

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF COOS

**THE SURFRIDER FOUNDATION,**

Plaintiff,

vs.

**THE JAY O'LEARY LIVING TRUST, and  
JAY O'LEARY in his capacity as  
Trustee of the Living Trust,**

Defendants.

Case No.: 22CV18438

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF (PUBLIC  
PRESCRIPTIVE EASEMENT)

ORS 21.135(2) (FEE AUTHORITY)

Plaintiff alleges:

**CLAIM FOR RELIEF:**  
(Public Easement by Prescription)

1.

Plaintiff The Surfrider Foundation ("Surfrider") is a national non-profit organization dedicated to the protection and enjoyment of our world's ocean, waves, and beaches, for all people, through a powerful activist network. Surfrider's grassroots network has approximately 80 chapters working towards its mission located throughout the United States, including its Coos Bay Chapter in Oregon. One of Surfrider's five primary initiatives is protecting public beach access.

2.

The Jay O'Leary Living Trust, Jay O'Leary Trustee, owns real property located at Map No, 26S14W04CD, Tax Lot or Parcel No. 1700 in Coos County, Oregon, near the City of Coos Bay (the "O'Leary Property"). This property is located west of address 89181 Lighthouse Way, and east of address 89167 Lighthouse Way. Other than a trail to Lighthouse beach, the property is unimproved.

3.

On the western side of the O'Leary Property is a trail which extends from

1 Lighthouse Way, onto the public beach area. This is a location known locally as the  
2 Lighthouse Beach Trail . See, Exhibit A, attached to and incorporated by reference into  
3 this Complaint (A copy of the original Plat Map, with an arrow indicating the approximate  
4 location of the Lighthouse Beach Trail).

5 4.

6 The original Plat Map for this neighborhood (Exhibit A) included a footpath to the  
7 beach in this same location that was: “dedicate[d] to the use of the public forever”. See,  
8 Exhibit A. That dedication was vacated in 1960. However, members of the public  
9 continued to use and to maintain the Lighthouse Beach Trail, despite that vacation, up  
10 until very recently when the defendants cut off access to that Trail and then  
11 subsequently damaged that Trail.

12 5.

13 Members of the public – including but not limited to Surfrider members – have  
14 used the Lighthouse Beach Trail regularly and continuously from at least approximately  
15 1965 to 2021. The Lighthouse Beach Trail is and has been well known as the primary  
16 public access point for recreation, water quality monitoring, community beach cleanups,  
17 and stewardship. Generations of public users have openly, notoriously, and adversely  
18 used that Trail to access Lighthouse Beach. The Trail is well known in the local  
19 community, and beyond. For example, the following advertisement – which is a photo  
20 taken on the Lighthouse Beach Trail – was run in Outside Magazine, in 2008, by the  
21 Oregon Coast Visitors Association:

