

Oregon Boundary Law, Legal Descriptions and Interpretation

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2015 PLSO Conference

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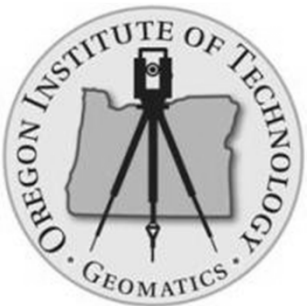
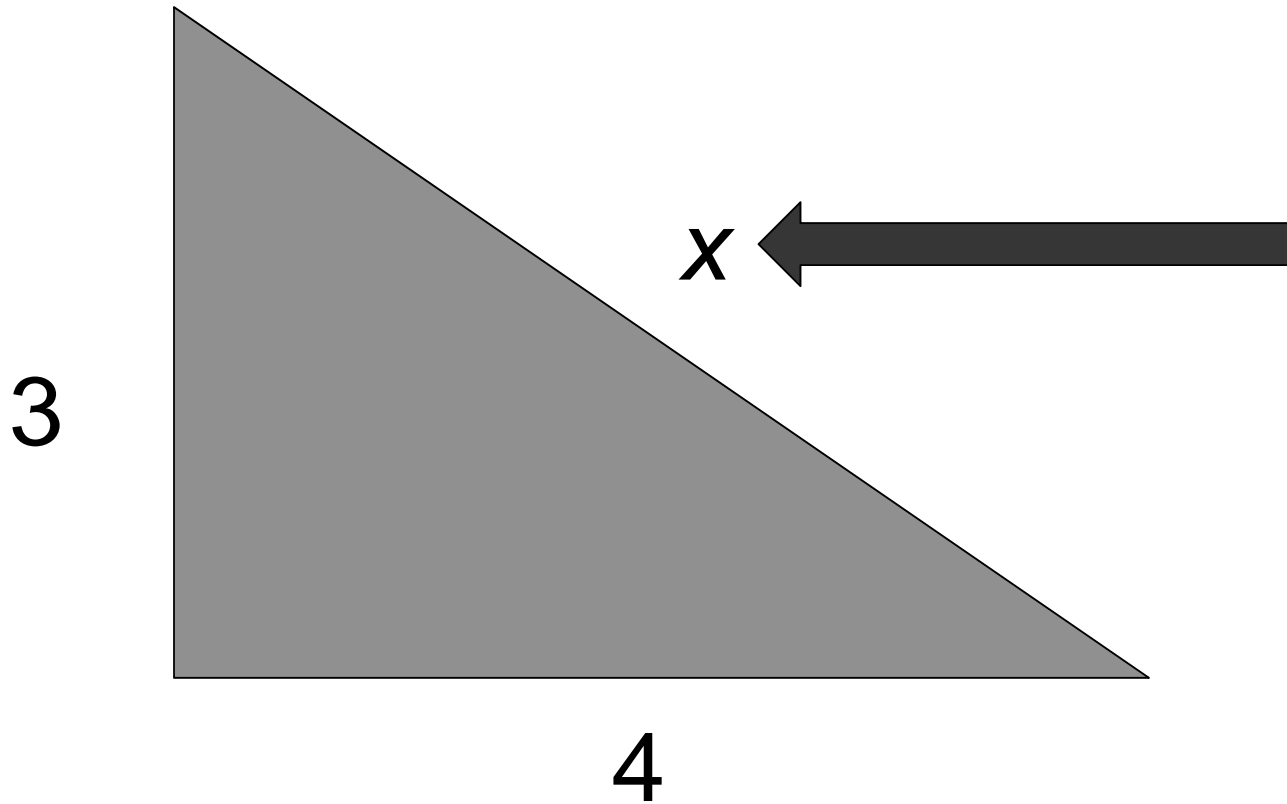
Salem, Oregon



Oregon TECH



Find "x"



