

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.                    IN THE MATTER OF GRANTING AN EASEMENT TO THE HECETA WATER  
00-8-30-13                    DISTRICT ON COUNTY OWNED PROPERTY IDENTIFIED AS ASSESSOR'S  
MAP # 18-12-11 TAX LOTS 100 AND 201 FOR USE AS AN ACCESS ROAD  
AND PLACEMENT OF WATER TRANSMISSION FACILITIES.

WHEREAS Lane County acquired real property identified as Assessor's map # 18-12-11-00-00100 through property tax foreclosure by virtue of a Sheriff's Deed recorded on Reel 66, Reception No. 65851, Lane County Oregon Deed Records and

WHEREAS Lane County acquired real property identified as Assessor's map # 18-12-11-00-00201 by virtue of a Warranty Deed recorded on Reel 545, Reception No. 59353, Lane County Oregon Deed Records and

WHEREAS said real property has been retained in county ownership to facilitate use of Clear Lake for public water supply purposes and for possible use as a public recreation area and

WHEREAS Heceta Water District has requested an easement from the county on said real property for construction and maintenance of water transmission facilities and for access over said real property and

WHEREAS a public hearing was held on the matter on August 30, 2000 with notice of said public hearing published in the "Eugene Register-Guard", a newspaper of general circulation in Lane County, on August 14, 2000 and August 21, 2000

IT IS HEREBY ORDERED that, pursuant to ORS 275.330 and ORS 275.090, an easement substantially similar to attached Exhibit "A" be granted to the Heceta Water District, an Oregon domestic water supply district, that the Board shall execute said easement and that said easement shall not be delivered or recorded until an Intergovernmental Agreement between Lane County, the City of Florence and Heceta Water District entered into in May, 1999 has been duly terminated

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this 24<sup>th</sup> day of January, 2001

  
Chair, Board of County Commissioners

APPROVED AS TO FORM

Date 8-22-2000 Lane County

  
OFFICE OF LEGAL COUNSEL

IN THE MATTER OF GRANTING AN EASEMENT TO THE HECETA WATER DISTRICT ON COUNTY OWNED PROPERTY IDENTIFIED AS ASSESSOR'S MAP # 18-12-11 TAX LOTS 100 AND 201 FOR USE AS AN ACCESS ROAD AND PLACEMENT OF WATER TRANSMISSION FACILITIES.

After recording, return to:

Paul V. Vaughan  
Hershner, Hunter  
P. O. Box 1475  
Eugene, OR 97440

## UTILITY EASEMENT

### PARTIES:

LANE COUNTY, a political subdivision of the State of Oregon (County)

HECETA WATER DISTRICT, an Oregon domestic water supply district (Water District)

### RECITALS:

A. County is the owner of the following described property located in Lane County, Oregon and conveyed to County by a Sheriff's Deed recorded September 12, 1955, in Reel 66-55D, at Recorder's Reception No. 65851, a Relinquishment of Title from the State of Oregon recorded October 16, 1970, in Reel 502-R, at Recorder's Reception No. 24588 and a Warranty Deed from the Cascade Title Company recorded August 16, 1971, in Reel 545-R, Recorder's Reception No. 59353, all in Lane County Official Records (the County Property):

Tax Lot 1 of Section 11; The Northeast Quarter of the Northeast Quarter of Section 11; and Lots 1 and 2 in Section 11; The Southeast Quarter of the Southeast Quarter of Section 2, all in Township 18, Range 12 West of the Willamette Meridian, Lane County, Oregon (Map #18-12-11-00-00100).

