty, he/she should get advice from BLM

Survey Principles

The highest and best proof of intention lies, not in the words of expression, but in the work performed on the ground itself. Lines actually run and corners actually established upon the ground prior to the conveyance are the most certain evidence of intention.

Pop Quiz

- Question: *As a local surveyor, what document should you study when restoring PLSS corners?*
- Answer: *The “Restoration of Lost or Obliterated Corners and Subdivision of Sections”*

Restoration of Lost or Obliterated Corners and Subdivision of Sections

- There are 7 circulars – read them all
- The Manual of Instructions was intended for GLO surveyors engaged in the original survey of public lands
- The corner restoration circulars were prepared for private surveyors engaged in Retracement of original surveys

Survey Principles

Restoration of a corner as “lost” should not be considered until every other means of identifying its original position has been exhausted

Original Survey Records

- Township Plat
 - Furnished the basic survey information relating to a Township
- Government Patent
- Field Notes
- Supplemental Plat
 - Showing revised lotting

Types of Surveys

- *Original*
- *First*
- *Resurvey*
- *Restoration*
- *Retracement*
- *Remonumentation*

Original Survey

- Create boundaries
- Controls
- Does not ascertain them

Survey Principles

A boundary line once established should remain fixed in it's original position through any series of conveyances

First Survey

- First survey to be placed on the ground after the description
- When a parcel is created on paper (without a survey being conducted) and a survey performed later on the ground
- Difference from an original survey:
 - Original survey controls
 - First survey is simply an opinion of the surveyor where the description should be placed

Resurvey

- Dependant Resurvey
 - Restoration of the original survey according to the record of the survey
 - Based upon the identified corners of the original survey
 - Restoration of Lost corners
 - Dependant resurvey plat
- Independent Resurvey
 - Designed to supersede the original survey
 - Creates new subdivisions and lotting of vacant public lands

Restoration Survey

- The recovery of lines and/or corner positions of a prior approved survey
- The replacement of lost or obliterated corners by approved methods

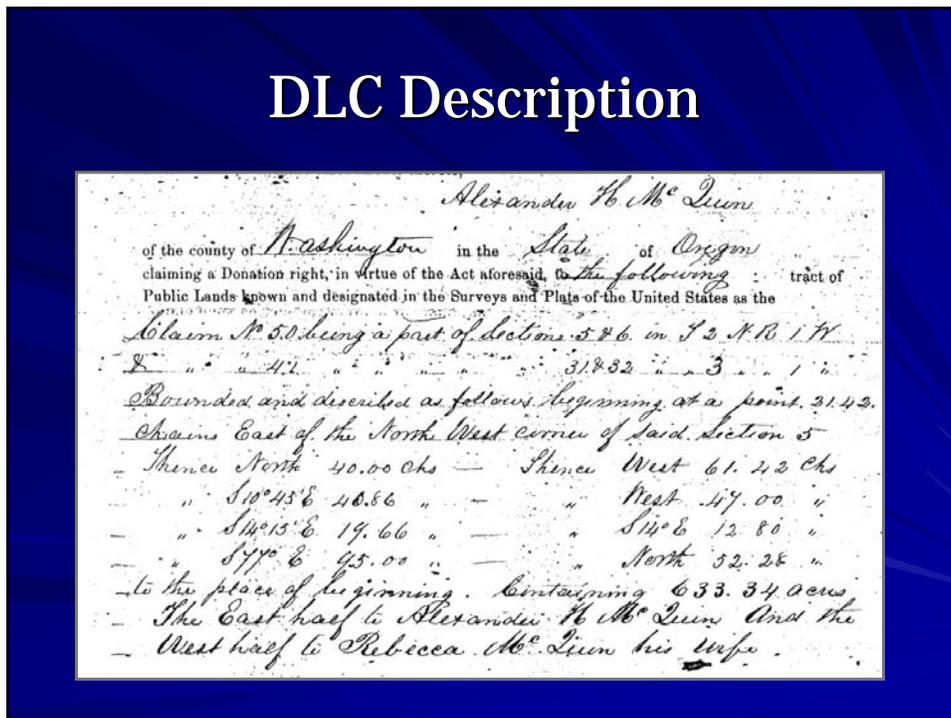
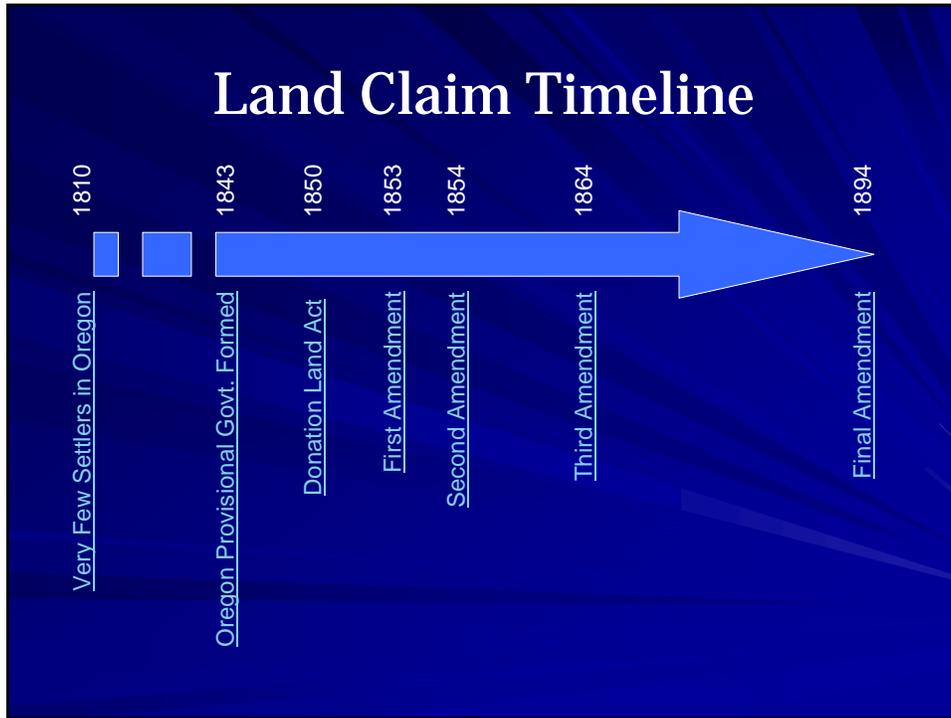
Retracement Survey