22 / / / /

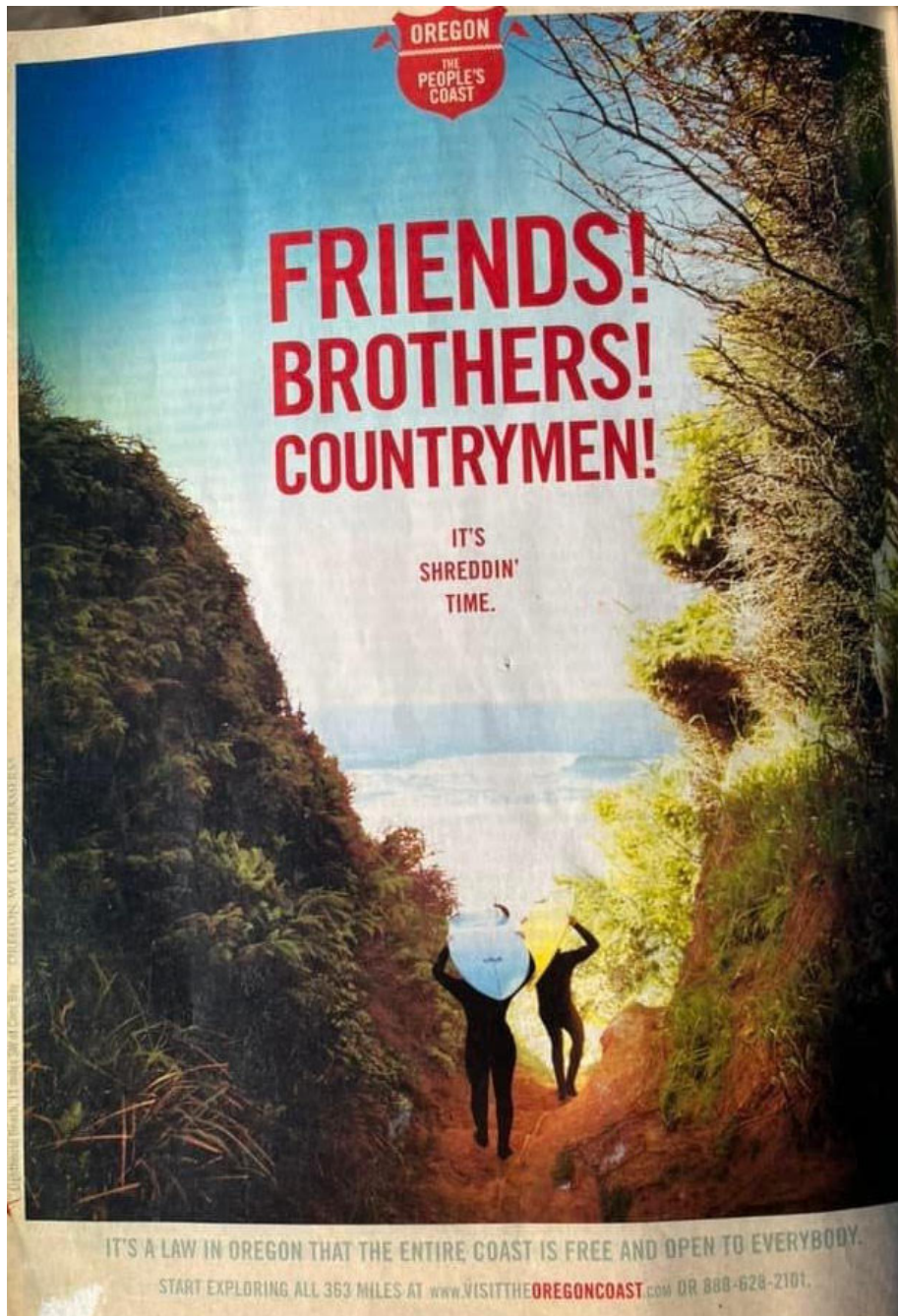
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26 / / / /

27 / / / /



6.

Members of the public – including but not limited to Surfrider members – have used the Lighthouse Beach Trail on the O'Leary Property openly and notoriously from at least approximately 1965 to 2021.

7.

Members of the public – including but not limited to Surfrider members – have

**COMPLAINT – Page 3 of 6**

LAW OFFICE OF KARL G. ANUTA, P.C.  
TRIAL ATTORNEY  
735 S.W. First Avenue  
Portland, Oregon 97204  
Phone: 503.827.0320 – Fax 503.228.6551

1 used the Lighthouse Beach Trail on the O'Leary Property in a manner adverse to the  
2 property owner's (including but not limited to The Jay O'Leary Living Trust and/or Jay  
3 O'Leary) exclusive use and possession of the property, from approximately 1965 to  
4 2021.

5 8.

6 It is Surfrider's understanding and belief that over the years, a number of "no  
7 trespassing" signs have been installed on the O'Leary Property, by the defendants or  
8 someone acting on their behalf or with their permission. It is Surfrider's understanding  
9 and belief that over the years, there have periodically been fences installed on the  
10 property by the defendants or someone acting on their behalf or with their permission,  
11 for the purpose of trying to prevent members of the public from using the Lighthouse  
12 Beach Trail. Some or all of those fences have been breached or removed by members  
13 of the public.

14 9.

15 Based on the adverse use of the Lighthouse Beach Trail for more than ten (10)  
16 years, a public prescriptive easement came into existence, allowing use of that Trail by  
17 members of the public to access Lighthouse Beach.

18 10.