AND

A parcel of land lying in the South one-half of the Northwest one-quarter, and the Southwest one-quarter of the Northeast one-quarter of Section 11, Township 18 South, Range 12 West, Willamette Meridian, and being a portion of the strip of land of variable width on each side of the centerline of Taylor Road, said centerline being described as follows:

Beginning at Engineer's Centerline Station L<sup>2</sup> 0+01.38, said station being South 0°09'40" West 1502.00 feet from a point on the North line of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, which point is South 86°18'20" East 930.29 feet from the Northwest corner of said Section 11, said station also being Oregon Coast Highway Centerline Station 218+15.00 P.O.T.; thence South 82°50'20" East 304.61 feet; thence on a 1145.92 feet radius curve right (the long chord of which curve bears South 70°36'35" East 485.46 feet) a distance of 489.17 feet; thence South 58°22'50" East 25.85 feet to Station L<sup>2</sup>8+21.01 P.O.T. Bk = L 8+21.01 P.T. Ah; thence South 58°22'50" East 866.10 feet; thence on a 1432.39 feet radius curve left (the long chord of which curve bears South 70°36'35" East 606.82 feet) a distance of 611.46 feet to Engineers' Centerline Station L 22+98.57 P.T.; thence South 82° 50' 20" East a distance of 1034.43 feet, more or less, to the west line of the Southeast 1/4 of the Northeast 1/4 of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, excepting therefrom that portion which is accepted public road with an Easterly terminus at Engineer's Centerline Station L 20+50.00 P.O.C., in Lane County, Oregon (Map #18-12-11-00-00201).

B. County, as Grantor, and Water District, as Grantee, are parties to that certain Easement dated July 24, 1968 and recorded in the Lane County Official Records on July 26, 1968 in Reel 401-R, at Recorder's Reception No. 33112 (the 1968 Easement). Pursuant to the 1968 Easement, County granted to Water District easements for a pipeline and access road, a reservoir (the Reservoir), and a pump station as more particularly described therein.

C. Pursuant to Order No. 00-8-30-13 of the Lane County Board of Commissioners, County agreed to grant to Water District an additional easement across the County Property for a pipeline and access road between the Reservoir and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property, on the terms described below.

**AGREEMENTS:**

1. GRANT. County hereby grants and conveys to Water District, its successors and assigns, a perpetual non-exclusive easement and right-of-way 60 feet in width (upon, across, over and/or under the real property) extending between the "Easement No. 2 reservoir site" described in the 1968 Easement and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property (the Easement Strip), as more fully described in Paragraph 3. below. This easement is subject to the easements previously granted to Water District in the 1968 Easement and to the Central Lincoln People's Utility District described in the document recorded on July 26, 1968 in Reel 401-R, Reception No. 33113, Lane County Deed Records, Lane County, Oregon. The Easement Strip grant shall be subject to the following limitations and conditions in addition to the other terms provided below:

a. After calendar year 2001, not more than one million (1,000,000) gallons of water may be withdrawn by Water District from Clear Lake in any given 24-hour period and during calendar year 2001 the maximum withdrawal shall be one million five hundred thousand (1,500,000) gallons per day; and

b. Water District shall monitor withdrawal of water from Clear Lake and the daily rate of water withdrawal shall be recorded for a five-year period beginning on March 1, 2001; and

c. Monthly reports showing all of the water withdrawn by Water District from Clear Lake shall be provided within 15 days of the end of each month by Water District to County Board of Commissioners during the entire five-year monitoring period. Thereafter, Water District shall provide to County an annual report showing water withdrawals from Clear Lake for each year following the initial five-year monitoring period for as long as this easement continues; and

d. Withdrawal of water in excess of the per day limitation provided for in paragraph 1.a. above may only occur when emergency conditions require additional water for public health or safety as determined by County within five (5) calendar days following the emergency withdrawal. Water District shall notify County immediately of all emergency water withdrawals; and

e. The terms and restrictions contained in this easement are intended to benefit and may be enforced by interested persons, which shall mean any person owning property or living within the Clear Lake Watershed as defined in Exhibit "B" attached and incorporated here by this reference, or any person served by the Water District. If any of the terms or conditions of the easement are violated by Water District, then County or other interested persons may enforce those requirements and take other appropriate actions that will protect the public interest only after providing to Water District notice and an opportunity to cure the alleged violation. The notice shall contain a statement or description of the alleged violation that can be readily understood and shall include the date, time, place and provision of the easement for each alleged violation. Any violation of the water withdrawal limitation provided for in paragraph 1.a. above shall be cured within three (3) calendar days of receipt of the notice. For violation of any other terms and conditions