- Made to ascertain the direction and lengths of lines and to identify the monuments and other marks of an established prior survey
- Survey method for resurrecting evidence of a once established property corner
- The aim is to follow, as closely as possible, in the footsteps of the original surveyor and re-establish property corners in the exact position in which he placed them

Remonumentation Survey

- The re-establishment of a corner monument at the position of an original monument as determined from proper measurement from its original accessories
- Performed to perpetuate the location of a corner

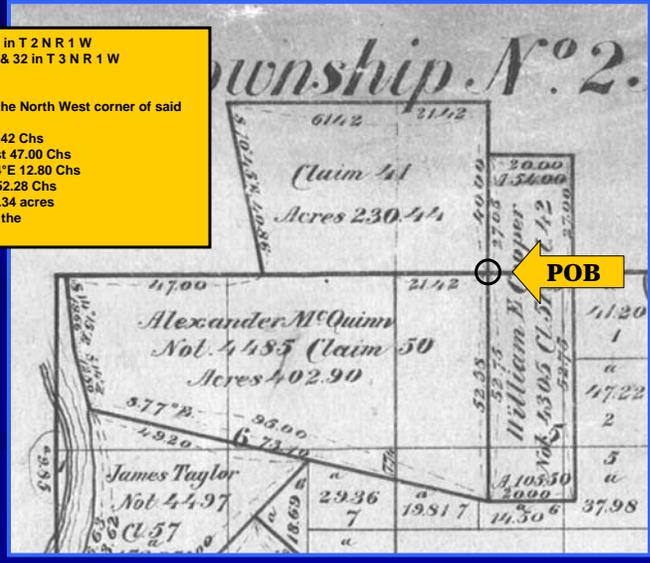
DLC Review



DLC Description

Claim No 50 being a part of Sections 5 & 6 in T 2 N R 1 W & Claim No 41 being a part of Sections 31 & 32 in T 3 N R 1 W Bounded and described as follows:

Beginning at a point 21.42 chains East of the North West corner of said Section 5
 Thence North 40.00 Chs – thence West 61.42 Chs
 Thence S 10°45' E 40.86 Chs – thence West 47.00 Chs
 Thence S 14°15' E 19.66 Chs – thence S 14°E 12.80 Chs
 Thence S 77° E 95.00 Chs – thence North 52.28 Chs
 to the place of beginning. Containing 633.34 acres
 The East half to Alexander H. McQuin and the
 West half to Rebecca McQuin his wife.



