

# EXHIBIT 10

BEFORE THE BOARD OF COMMISSIONERS  
FOR MULTNOMAH COUNTY

IN THE MATTER OF: )  
McQUINN FAMILY PIONEER CEMETERY ) No. 92-51-C  
ASSOCIATION, an Oregon Non-Profit ) AFFIDAVIT OF  
Corporation, ) SHERYL ANDERSON  
)  
)

STATE OF OREGON )  
) ss.  
County of Washington)

I, Sheryl Anderson, being first duly sworn, do depose and say that:

1. I am the owner of an undivided one-half interest in both Tax Lots 16 and 17 of Section 6, Range 2 North, Township 1 West of the Willamette Meridian. Tax Lot 16 comprises approximately 21.66 acres and surrounds Tax Lot 17 which comprises 1 acre. Tax Lot 17 contains, approximately in the middle thereof, the graveyard that is the issue before this proceeding.

I purchased the property with my brother, James L. Smith (having the other undivided one-half interest) in January of 1965. A true copy of the Deed is attached hereto and incorporated herein as Exhibit "A".

This Deed and transfer have been in effect for approximately twenty-seven years. There has been no legal proceeding to dispute this claim or to establish that I did not acquire my interest in the graveyard lot back in 1965.

1           2.       A review of the deed record of Multnomah County  
2 establishes that since 1876, there was no proceeding deed  
3 pertaining to Tax Lot 17 of Section 6, Range 2 North, Township 1  
4 West (hereinafter the graveyard parcel).

5           My family heirs acquired title to all of the properties  
6 surrounding the graveyard parcel through Isaac Thomas back on  
7 October 28, 1876. Thereafter, the "McQuinn" family ceased usage  
8 of the graveyard parcel and abandoned both their interest and any  
9 pursuit of an access to said graveyard parcel. In essence the  
10 graveyard parcel remained abandoned by the McQuinn family for the  
11 last 116 years. If any ownership interest in the graveyard  
12 parcel was transferred from the estate of Alexander and Rebecca  
13 McQuinn to their heirs, such transfers had to have been  
14 accomplished by last will and testament. As of today,  
15 descendants of Alexander and Rebecca McQuinn exceed over six  
16 hundred people. See Exhibit "B".

17           Presumably prior to 1876 when the property was sold Isaac  
18 Thomas, at least one member of the McQuinn family was buried in  
19 the graveyard (thus the designation as a graveyard in 1876).  
20 However, there are only two clear graveyard sites on the  
21 graveyard parcel. One grave site is completely unmarked and  
22 undated. It is only distinguished by a cross with no name or  
23 date inscribed. The second grave belonged to George Anderson,  
24 born September 22, 1852 and died March 28, 1891. This grave is  
25 surrounded by a fence with corner posts. As of 1891, the  
26 graveyard was taken over by the Anderson family for their own

1 purposes and no more McQuinn descendants were permitted to be  
2 buried in the graveyard parcel.

3 The "McQuinn Family Pioneer Cemetery" purports to have a  
4 deed for the one acre parcel from Mrs. Maxine Daly that was  
5 executed in the last few years. However, there is no record that  
6 Mrs. Daly possess any verifiable claim to ownership of the  
7 graveyard parcel resulting from a direct line of inheritance from  
8 the original McQuinn estate proceeding 1876.

9 3. Prior to members of my family obtaining ownership of  
10 Tax Lot 16 which surrounds the graveyard parcel from Isaac Thomas  
11 (who purchased the property on October 28, 1876) the property was  
12 owned by members of the McQuinn family. In 1873, the United  
13 States of America deeded to Alexander H. McQuinn and Rebecca  
14 McQuinn (husband and wife) 640 acres of land that later included  
15 the cemetery (Tax Lot 17) and my other property (Tax Lot 16).  
16 Attached hereto and incorporated herein is Exhibit "C" which is  
17 the document representing that 1873 acquisition. By 1876, eleven  
18 sets of heirs to this 640 acres owned all the land; and  
19 participated in a partitioning request to the County Court to  
20 have the land partitioned into eleven parcels among themselves.  
21 The court determined that a partition could not be equitably  
22 accomplished, and so the land was sold at public auction to Isaac  
23 Thomas and confirmed by court order on October 28, 1876. Exhibit  
24 "D" attached hereto and incorporates the documents involved in  
25 these transactions. The land sold to Isaac Thomas excluded the  
26 one acre cemetery and did not provide any access to the cemetery.