of this easement, steps shall be taken by Water District to cure the alleged violation within 30 days of receipt of the notice. Any notice of alleged violation shall also be provided to County and failure of County to take steps indicating an intention to enforce the terms and conditions of this easement within 30 days of County receipt of the notice shall entitle any other interested person to proceed with appropriate enforcement action. An affirmative indication by the County Board of Commissioners declining to take enforcement steps in the face of an alleged violation at any time within the 30-day period for County action shall entitle any other interested person to proceed with appropriate enforcement action for that violation before expiration of the 30-day period. Enforcement shall not entitle any interested person other than County and Water District to an award of damages; provided, Water District may only seek damages from County and County may only seek damages from Water District. Enforcement by County, Water District or any interested person shall not entitle any award of costs or attorney fees; and

f. Notwithstanding any other provision of this easement, County reserves the exclusive right to terminate or modify the terms and conditions of this easement by agreement with Water District alone.

2. **PURPOSE.** Water District shall have the right to use the Easement Strip for access to the easement areas described in the 1968 Easement for the full and complete use, occupation and enjoyment of the easements and rights granted pursuant to the 1968 Easement, and in conjunction with such use, may construct, reconstruct, maintain and repair a road thereon. Water District shall also have the right to use the Easement Strip for (a) the construction, installation, operation, maintenance and repair of water transmission facilities (including pumping stations and distribution lines) and (b) the installation, operation, maintenance and repair of such electrical and communication lines (telephone, cable, fiber optic or similar technology) as the Water District deems necessary or appropriate for operating the water transmission facilities installed within the Easement Strip and for operating the facilities installed or constructed within the easement areas described in the 1968 Easement. Location and relocation of facilities installed within the Easement Strip shall be the sole responsibility of the Water District.

3. **LEGAL DESCRIPTION OF THE EASEMENT STRIP.** The approximate location of the centerline of the Easement Strip is described on the attached Exhibit A. The parties acknowledge that geologic conditions, wetlands, terrain and other natural and man-made features may affect the actual location of the Easement Strip between the "Easement No. 2 reservoir site" described in the 1968 Easement and the point at which the dedicated public road portion of Taylor Road intersects the westerly boundary of the County Property. Water District shall determine a suitable location for the centerline of the Easement Strip for the purposes described in the above paragraph 2. and shall have a survey made by a licensed engineer and/or surveyor of that centerline. After that survey is filed with the county surveyor's office, Water District shall record an instrument referencing this Utility Easement and describing the surveyed centerline of the Easement Strip. Upon recording, such instrument shall serve to amend this Utility Easement to provide the correct legal description of the centerline of the Easement Strip, and such amendment of the description

shall be effective without the signature of County. Upon recording, a copy of the instrument showing the recording information shall be provided by Water District to County's administrator, with a copy to County's legal counsel.

4. **ABANDONMENT.** The Easement Strip shall be used by the Water District only for the described public purposes and if not used for those public purposes for a period of one year or more after the initial installation of the water transmission facilities, this Utility Easement shall terminate and use of the Easement Strip shall revert to County.

5. **COMPLIANCE WITH LAW.** Water District shall build, operate and maintain the transmission facilities authorized by this Utility Easement and installed within the Easement Strip in conformance with all applicable laws and regulations.

6. **CONSIDERATION.** As consideration for this Utility Easement, Water District shall provide up to 1.5 million gallons of water per calendar year at no fee to County's park facilities at Harbor Vista Park, Heceta Beach and the Munsel and Mercer Lake boat landings.

7. **INDEMNITY.** Water District agrees to indemnify, defend and hold County, its Commissioners, officers, agents and employees acting in their capacity for the county harmless from any and all loss, liability or expense arising out of claims made by third parties against County as a result of County's execution of this Utility Easement. Water District also specifically agrees to defend and indemnify County, its Commissioners, officers, agents and employees acting in their capacity for the county from any claim, liability or damage resulting from the withdrawal, filtration, treatment and transmission of water from Clear Lake and use of the Easement Strip by Water District, including claims related to the water quality or level of the lake and effects on the adjacent property owners. Further, each of the parties hereto agree to indemnify and save the other harmless from any claim, liability or damage resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees in the performance of its responsibilities under this agreement. The obligations under this paragraph are subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act.