Survey Principles

When a Point of Beginning called for by the legal description is missing, it must first be re-established in its original position before the retracement may proceed

DLC Descriptions

- **Primarily By Metes And Bounds**
 - Prone To Gaps And Overlaps
 - Older Claims Not Cardinal
 - Harder To Resolve
- **May Also Have Been By Aliquot Parts**
 - Easier To Resolve
 - Actually Exist In Eastern Oregon, May Not Be Well Known Because Of Their Aliquot Part Description

Survey Principles

Relative Importance of Conflicting Elements in a Metes and Bounds Description

1. *Corners and Marked Lines*
2. *Natural Monuments*
3. *Courses/Angles*
4. *Distances*
5. *Abutting Boundary*
6. *Area*

Pop Quiz

- Question: *What is a Land Patent?*
- Answer: A Land Patent is a document that transfers land ownership from the federal government to private individuals.

DLC Related Numbers

- **Notification Number**
 - Serial number issued in the order filed in Surveyor General's office (Land Office)
 - Does not establish Junior/Senior rights
- **Claim Number**
 - Serial number issued by Surveyor General
 - Does not indicate the order of the survey
 - Does not establish Junior/Senior rights
 - Claims taken by aliquot parts were not given a claim number

DLC Related Numbers

- Donation Certificate Number
 - After all the requirements were met and the claim “proved up”, a certificate number was issued by the Surveyor General’s office
 - Does not establish Junior/Senior rights

Many issues to consider

- Junior/Senior rights
- Hiatus and Overlaps
- Adverse Possession
- Acquiescence
- Color of Title
- Accretion
- Reliction
- Avulsion

Many issues to consider

- Property Line Agreements
- Magnetic Declination
- Encroaching against sovereignty
- Proper restoration techniques
- Case law (with caution)

Junior/Senior Rights

- The rights which take precedence
- The first patent issued may take precedence in a situation where a later survey is in conflict with an earlier survey
- The line of an older survey is controlling unless officially superseded by a subsequent survey

Junior/Senior Rights

- Oregon was all public domain land until title was transferred
- Claim (DLC) numbers do not convey junior/senior rights
- Simultaneous surveys establish sequential claim numbers, but no Junior/Senior conditions exist

Junior/Senior Rights

- The general belief is that the date of entry (settlement) is the date on which a claimant acquired a “right” to the land
- However, many other issues need to be considered. Do not blindly hold to that concept

Pop Quiz

- Question: Can a junior survey ever control a senior one?
- Answer: Yes, in the case of obliteration of the senior line, the existing junior (closing) corners may be the best evidence as to the location of the senior line
- Thoroughly investigate evidence of both surveys

Hiatus

- The area between two adjoining surveys that is not included in either survey
- 2 separate surveyors monument the same line (some distance from each other)
- There is no conflict between the 2 surveys

Pop Quiz

- Question: Who does the hiatus land belong to?
- Answer: It depends...
- Hiatus land created during original surveys is public land and remains in United States possession
 - United States v. Weyerhaeuser
- Hiatus land created during subsequent surveys of private land need to be resolved

Survey Principles

Monuments established by a government surveyor, along with the plat and field notes absolutely control the boundaries of land patented on the basis of those monuments, plat, and notes

Overlaps

- Conflict between adjoining surveys
- A common area included in separate adjoining surveys
- Surveying and legal problem
- Proceed with caution
- Generally the monuments of the junior survey would move to the senior line

Pop Quiz

- Question: What does “de minimis lex non curat” mean?
- Answer: “The court does not care for trifles”
- Many Junior/Senior disputes are just that.
- If its not fraud or gross errors, but simply small accuracy issues, bend the senior line to protect bona fide rights
- Do not establish Closing Corners

Pop Quiz

- Question: *What is a Closing Corner?*
- Answer: A Corner established where a survey line intersects a previously fixed boundary at a point between corners.
- The closing corner is located (by law) at the actual point of intersection without regard to its monumented location

Pop Quiz

- Question: *Does a closing corner establish an angle point in the boundary?*
- Answer: *It depends...*
- *A closing corner is junior, and generally only establishes the direction of the closing line, unless it is the only remaining evidence of the senior line*

Adverse Possession

- A means of acquiring title to another's real property without compensation
- Requires the actual, visible, hostile, notorious, exclusive, and continuous possession of the property