Oregon Boundary Law, Legal Descriptions And Interpretation

- Locating Sequential Conveyances in Real Property
 - Key Definitions
 - Order of Importance of Conflicting Title Elements
 - Brown's Boundary Control & Legal Principles, Chapter 11
 - General Rules for Construing Legal Descriptions
 - Title Handbook by Ticor Title – Section 12.1
 - Oregon Statutory Law (ORS 93.310)
 - Oregon Case Law

Key Definitions

- Hierarchy of Laws
- Simultaneous Conveyances
- Sequential Conveyances

Key Definitions

Hierarchy of Laws

- Three Branches of Government
 - Executive
 - Legislative
 - Judicial
- Three types of laws
 - Administrative Codes
 - Statutory Laws
 - Cast Law

Key Definitions

- Simultaneous Conveyances
 - More than one parcel
 - Created at the same time
 - By the same owner
 - By the same document

(Robillard & Wilson, 2013)

Key Definitions

- Simultaneous Conveyances
 - Subdivisions
 - Partition Plats or Subdivision Plats
 - Decree of Distribution
 - USPLSS
 - Each parcel is in equal standing with the other parcels created in the instrument.

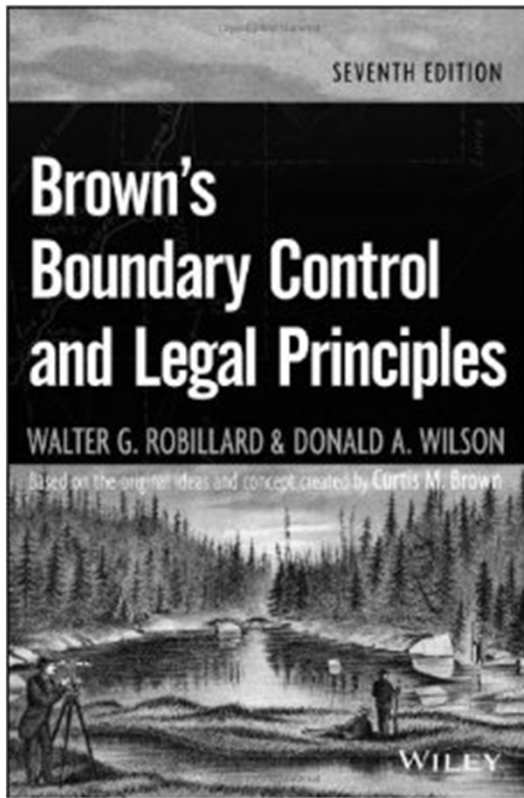
(Robillard & Wilson, 2013)

Key Definitions

- Sequential Conveyances
 - One parcel at a time
 - Junior/Senior Rights
- Informative and Controlling calls

(Robillard & Wilson, 2013)

Order of Importance of Conflicting Title Elements



Chapter 11

(Robillard & Wilson, 2013)

Order of Importance of Conflicting Title Elements

- A. Right of Possession (unwritten conveyance)
- B. Senior Rights
- C. Written Intent of the Parties

(Robillard & Wilson, 2013)

Senior Rights



(Robillard & Wilson, 2013)

Senior Rights



(Robillard & Wilson, 2013)

Senior Rights



Record = 100'

(Robillard & Wilson, 2013)

Senior Rights



Record = 100' Measured = 98'

(Robillard & Wilson, 2013)

Order of Importance of Conflicting Title Elements

C. Written Intent of the Parties

1. Call for a Survey
2. Call for Monuments
 - a. Natural
 - b. Artificial
3. Call for Adjoiners
4. Call for direction and distance
5. Call for direction or distance
6. Call for Area
7. Call for Coordinates (3rd Edition)

(Robillard & Wilson, 2013)

Order of Importance of Conflicting Title Elements

C. Written Intent of the Parties

Excepting senior rights of others and a valid unwritten right of possession, the intentions of the parties to a deed, as expressed by the writings, are paramount considerations in determining the order of importance of conflicting title elements.