8. **RESERVATION OF RIGHTS.** County reserves the right and privilege to use the Easement Strip at any time and in any manner for any purpose not inconsistent with the full use and enjoyment of the rights and privileges herein granted to Water District. Location and relocation of facilities installed within the Easement Strip shall be the sole responsibility of the Water District.

9. **FUTURE ASSURANCES.** Each of the parties shall, upon request of the other party, execute and deliver such additional documents as may be necessary or convenient for the purpose of evidencing or perfecting any rights or interests arising under this Utility Easement.

10. **BINDING EFFECT.** All of the covenants, agreements, conditions and terms contained in this Utility Easement shall be binding upon, apply and inure to the benefit of the successors and assigns of the respective parties hereto.

11. PARTIAL INVALIDITY. If any provision of this Utility Easement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

12. CAPTIONS. The captions are inserted only for convenience and are not part of this Utility Easement nor a limitation on the scope of the particular paragraph to which each refers.

13. TERMINATION FOR REPEATED VIOLATIONS OF EASEMENT. If Water District commits "Repeated Violations" of this easement, County shall have the right, at its option, to terminate this easement. The right to terminate this easement as provided in this paragraph shall be a remedy available exclusively to County and shall not apply to any third-party enforcement of the easement as provided herein. As used in this paragraph, "Repeated Violations" of this easement shall be defined to have occurred when:

a. Except as permitted in subparagraph 1.d., the water withdrawal limitation described in Paragraph 1. is exceeded on more than three (3) days in any calendar month; provided, however, that notice and an opportunity to cure as provided in subparagraph 1.e. must first have been given to Water District during that calendar month and Water District shall have failed to cure the violation within the time provided in subparagraph 1.e.; or

b. During any calendar year, on more than two occasions, Water District is provided with notice of a violation of any provision of this easement in accordance with subparagraph 1.e., and Water District fails to cure the violation within the time provided in subparagraph 1.e.

DATED: January 24, 2001

LANE COUNTY

By BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

\_\_\_\_\_, Commissioner

Water District accepts this Utility Easement and authorizes its recording.

HECETA WATER DISTRICT

By: \_\_\_\_\_  
Ted Condo, Chair

STATE OF OREGON        )  
                                  ) ss.  
COUNTY OF LANE        )

This instrument was acknowledged before me on \_\_\_\_\_, 2001, by  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_, County Commissioners of  
Lane County.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

STATE OF OREGON        )  
                                  ) ss.  
COUNTY OF LANE        )

This instrument was acknowledged before me on \_\_\_\_\_, 2001, by Ted Condo,  
Chair of Heceta Water District.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

**EXHIBIT A**

**DESCRIPTION OF CENTERLINE OF 60 FOOT EASEMENT**

Beginning at Engineer's Centerline Station L<sup>2</sup> 0+01.38, said station being South 0°09'40" West 1502.00 feet from a point on the North line of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, which point is South 86°18'20" East 930.29 feet from the Northwest corner of said Section 11, said station also being Oregon Coast Highway Centerline Station 218+15.00 P.O.T.; thence South 82°50'20" East 304.61 feet; thence on a 1145.92 feet radius curve right (the long chord of which curve bears South 70°36'35" East 485.46 feet) a distance of 489.17 feet; thence South 58°22'50" East 25.85 feet to Station L<sup>2</sup>8+21.01 P.O.T. Bk = L 8+21.01 P.T. Ah; thence South 58°22'50" East 866.10 feet; thence on a 1432.39 feet radius curve left (the chord of which curve bears South 65°38'18" East 361.92 feet) a distance of 362.89 feet to Engineers' Centerline Station L 20+50.00 P.O.C., and the TRUE POINT OF BEGINNING of this centerline description;

thence on a 1432.39 feet radius curve left (the chord of which curve bears South 77°52'03" East 248.26 feet) a distance of 248.57 feet;

thence South 82° 50' 20" East a distance of 1034.43 feet, more or less, to the west line of the Southeast 1/4 of the Northeast 1/4 of Section 11, Township 18 South, Range 12 West of the Willamette Meridian;

thence South 82° 50' 20" East a distance of 667 feet to Engineers' Centerline Station L 40+00.00 P.O.T.;

thence leaving said Engineers' Centerline South 02°30'00" West a distance of 328.00 feet;

thence South 18°08'15" East a distance of 770.00 feet, more or less, to the existing water tank, the END POINT this description.