Acquiescence

- An act of concurrence by the adjoining owners bearing on the practical location of their common boundary where the line has not or cannot be defined by survey
- May be an unwritten property line agreement

Pop Quiz

- Question: *In a case of acquiescence, how do you establish senior rights?*
- Answer: *You don't...*
- *There is none. Both parties acquiesced to the line, nullifying Junior/Senior rights*

Color of Title

- Claim to title of real property that appears valid, but is legally defective

Accretion

- The gradual and imperceptible addition of soil or other materials on shores or banks forming firm ground
- Boundaries move through accretion

Reliction

- The gradual and imperceptible withdrawal of water that formed a natural boundary
- Boundaries move through reliction

Avulsion

- A rivers sudden change in flow alignment to a new channel
- Boundaries do not move. It does not result in a change of title to land

Encroaching against Sovereignty

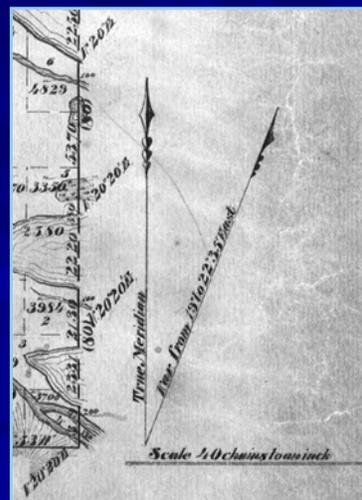
- No encroachment upon public lands
- Possession of land does not operate adversely against the United States or a State

Pop Quiz

- Question: *What is Magnetic Declination?*
- Answer: Angle from True North to Magnetic North
 - The difference between a compass needle and the line of longitude at that point
 - 19 degrees West (or -19 degrees) means magnetic north lies 19 degrees counterclockwise from True north
 - Magnetic declination changes from place to place and over time

Magnetic Declination

- Magnetic declination or variation at the time of the original survey
- Local compass variation (anomalies) along lines or at corner
- Old survey notes have shown large variations (30°E) at some locations



Survey Principles

*Retrace as nearly as possible
the steps of the surveyor who
originally projected the lines
on the ground*

Steps in Retracing the original boundary of a DLC

- Research and acquire copies of the original GLO field notes and survey
- Acquire copies of all DLC related documents; Notification, Proof of date of occupation, Certificate, Patent, and Township map.
- Identify all adjoining properties and landowner names
- Research additional subsequent surveys of record

Steps in Retracing the original boundary of a DLC

- Research boundary disputes and/or court cases
- Perform thorough search for original and any subsequently set monuments
- Document results of monument search
- Perform thorough search of related evidence
- Acquire parole evidence from long time residents
- Develop composite analysis map

Steps in Retracing the original boundary of a DLC

- Research compass declination at time of original survey
- Establish local control
- Tie all found monuments and related evidence
- Determine relationship between current and original survey measurements – distance proportions, index error, etc

Steps in Retracing the original boundary of a DLC

- Know the Surveyor
 - Try to establish the professional reputation and reliability of the original surveyor
- Determine relationship between found evidence and record positions
- Apply your professional judgment to resolve and restore the boundary
- Seek peer opinions
- Seek BLM opinion

Develop a Claim Spreadsheet

Name	Date of Entry	Notification No	Notification Date	Claim No	Certificate No	Certificate Date	Patent Date	Patent Acres
Alexander McQuin	3/15/1847	4485	7/19/1854	50	3569	7/31/1869	7/21/1873	230.44
Alexander McQuin	3/15/1847	4485	7/19/1854	41	3569	7/31/1869	7/21/1873	402.90
James Taylor		4497		57	1977		9/6/1866	153.85
Isabella Logie		4486		49	1918		9/9/1866	640.00
William E. Cooper		4305		51	3541		1/18/1876	105.50
William E. Cooper		4305		42	3541		1/18/1876	54.00

Court Cases

- Don't blindly accept court decisions. Many experts disagree with some court cases and could easily repudiate them
- Example: *Albert v. Salem* - 39 OR 466 (1901)
 - Where the court held that an original bearing tree is not sufficient evidence to locate the position of an original corner
 - The court was incorrectly informed that the claim numbers were in the order of the survey and established junior/senior rights

Survey Principles

Monuments established by a government surveyor, along with the plat and field notes absolutely control the boundaries of land patented on the basis of those monuments, plat, and notes