19 Starting in March 2021, defendants, or an agent of defendants or someone  
20 acting with the permission of the defendants, again blocked the Lighthouse Beach Trail  
21 on the O'Leary Property, this time with barbed wire, and other materials in an attempt to  
22 preclude public access to Lighthouse Beach using the Lighthouse Beach Trail. That  
23 person or persons also damaged or destroyed portions of the Trail, in a further attempt  
24 to preclude public access to Lighthouse Beach using the Lighthouse Beach Trail.

25 11.

26 At some time in the first half of 2022, defendants, or someone acting on behalf of  
27 defendants, installed a new even more robust fence, placed one or more newly downed

1 trees across the path, and removed and/or destroyed the steps built on the Lighthouse  
2 Beach Trail in the 1960s by members of the public (and used by generations of public  
3 Trail users to access the beach). In addition, defendants or someone acting on their  
4 behalf or permission installed motion sensors with audible alarms on the property, such  
5 that use of the Lighthouse Beach Trail would trigger those alarms.

6 12.

7 Plaintiff has no plain, adequate, or speedy remedy at law.

8 13.

9 Plaintiff requests this Court's decree and judgment declaring that: (a) The  
10 Lighthouse Beach Trail on the O'Leary Property is subject to a public easement by  
11 prescription, in favor of the State of Oregon and its Citizens, allowing them to access  
12 Lighthouse Beach via the Trail through defendant's property; (b) Defendants must  
13 cease and desist from interfering with public access to the beach on that Trail; and (c)  
14 That defendants are required to restore the steps on the Lighthouse Beach Trail that  
15 were removed by defendants or their agents from that public Trail, to the same or  
16 similar condition that they were in before they were removed.

17  
18 WHEREFORE, Plaintiff requests that this Court grant the following relief:

19 1. A judgment declaring that the Lighthouse Beach Trail on the O'Leary Property is  
20 subject to an easement by prescription, on behalf of the public;

21 2. An injunction preventing the defendants, or anyone acting on behalf of the  
22 defendants, from blocking public access to Lighthouse Beach Trail on the O'Leary  
23 Property;

24 3. An injunction requiring the defendants, or someone acting on behalf of the  
25 defendants, to restore the steps; and,

26 4. Such other relief as the Court deems just, equitable, and proper.

27 ////

1 DATED: this 6<sup>th</sup> day of June, 2022  
2  
3

/s/ Karl G. Anuta

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*Trial Attorney*

/s/ Mike Sargetakis

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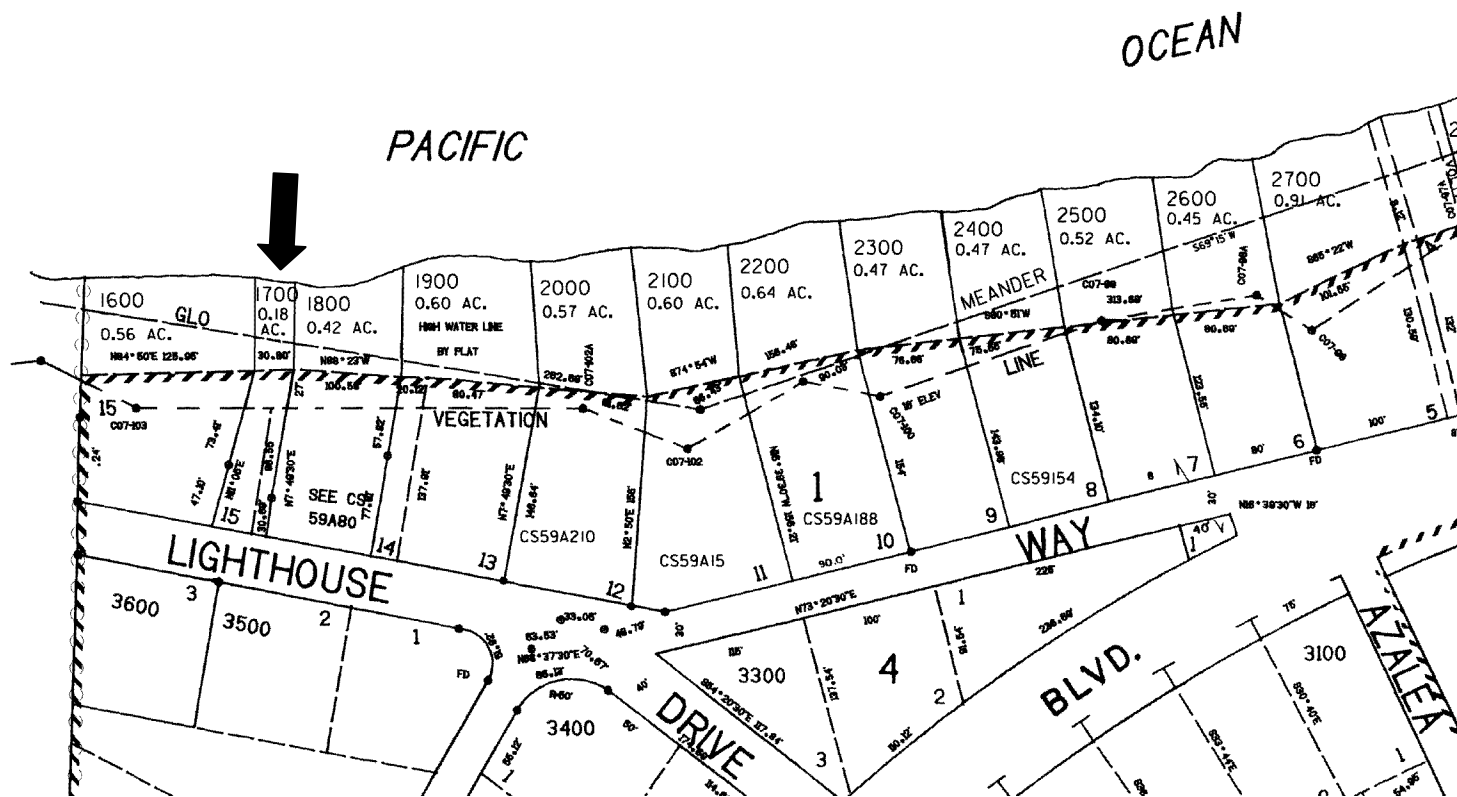
*Attorneys for Plaintiff*