(Robillard & Wilson, 2013)

1. Call for a Survey or actual survey on which the conveyance is based
 - a. The lines run were considered as the lines of the transaction
 - b. The lines can be identified
 - c. The lines run do not encroach onto a senior right
 - d. The lines run are not for the purpose of meandering a body of water
 - e. The lines run are called for in the deed

(Robillard & Wilson, 2013)

1. Call for a Survey or actual survey on which the conveyance is based
1. Deed refers to a recorded (filed) survey / Record of Survey
2. Deed refers to an unrecorded survey
3. Call for an survey without constructive notice?

2. Call for Monuments

- a. Natural
- b. Artificial
- c. Limitations to the Principle
 - a. Called for in the instrument
 - b. Identifiable
 - c. Undisturbed

(Robillard & Wilson, 2013)

3. Call for Adjoiners

Call for an adjoiner is not always a correct criterion for determining senior rights.

A title search back to the original formation of conveyance is necessary for correct solution.

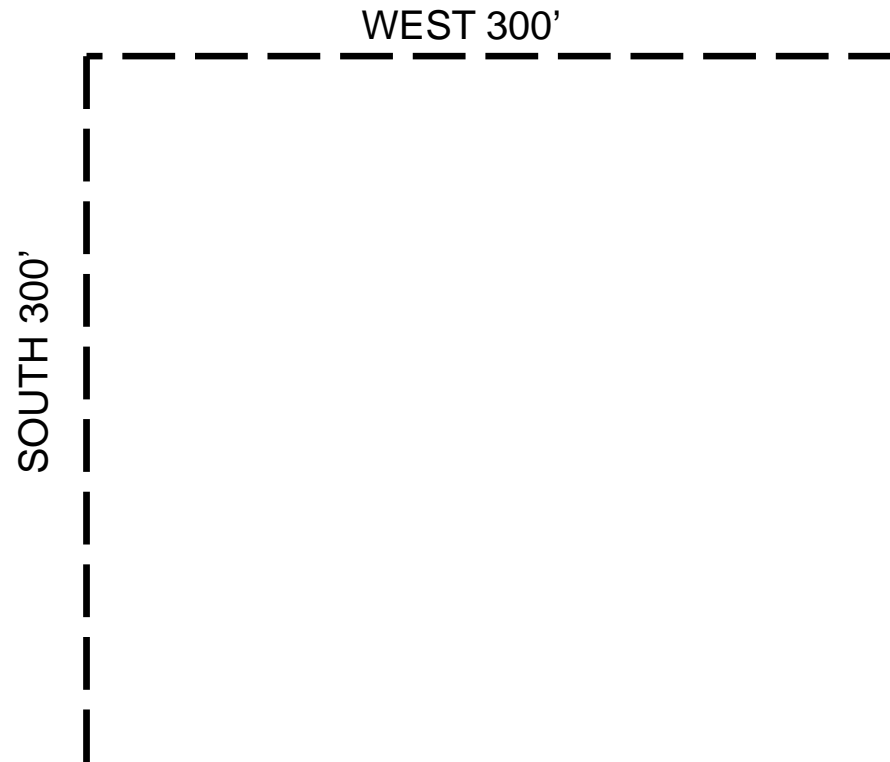
(Robillard & Wilson, 2013)

4. Call for direction and distance

Bearing and distance are presumed to be superior to area (surface), and only where bearing and distance more clearly show the intent do they control other elements.