1 Attached hereto and incorporated herein is Exhibit "E". Our  
2 review of the court records and deed records establishes that  
3 none of the eleven McQuinn heirs objected to the property sale,  
4 the description used in the property sale, nor the absence of a  
5 right of access across my Tax Lot 16 to the graveyard parcel,  
6 prior to or during the sale to Isaac Thomas. Further, no appeals  
7 were ever filed by these eleven heirs of the court's decision to  
8 sell the property to Mr. Thomas.

9 4. The land surrounding the graveyard parcel that Mr.  
10 Thomas acquired in 1876 ultimately was sold to my family. From  
11 1876 until today the cemetery was abandoned by the McQuinn  
12 family. No McQuinn family members or relatives were buried in  
13 the cemetery after 1876. No McQuinn heirs ever asked for or  
14 sought to acquire access to the graveyard parcel until just  
15 before this proceeding.

16 5. As of 1965, my brother and I acquired complete  
17 ownership of Tax Lot 16 which incorporates in its legal  
18 description the graveyard parcel. However, prior to my personal  
19 ownership of both Tax Lot 16 and the graveyard parcel, my family  
20 and proceeding owners (after 1876) have controlled and exercised  
21 rights of adverse possession starting from March 28, 1891. On  
22 March 28, 1891, George Anderson died and was buried in one of the  
23 two graves located in the graveyard parcel. Attached hereto and  
24 incorporated herein is Exhibit "F" which is a photograph of the  
25 grave marker that was located in the large grave site on the  
26 graveyard parcel. The other grave site in the graveyard parcel

1 is unmarked and has had no marker on it since at least 1948 (the  
2 time I started living at the property and started inspecting the  
3 graveyard parcel). George Anderson was not an heir or member of  
4 the "McQuinn" family, and was buried as part of the family  
5 members of the owners of Tax Lot 16 as of 1891. From that point  
6 thereafter, no "McQuinn" family members were permitted to visit  
7 or be buried in the graveyard parcel. The only permitted  
8 visitors and persons to be buried in the graveyard parcel from  
9 1891 on were family members of the owners of Tax Lot 16.

10 6. Between 1958 and 1960 the photograph identified as  
11 Exhibit "F" herein was taken at the graveyard parcel where the  
12 grave marker was located. Soon thereafter, the grave marker was  
13 removed for the purposes of preservation, as the marker was made  
14 of wood and was rapidly deteriorating due to the wet conditions  
15 in that location. An artist had also taken interest in the grave  
16 marker and my family allowed him to safeguard the marker while he  
17 was drawing its image and doing a "rubbing" of the recesses on  
18 its surface. This same grave marker will be made available for  
19 display to the County Commissioners. This marker was on the same  
20 graveyard site that the Petitioners eventually attempted to claim  
21 as the grave of one of the original McQuinn family members.  
22 However, they are clearly in error and it has long been  
23 established that George Anderson is the person buried in that  
24 grave site.

25 7. From 1891 and continuously through until today, both my  
26 predecessors in ownership and myself have exercised dominion over

1 the graveyard parcel and excluded all others from exercising any  
2 ownership rights to the land. Since 1891, my predecessors in  
3 ownership and myself have refused anyone other than our own  
4 family members from being buried in the graveyard parcel. We  
5 have precluded all other persons, excepting our own family  
6 members from having access to or rights of entry onto the  
7 graveyard parcel.