Survey Principles

*Conclusive evidence outweighs the record.
The actual corner monument, when found and is undisturbed, is paramount; the record (field notes and plat) is subordinate to the monument*

DLC Research Tips

- Not All Claims Were Successful. Quite A Number Were Rejected.
- Make Certain That A Certificate Was Issued.
- Refer To The List Of Rejected Claims – Available At The State Of Oregon Archives
- County Lines Changed - Records May Be In The Parent County

DLC Research Tips

- Look for every possible spelling of name
- Whole families migrated to Oregon together and made separate claims
- Ascertain the date of entry
- The claim description on the Notification may not be the same as that of the Patent
- Property line agreements may have been made between adjoiners

DLC Research Tips

- Read all the descriptions of DLCs in the vicinity (not just the adjoiners) for clues.

Case Study

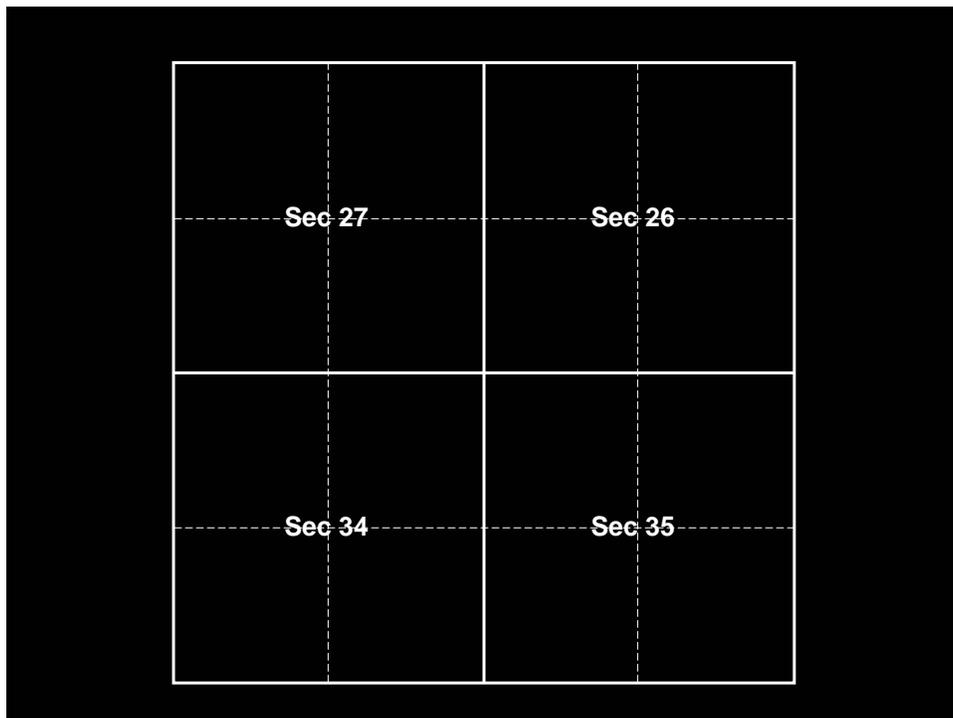
T. 37 S., R. 1 W. Willamette Meridian

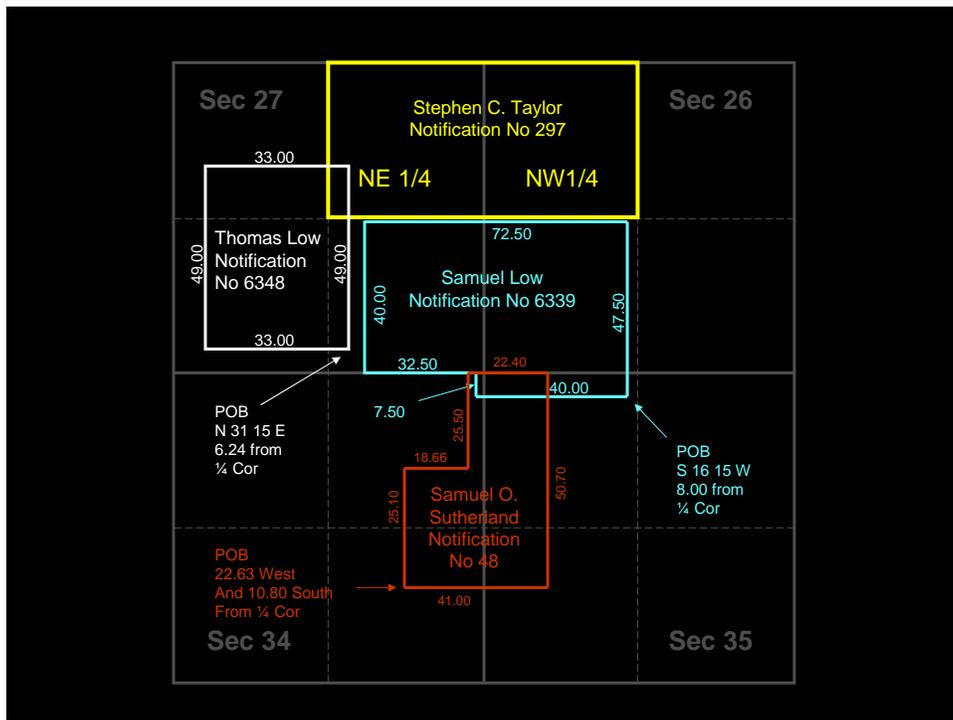
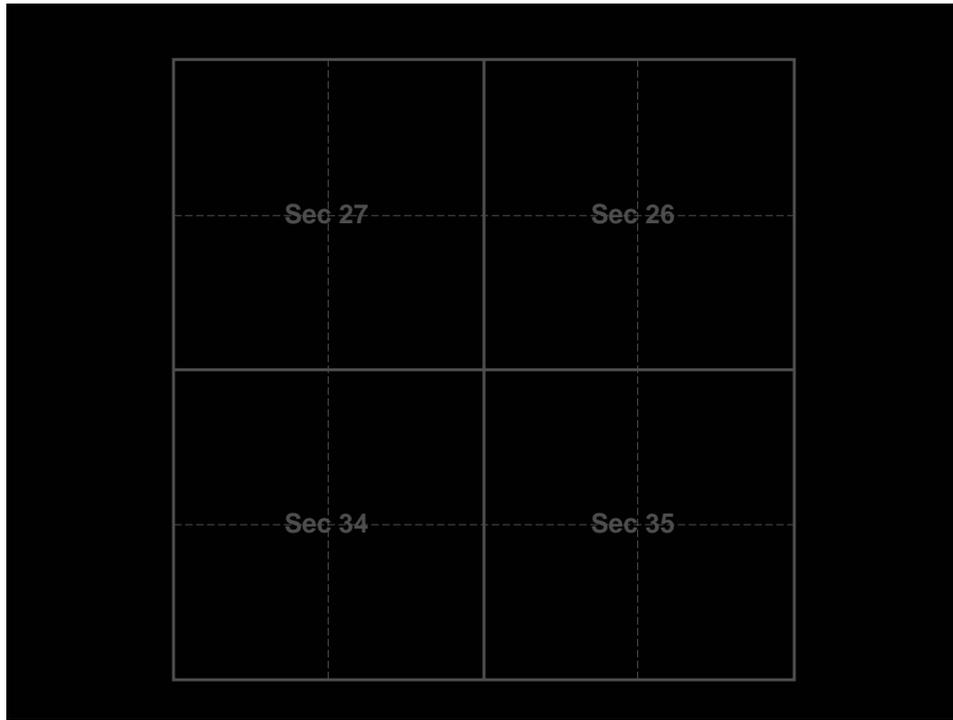
Samuel D. Sutherlin DLC