The westerly boundary of the 60 foot wide easement strip shall be extended or shortened so as to terminate on the westerly line of the County Property described in this Utility Easement.

The bearings used herein are based upon the Oregon Coordinate System, South Zone.

All in Lane County, Oregon.

LEGAL DESCRIPTION OF CLEAR LAKE WATERSHED

Beginning at point known as Tank One, located in Section One, Township 18 South,  
Range 12 West, of the Willamette Meridian, Lane County Oregon;

Run thence S. 67° 50' 51.5" E. 97.8 ft. to the True Point of Beginning;  
Run thence S. 05° 40' 43.0" W. 1960.62 ft. to a point,  
Run thence S. 04° 58' 45.4" E. 1301.91 ft. to a point,  
Run thence S. 52° 44' 01.0" W. 231.21 ft. to a point,  
Run thence S. 15° 20' 45.4" E. 774.62 ft. to a point,  
Run thence S. 31° 44' 14.0" W. 520.89 ft. to a point,  
Run thence S. 00° 24' 43.9" W. 834.02 ft. to a point,  
Run thence S. 07° 49' 01.8" W. 1191.07 ft. to a point,  
Run thence S. 50° 26' 06.3" W. 731.61 ft. to a point,  
Run thence S. 02° 51' 10.5" W. 301.37 ft. to a point,  
Run thence S. 36° 37' 58.2" W. 918.41 ft. to a point,  
Run thence S. 47° 12' 26.3" W. 1321.86 ft. to a point,  
Run thence S. 72° 58' 54.2" W. 498.84 ft. to a point,  
Run thence S. 85° 44' 21.3" W. 955.64 ft. to a point,

Which is N. 11° 39' 16.9" W. 5434.90 ft. from a point known as Green Two  
(located in section 13 in said Township and Range);