8 The graveyard parcel has been maintained in a forest  
9 condition. This has provided my family members and myself with  
10 fire wood for well over the last fifty years. We have also cut  
11 our Christmas trees each year from this graveyard parcel. We  
12 have also collected blackberries on an annual basis from the  
13 graveyard parcel. My family has annually conducted picnics on  
14 the site and we have buried our family pets within the graveyard  
15 parcel. From before 1948 through until recently, my father and  
16 my family members have hunted game in the graveyard parcel. One  
17 of the reasons the site was maintained in its forest condition  
18 was to allow it to continue as a game preserve within our  
19 property. This has been an important function to my family as it  
20 has provided both fruits and meat for our family table since well  
21 before 1948 until today.

22 My family has posted the property with "No Trespassing"  
23 signs over the last fifty years to preserve the uses we have been  
24 making of the graveyard parcel. We have precluded other hunters,  
25 berry pickers, picnickers and persons intending to bury deceased  
26 people or creatures on this property for well over fifty years.

1 Recently, the "No Trespassing" signs that I have posted on the  
2 property have been taken down by persons unknown immediately  
3 after the Petitioners became interested in using the graveyard  
4 for their personal family graveyard site. Exhibit "G" are  
5 pictures that I took of these signs prior to them being taken  
6 down or stolen. The signs were photographed approximately two  
7 years ago and included some signs that had been on the site prior  
8 to the Petitioners interest in the property. All of these signs  
9 were taken down and stolen without my permission.

10 8. Members of the Petitioner's association did not know of  
11 this graveyard parcel for approximately the last 100 years. No  
12 member of their family ever approach us or the site during that  
13 100 year period until around 1989. Heirs of the McQuinn family  
14 did not pass down the knowledge of the existence of the graveyard  
15 because it was apparently lost to them back in the late eighteen  
16 hundreds. Members of the Petitioner's Association only learned  
17 of the existence of the graveyard through a record of pioneer  
18 graveyards maintained by the State of Oregon.

19 Upon entering our property without permission and  
20 trespassing across Tax Lot 16 and trespassing upon Tax Lot 17,  
21 members of Petitioner's Association discovered that the two grave  
22 sites located in the graveyard parcel were unmarked. These grave  
23 sites were surrounded by wooden fences so they could notice that  
24 they were in fact grave sites. From the last fifty years until  
25 the present, these two grave sites have not been maintained and  
26 completely overgrown with the vegetation commonly found in the

1 heart of this small woods.

2 Since this trespass occurred, members of Petitioner's  
3 association attempted to place a marker on one of the unmarked  
4 graves. This grave site is actually the grave site for George  
5 Anderson. I was informed of this by Maxine Daly and her  
6 attorney. Upon inspection of the site during the year 1990, I  
7 could not find any trace of this marker. Apparently it was  
8 either hidden or removed by members of Petitioner's association  
9 or someone else trespassing on the property.

10 However, I have discovered that a cross that does not belong  
11 there has been placed on the smaller grave site in the graveyard  
12 parcel. This cross, which has no name or date on it, is  
13 identified in Exhibit "H" (which is a photograph attached  
14 hereto). This is not an original feature of this grave site and  
15 has been artificially created and been placed there recently.  
16 You will note from the photograph that the cross is held together  
17 by three galvanized nails. Galvanized nails did not even exist  
18 in the late eighteen hundreds. Also the cross does not show any  
19 sign of deterioration at the time the photograph was taken (moss,  
20 dry rot, degradation of the corners of the boards, etc.).  
21 Clearly from the face of this photograph, this cross must have  
22 been placed by someone, without my authorization, within the last  
23 one to three years.