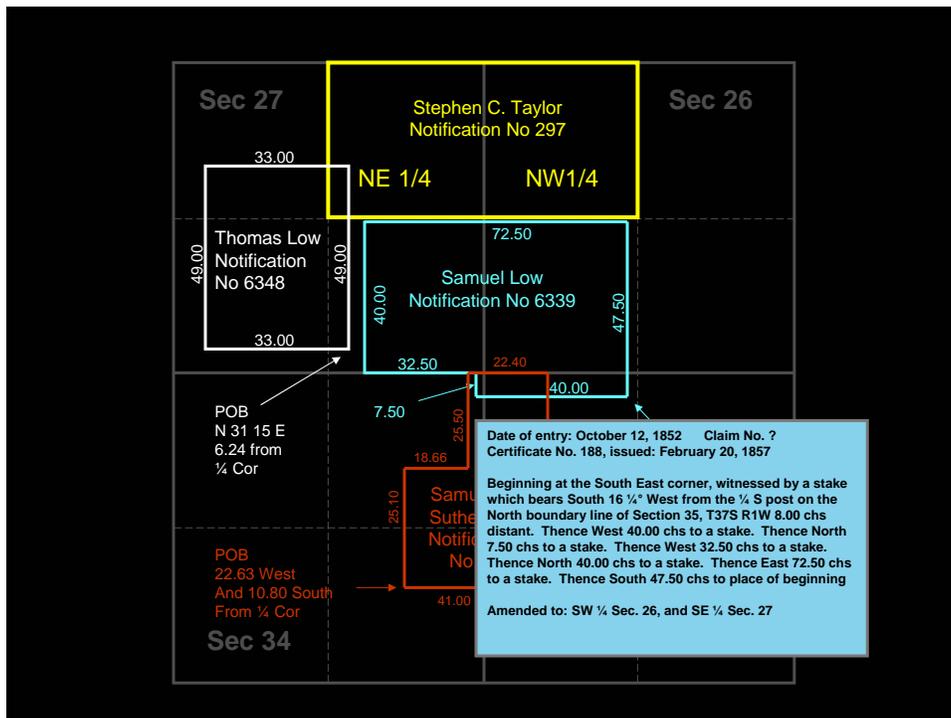
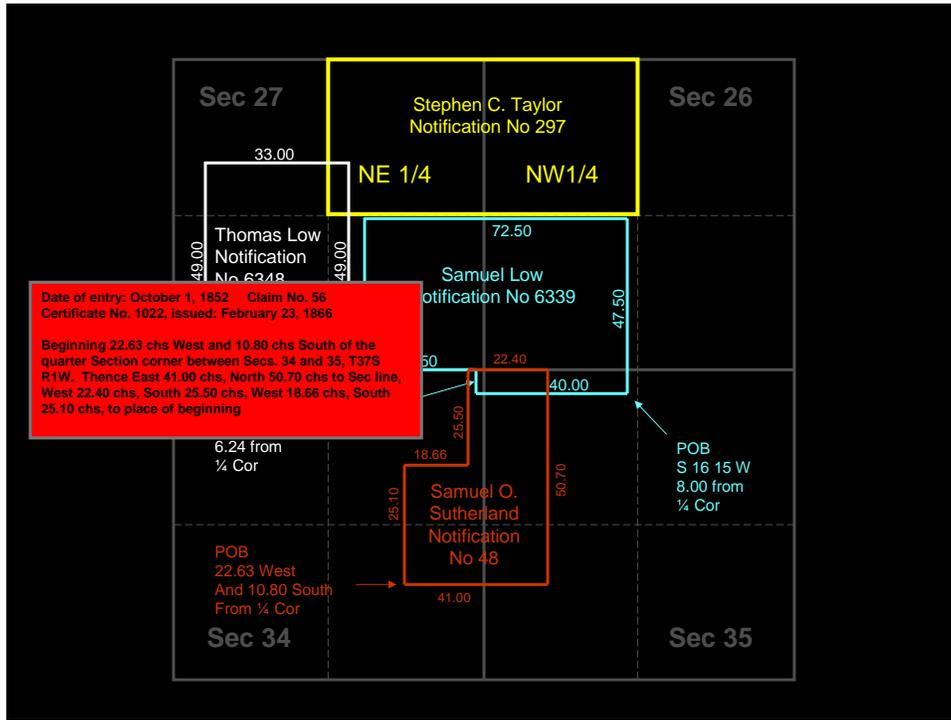
Samuel Low DLC