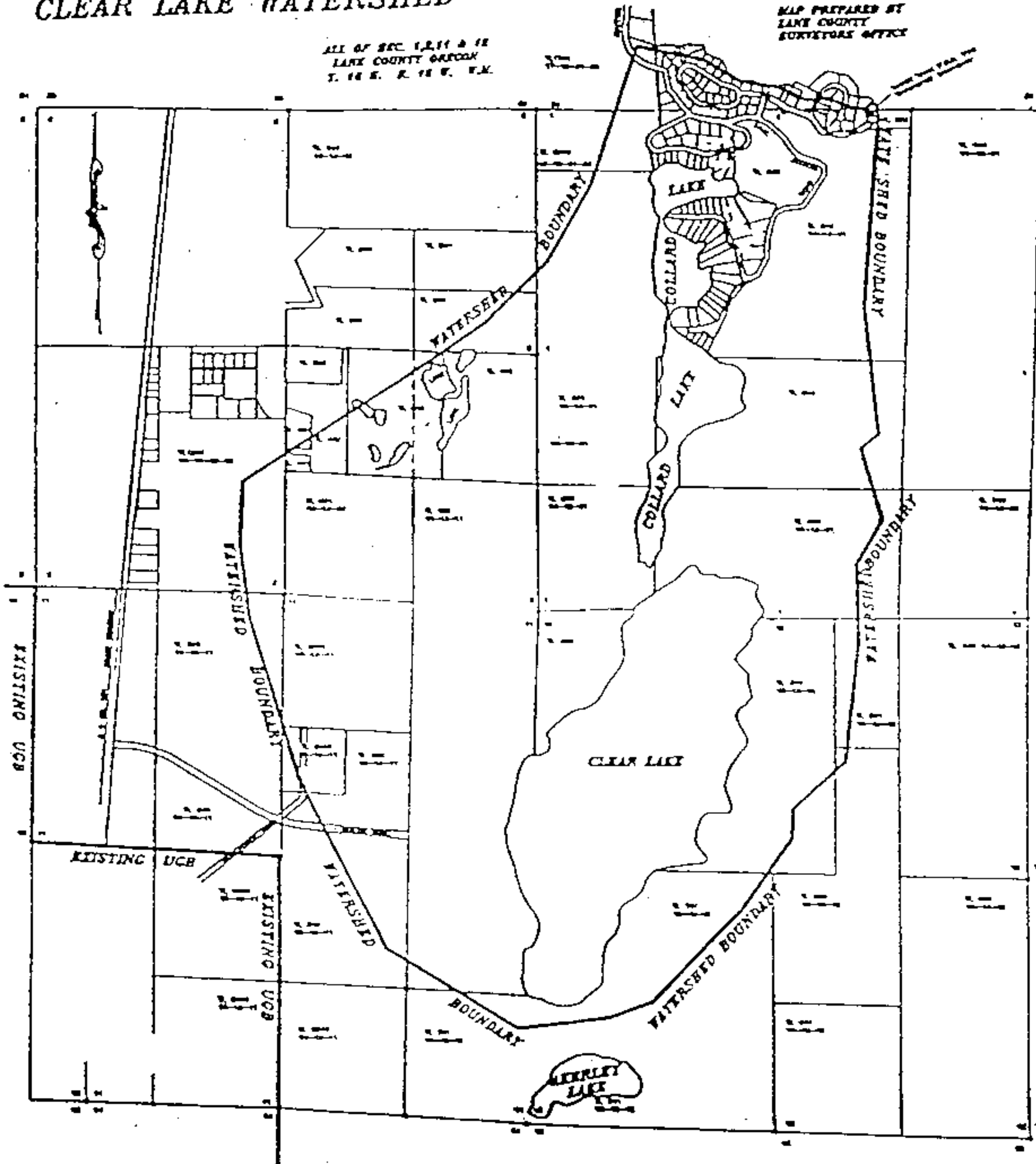
Run thence N. 58° 09' 44.1" W. 1630.28 ft. to a point,  
Run thence N. 25° 23' 10.1" W. 1978.00 ft. to a point,  
Run thence N. 16° 34' 21.0" W. 1731.95 ft. to a point,  
Run thence N. 06° 13' 18.0" W. 747.40 ft. to a point,  
Run thence N. 03° 50' 32.8" E. 671.51 ft. to a point,  
Run thence N. 59° 33' 18.9" E. 1117.02 ft. to a point,  
Run thence N. 59° 50' 06.0" E. 1894.56 ft. to a point,  
Run thence N. 48° 28' 40.0" E. 897.56 ft. to a point,  
Run thence N. 31° 29' 50.7" E. 920.64 ft. to a point,  
Run thence N. 19° 46' 39.6" E. 1524.95 ft. to a point,  
Run thence S. 76° 05' 37.1" E. 748.95 ft. to a point,  
Run thence S. 57° 33' 30.2" E. 445.53 ft. to a point,  
Run thence S. 78° 27' 44.9" E. 394.98 ft. to a point,  
Run thence S. 61° 55' 39.0" E. 323.00 ft. to a point,  
Run thence N. 89° 04' 46.8" E. 249.03 ft. to a point,  
Run thence S. 67° 43' 17.4" E. 245.31 ft. to a point,  
Run thence S. 79° 55' 09.8" E. 45.71 ft. to a point,  
Run thence S. 83° 59' 27.6" E. 95.52 ft. to a point,  
Run thence N. 42° 02' 57.2" E. 68.68 ft. to a point,  
Run thence S. 80° 41' 24.2" E. 61.81 ft. to a point,  
Run thence S. 10° 47' 03.5" E. 128.27 ft. to the True Point of Beginning.

APPENDIX "A" TO LANE CODE  
CHAPTER 16 (LC 16.258(2))

# CLEAR LAKE WATERSHED

ALL OF SEC. 1, 2, 11 & 12  
LANE COUNTY OREGON  
T. 18 N. R. 12 W. E.M.

MAP PREPARED BY  
LANE COUNTY  
SURVEYORS OFFICE



APPENDIX "A" TO LANE CODE  
CHAPTER 16 (LC 16.258(2))