24 9. As no "McQuinn" family member has even attempted to  
25 maintain this graveyard site or bury any of its family members  
26 over at least the last fifty years prior to the date of the



1 Petition for Establishing a Way of Necessity, I am requesting as  
2 part of my Answer and Memorandum in Opposition to the Petition  
3 for Establishing a Way of Necessity that ORS 97.450 be applied to  
4 qualify this site for a complete termination as a recognized  
5 cemetery. In addition, make this request, based upon the fact  
6 that the only known and provable family member buried in this  
7 location is that of George Anderson. Mr. Anderson died in 1891  
8 and is not a member of the "McQuinn" family. On behalf of the  
9 Anderson family we waive any rights to maintaining this site as a  
10 cemetery.

11 10. Since I have acquired ownership of the property in 1965  
12 from my mother (which legal description included Tax Lot 17 the  
13 graveyard parcel), I have paid the taxes for both parcels (Tax  
14 Lot 16 and 17) on a continuous basis. After Maxine Daly  
15 purportedly provided the Petitioner with a deed for her alleged  
16 interest in the graveyard parcel, the Petitioner attempted to pay  
17 and reimburse these taxes. I protested such action and between  
18 my attorney and Petitioners' attorney, it was agreed that I or my  
19 attorney would hold the refunded tax payments in trust and allow  
20 the Petitioner to maintain payments until this ownership matter  
21 and rights of access could be resolved. Attached hereto and  
22 incorporated herein is Exhibit "I" which identifies that we are  
23 so holding these funds in trust.

24 11. Since Petitioner and Maxine Daly have "discovered" my  
25 graveyard parcel, I have found cigarette butts and other trash  
26 left in and around the graveyard site. I have informed Maxine

1 Daly and her association (through attorney letters) that they are  
2 not to trespass upon my property including the graveyard parcel.  
3 Attached hereto as Exhibit "J" are letters from my attorney  
4 identifying that the Petitioners and their association members  
5 are not to trespass on my property.

6 In addition, it has become necessary to set up blockages or  
7 barriers around the small pathways that have been created by  
8 Petitioner's association members who have trespassed on my  
9 property. Attached hereto is Exhibit "K" identifying brush that  
10 has been placed around the graveyard parcel to prevent access to  
11 the graveyard sites. This form of blockage became necessary when  
12 someone tore down and stole my "No Trespassing" signs posted on  
13 the property.

14 12. The land has been continuously farmed since well before  
15 1891. Attached hereto as Exhibit "L" are photographs depicting  
16 my property in cultivation and surrounding the graveyard. My  
17 brother and I agree that the value of our property is \$17,250.00  
18 per acre. Attached hereto is Exhibit "M" identifying comparable  
19 sales of farm land on the same island and in close proximity to  
20 my property. These comparable sales indicate that the value of  
21 my land is approximately \$17,281.00 per acre. Also attached as  
22 the same Exhibit is a letter from a real estate evaluator who is  
23 familiar with land values on the island and my property in  
24 particular. This real estate appraiser evaluated the value of my  
25 property as \$\_\_\_\_\_ per acre.

26 13. In the event, that this Board should approve

1 Petitioner's request, I am entitled to just compensation for the  
2 fair market value of my property (as identified in the preceding  
3 paragraph and Exhibit "M", under my rights in the United States  
4 Constitution and the Oregon Constitution. The use of a portion  
5 of my property for an access will prohibit me from using any  
6 portion of that property for cultivation. It will also preclude  
7 adequate turning space for farm vehicles in the cultivation  
8 process. That is, you cannot cultivate right up to the edge of a  
9 road way or path way. Therefore, I will lose an additional 10  
10 feet in width from the side of this way of necessity for crop  
11 production. Ten feet will be needed to allow for the turning of  
12 farm vehicles on my property during the crop cultivation and  
13 harvesting process. The width of the way of necessity plus the  
14 ten foot turning area is what I would be deprived of in the use  
15 of my property. I should be so compensated for that loss. My  
16 evaluation of the value of the property and Exhibit "M" represent  
17 the true market value for the property.