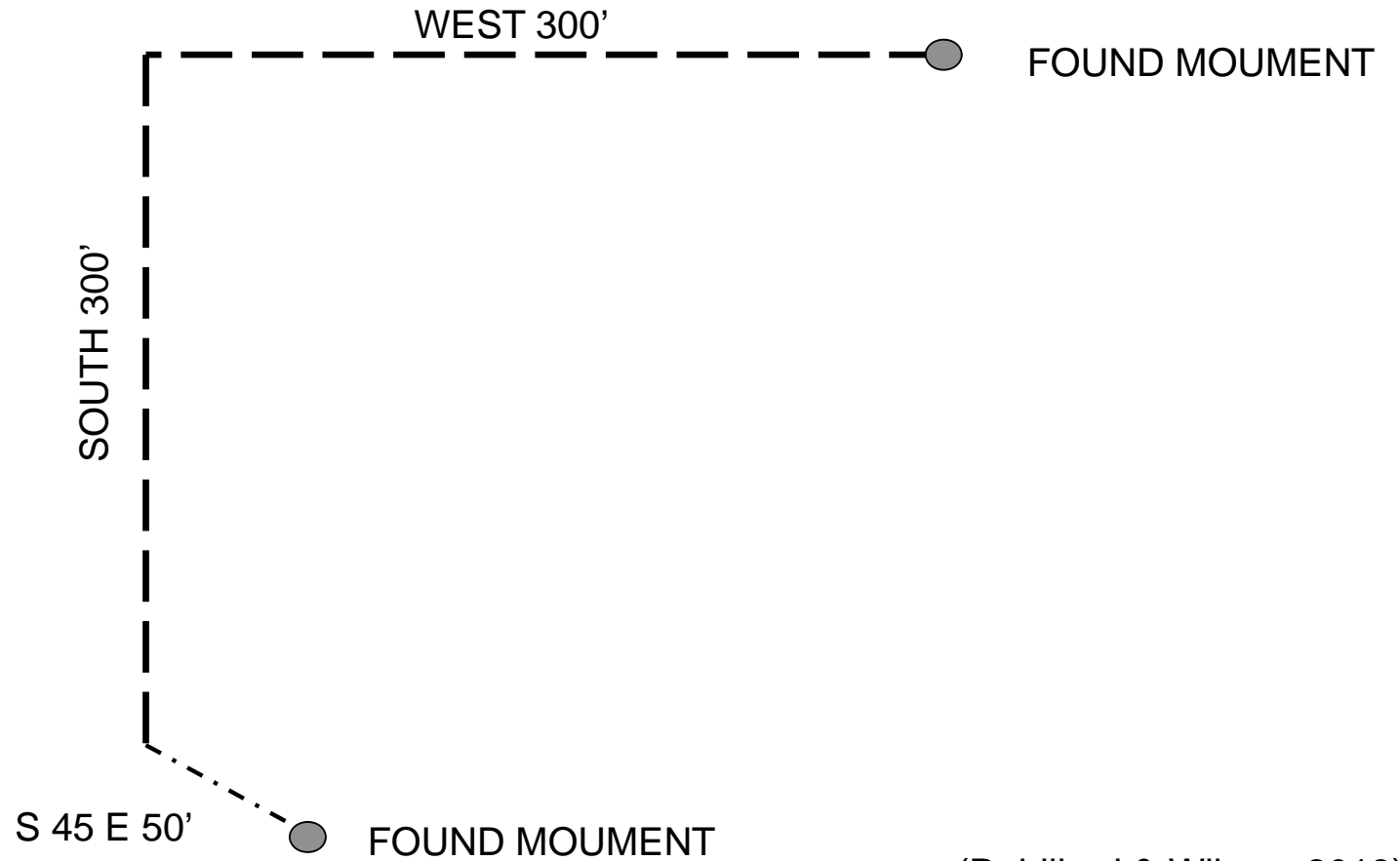
(Robillard & Wilson, 2013)