**TICOR TITLE™**



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, locations of easements, acreage or other matters shown thereon.





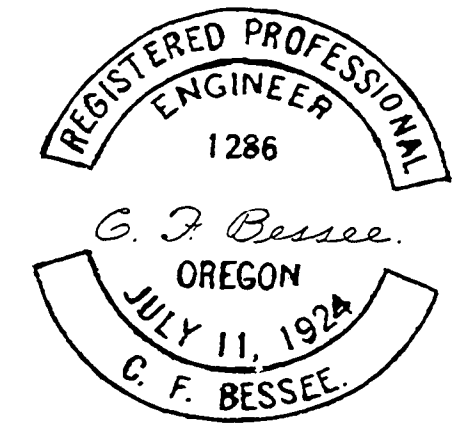
County of Oregon ss.  
County Clerk  
I hereby certify that the within instrument  
was duly recorded in Book 6-1929  
in the Coos County  
Records in Book 6-1929  
at Coquille, Oregon  
this 16th day of December, A.D. 1929

SURVEYOR'S AFFIDAVIT.

I, C. F. Bessee, being duly sworn upon oath do say that I have correctly surveyed the following described tract of land, to-wit: Beginning at a point on the East boundary of Lot 3, Section 4, Township 26 South, Range 14 West of Willamette Meridian, said point being North a distance of 797.25 feet from the quarter section corner between Sections 4 and 9, said Township and Range, and running thence North along the East boundary of said Lot 3, Section 4, a distance of 216.24 feet to approximate high water line; thence S. 69° 08' 12" W. a distance of 369.22 feet; thence S. 63° 22' W. a distance of 109.27 feet; thence S. 80° 51' W. a distance of 313.49 feet; thence S. 74° 45' W. a distance of 156.46 feet; thence N. 88° 23' W. a distance of 262.58 feet; thence S. 84° 50' W. a distance of 153.50 feet to a point on the West boundary of said Lot 3, Section 4, all of the foregoing courses being along the approximate high water line along the North side of said Lot 3, Section 4; thence South along the West boundary of said Lot 3, Section 4, a distance of 730.77 feet to the 1/4 corner of the Southwest quarter of said Lot 3, Section 4; thence S. 1° 58' E. along the West boundary of the Northeast quarter of the Northwest quarter of Section 9, said Township and Range a distance of 469.27 feet; thence N. 85° 14' E. a distance of 428.50 feet; thence N. 35° 10' E. a distance of 521.77 feet to the point of beginning of a curve of 1022.5 feet radius; thence along said curve to the right through a central angle of 1° 41' for a distance of 30.18 feet to a point on the North boundary of the said Northeast quarter of the Northwest quarter of Section 9, from which point the quarter section corner between Sections 4 and 9, said Township and Range, bears S. 89° 45' E. a distance of 556.27 feet; and continuing thence along said curve of 1022.5 feet radius to the right through a central angle of 27° 13' for a distance of 425.82 feet; thence N. 27° 36' W. a distance of 380.12 feet to a point on a curve of 1402.5 feet radius whose tangent at said point bears N. 63° 37' E.; thence along said curve to the right through a central angle of 14° 23' for a distance of 352.41 feet; thence N. 78° 01' E. a distance of 30.74 feet to a point on the East boundary of said Lot 3, Section 4; thence North along the East boundary of said Lot 3, Section 4, a distance of 30.67 feet to the point of beginning, and containing 25.69 acres, more or less, and being parts of Lot 3, Section 4, and of the Northeast quarter of the Northwest quarter of Section 9, both in Township 26 South, Range 14 West of the Willamette Meridian.