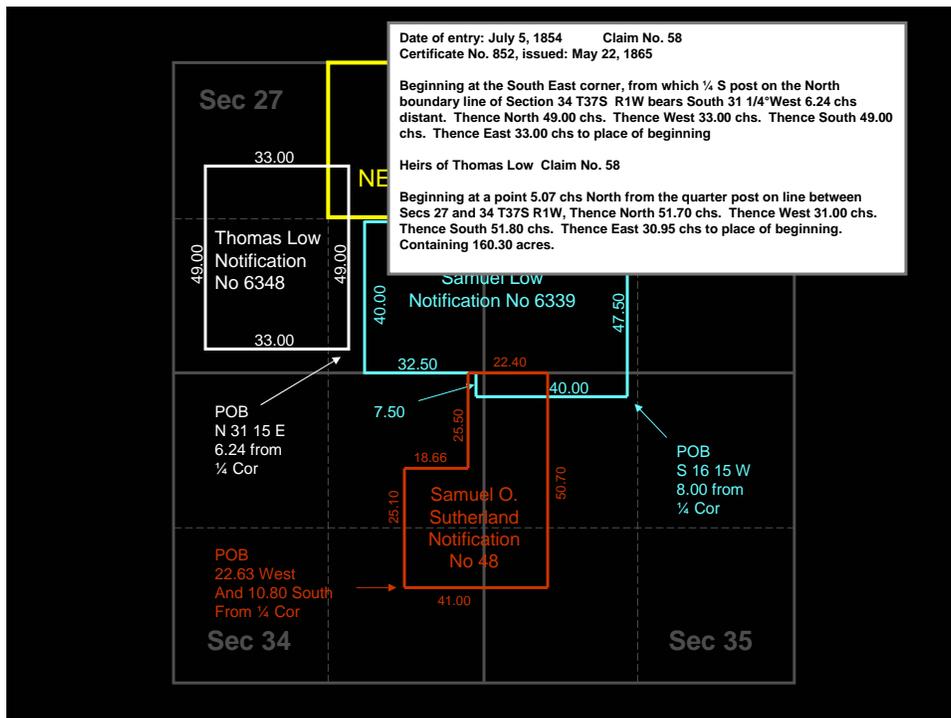
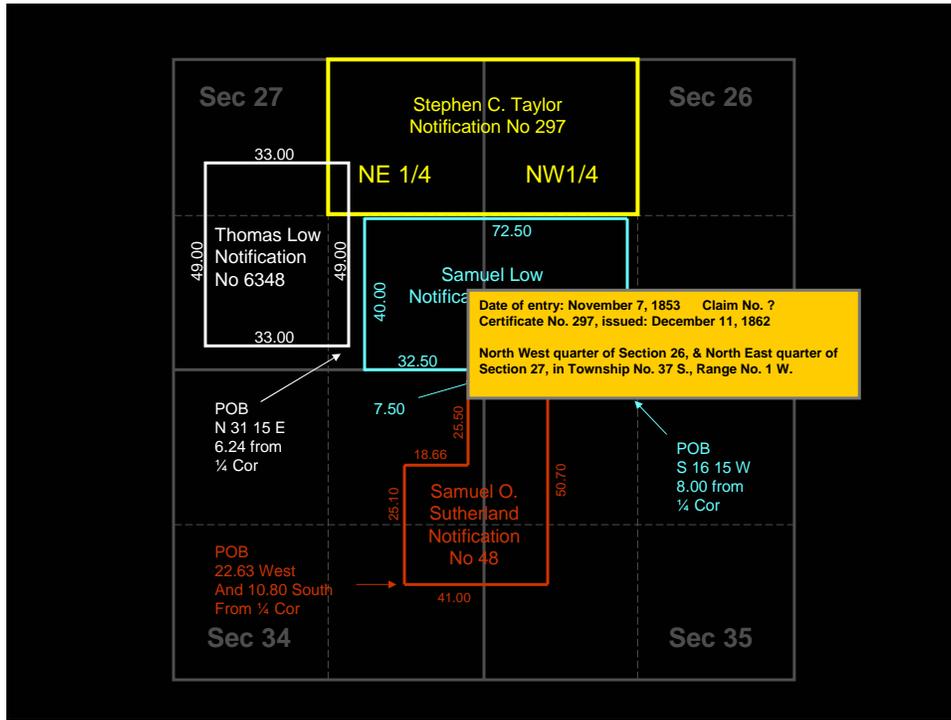
Stephen C. Taylor DLC

Thomas Low DLC









Resources



*“A Casebook of Oregon
Donation Land Claims”*

by C. Albert White

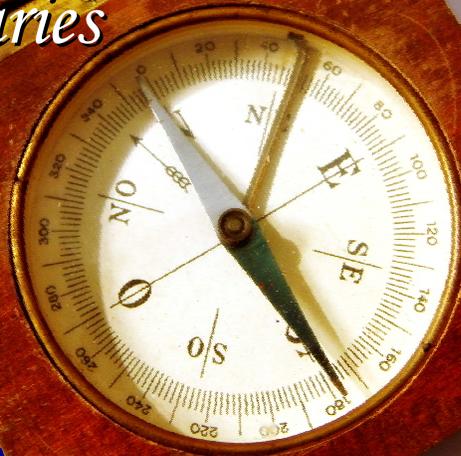
*“Clark on Surveying and
Boundaries”*

Bureau of Land Management

County Records

Oregon State Archives

*Restoration of
Donation Land Claim
Boundaries*



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