5. Call for direction or distance



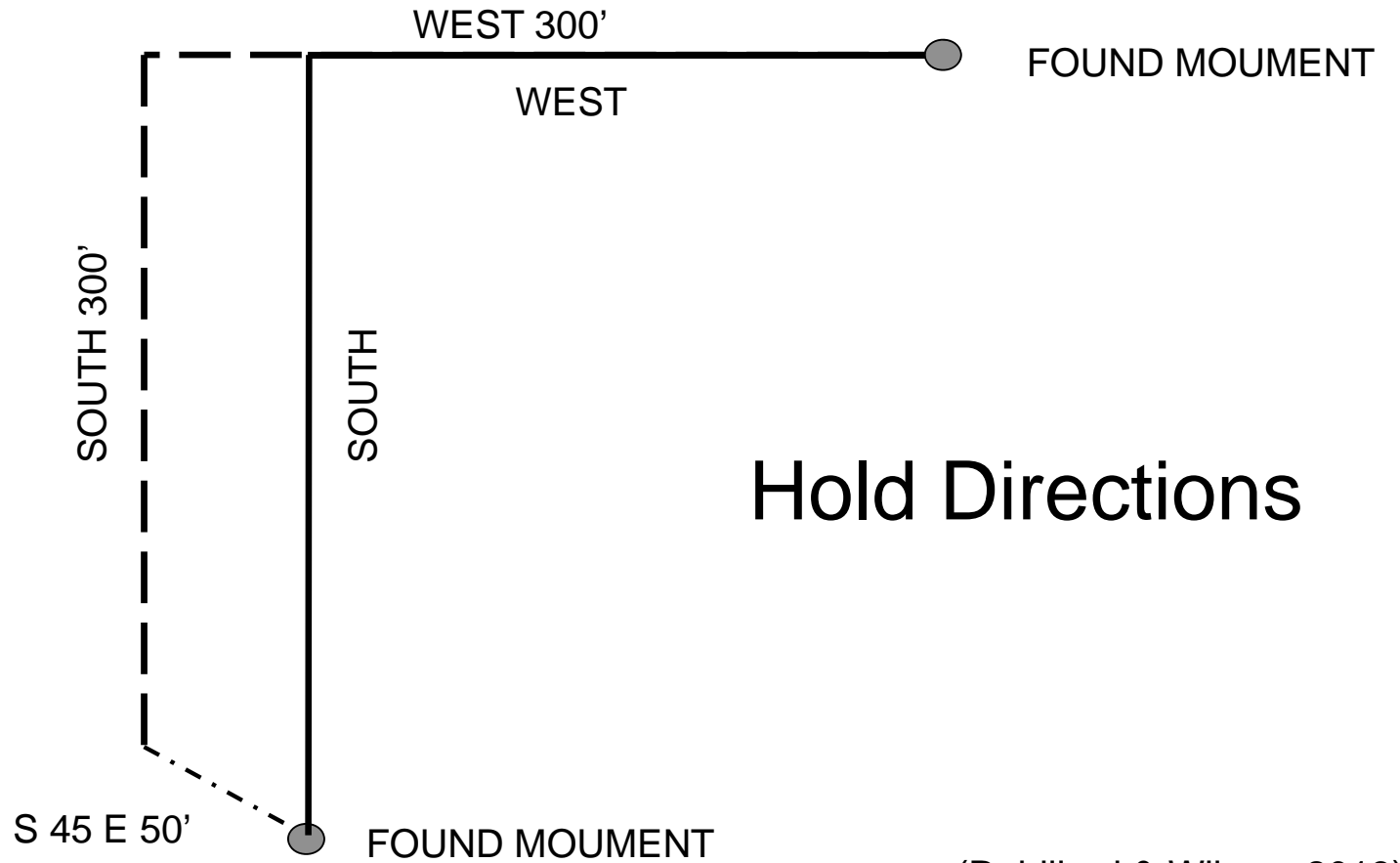
(Robillard & Wilson, 2013)

5. Call for direction or distance



(Robillard & Wilson, 2013)