I also certify that I have set iron monuments at all points marked @ on the accompanying plat and that I have established a proper monument for an Initial Point, consisting of an iron pipe two inches in diameter and four feet long, set eight inches below the surface of the ground, the same being set at the point of beginning of the foregoing metes and bounds description, on the East boundary of Lot 3, Section 4, and from which point the quarter corner between Sections 4 and 9 Township 26 South, Range 14 West of Willamette Meridian bears South a distance of 797.25 feet.

I also certify that the accompanying map and plat is a true and correct map and plat of the foregoing described tract, and is drawn to scale, the figures thereon representing the actual dimensions and distances intended, and that the same are the true dimensions and distances.



Subscribed and sworn to before me this 10th day of September, 1929.  
Notary Public for Oregon  
My commission expires Jan. 17, 1932.

DEDICATION

Know all men by these presents that W. J. Conrad and Laura D. Conrad, his wife, do hereby execute and offer for filing and record in the office of the County Clerk of Coos County, Oregon, and in the County Court of said County and State, the accompanying map and plat of "SUNSET VIEW" and do hereby dedicate to the use of the public forever, all highways, boulevards, drives, ways and foot paths, as shown on the accompanying map and plat, to have and to hold the above easements unto the public for the uses and purposes aforesaid, forever.

The tract of land embraced and included in said plat of "SUNSET VIEW" is that tract described in the accompanying Surveyor's Affidavit.

In testimony whereof we have hereunto set our signatures and seals this 10th day of September, 1929.

W. J. Conrad  
Laura D. Conrad

STATE OF OREGON ss.  
COUNTY OF COOS

On this 10th day of September, 1929, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above named W. J. Conrad and Laura D. Conrad, husband and wife, who are known to me to be the identical individuals in, and who executed the foregoing dedication, and they acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year, in this, my certificate, written.

Notary Public for Oregon  
My commission expires

CERTIFICATE OF COUNTY CLERK  
STATE OF OREGON ss.  
COUNTY OF COOS

I, R. R. Watson, hereby certify that I am the duly elected and qualified County Clerk of Coos County, State of Oregon, and that the accompanying map constitutes a full, true and complete copy, and the whole thereof, of the original plat of "Sunset View", Coos County, Oregon, as the same appears on file of records in the Record of Town Plats, Volume at page thereof in the office of the County Clerk of Coos County, Oregon.

Witness my hand and official seal this day of A.D. 1929.

CERTIFICATE OF COUNTY COURT,  
COUNTY SURVEYOR AND COUNTY ASSESSOR.  
Examined and approved at Coquille, Coos County, Oregon, this 5 day of December, A.D. 1929.

County Surveyor  
County Assessor  
County Judge  
County Commissioner  
Deputy  
County Commissioner

PLAT OF  
**SUNSET VIEW**  
IN SECTIONS 4 & 9, TWP 26 S., RGE. 14 WEST T., W. M.  
COOS COUNTY - OREGON.

SCALE: 1 INCH = 100 FEET.