18 14. Since November 22, 1988, I have been in contact with  
19 Petitioners or members of their association. We have discussed  
20 the possibility of allowing some form of access back to the  
21 graveyard parcel, if the Petitioner could provide us with proof  
22 that they have a legal right to possession of the cemetery.  
23 Since 1988, we have not received from Petitioner any  
24 identification of proof that they have a legal right to possess  
25 the graveyard site. See Exhibit "J". Instead, they merely  
26 "drafted" a deed from Maxine Daly (purportedly a legal heir to

1 the "McQuinn" estate) to the Petitioner. Petitioners have not  
2 provided us any proof nor could we find it the deed records that  
3 Maxine Daly has any legal right to ownership of the graveyard  
4 parcel. In essence, if Petitioner has a legal right to  
5 possession of the cemetery parcel, Petitioner had an opportunity  
6 to obtain a license or easement for access through the legal  
7 action of purchase and recording of such easement or license.  
8 Thus, the Petition is premature and must be denied pursuant to  
9 ORS 376.180(9).

10 15. In the event this Board approves Petitioners request, I  
11 request that the way of necessity be restricted to a five foot  
12 wide pedestrian pathway. For the past one hundred and sixteen  
13 years there has been no "McQuinn" family heir visiting this  
14 graveyard parcel. Only recently have the Petitioner's  
15 association members come to the site. It is quite clear that all  
16 access to the site has been by pedestrian method only. In fact,  
17 when the graveyard was in existence prior to 1876, there were no  
18 automobiles and the site was accessed by pedestrian traffic only.  
19 In those days, the farm fields surrounding the graveyard parcel  
20 were continuously cultivated and no road (gravel or other  
21 improvements) have ever been provided to the graveyard parcel.

22 In addition, there are only two verifiable graves at the  
23 graveyard parcel. If the graveyard is deemed a history site, no  
24 additional graves would be allowed and very little alteration of  
25 the site would be permitted under current state and local  
26 regulations. A larger permanent access to the graveyard parcel

1 would incorporate valuable land needed for cultivation and  
2 production of farm crops. Already in Oregon have lost too much  
3 class I and class II soils to development in the state. An  
4 unnecessary incorporation of land greater than a five foot wide  
5 pedestrian pathway would violate the Oregon Statewide Planning  
6 Goal 3 for preservation of agriculture lands. It would also  
7 violate ORS 376.155 and 376.180 by allowing for uses unnecessary  
8 to provide "access" and causing substantially greater damage and  
9 interference to the Anderson/Smith farm lands.

10 16. Petitioner has not complied with ORS 376.180(9) in that  
11 Petitioners could acquire an easement for access from the  
12 graveyard parcel to a public road through the legal action of  
13 seeking a declaratory judgment under ORS 28.010 - 160. If  
14 Petitioner actually had an ownership interest in the graveyard  
15 parcel, the Circuit Court could grant an easement across the  
16 Anderson-Smith lands under the common law theory of an "easement  
17 implied from necessity." See, VanNatta v. Nys & Erickson, 203  
18 Or. 204 (1955); Tucker v. Nuding, 92 Or. 319 (1919).

19 Petitioner could also include in the declaratory judgment  
20 action a claim to clear their title to the graveyard parcel  
21 (contested by Anderson-Smith) under ORS 105.605.

22 Petitioner has not sought to establish that they have a  
23 superior right of ownership to Anderson-Smith's 1965 right of  
24 adverse possession and deed, and have not sought a declaratory  
25 judgement to grant it an easement implied from necessity.

26 ////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 31<sup>st</sup> day of August, 1992.

*Sheryl Anderson*  
Sheryl Anderson

SUBSCRIBED AND SWORN to before me this 31<sup>st</sup> day of August, 1992.



NOTARY PUBLIC OF OREGON  
My Commission Expires: 2/25/95

*Jacalyn L. Fearing*

Page

AFFIDAVIT OF SHERYL ANDERSON  
(RH\ANDERSON\0827.1JJ)

JOHN W. SHONKWILER, P.C.  
ATTORNEY AT LAW  
13425 SW 72ND AVENUE  
TIGARD, OREGON 97223  
624-0917  
fax: 684-8971