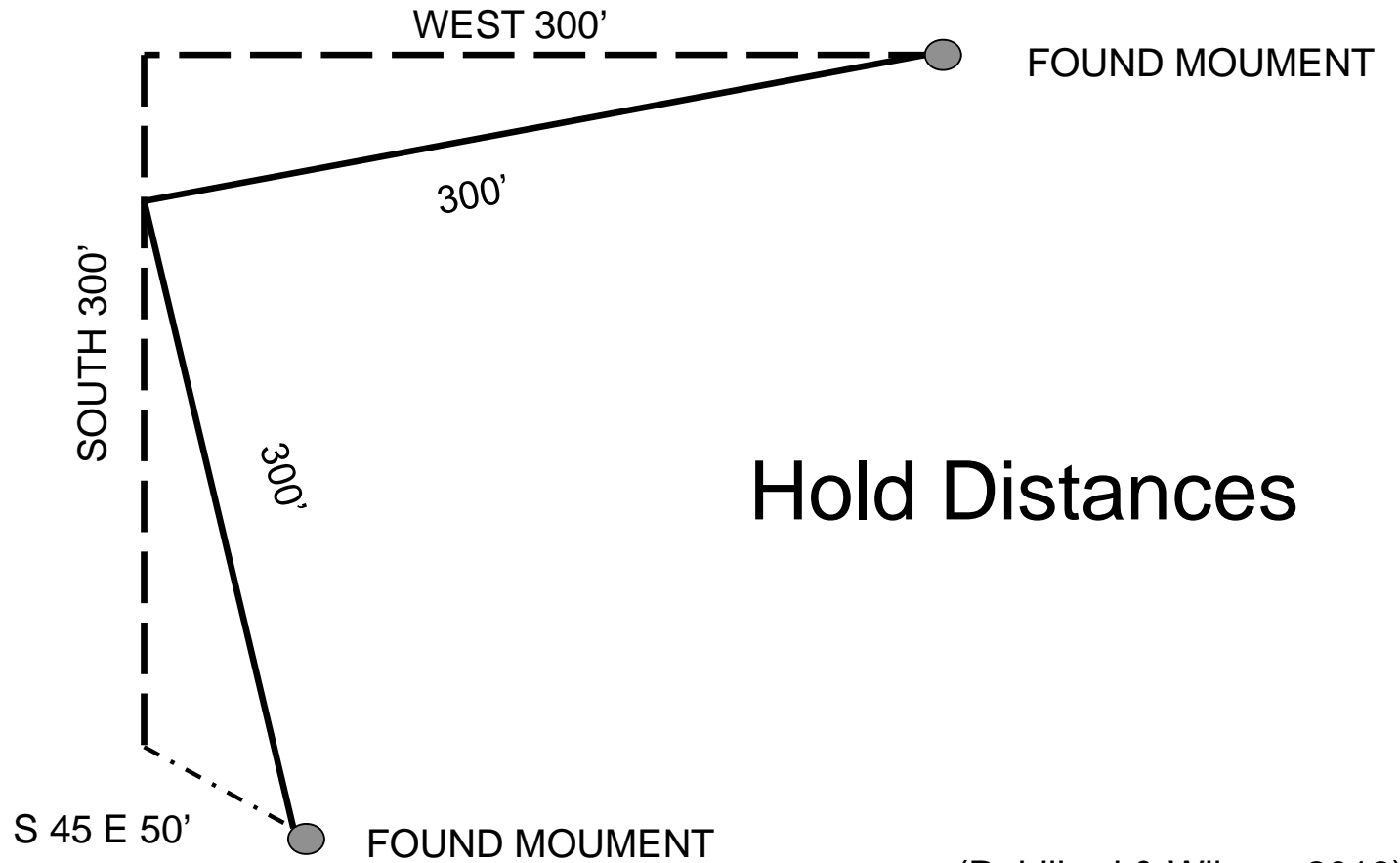
Option 1



Hold Directions

(Robillard & Wilson, 2013)

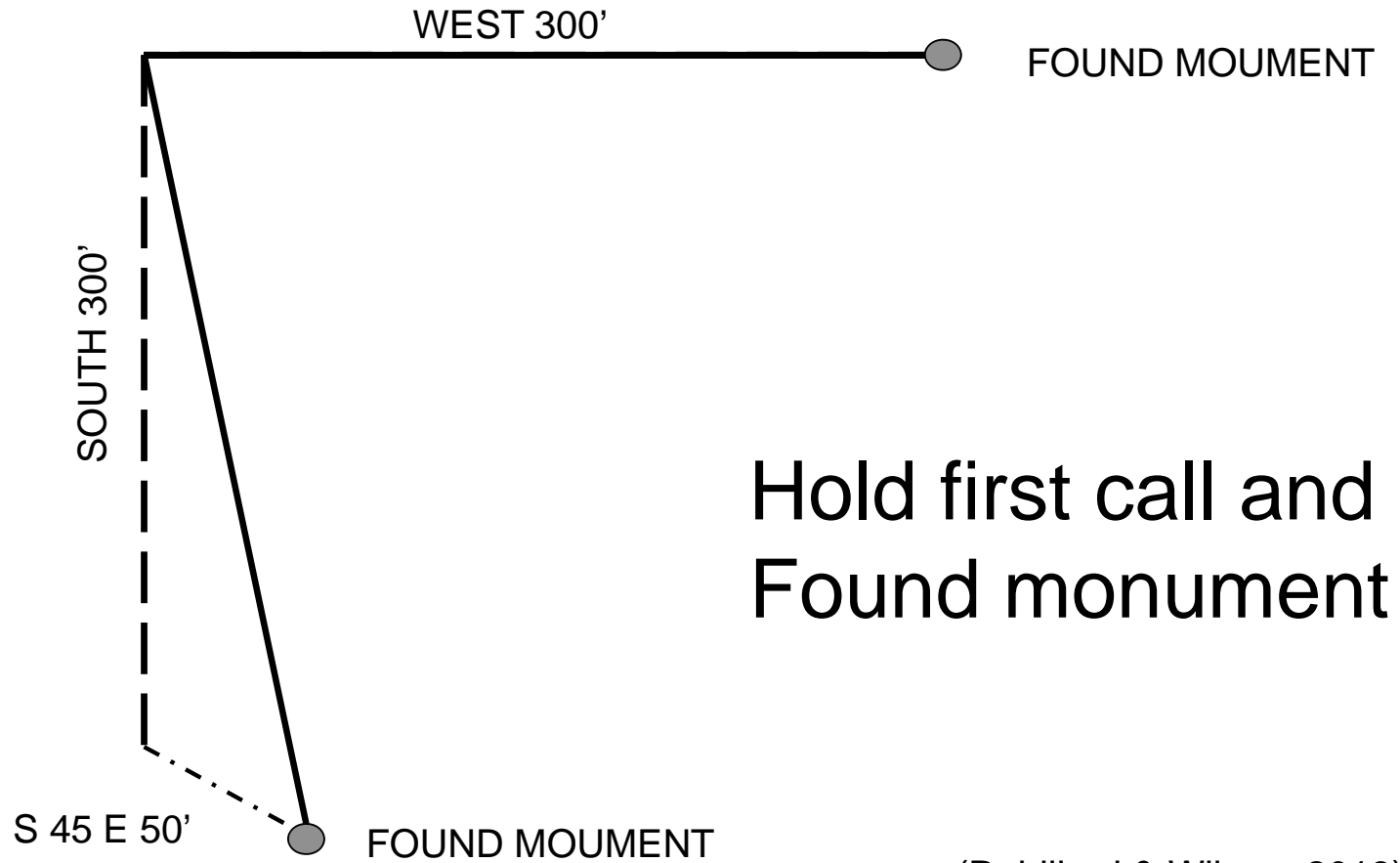
Option 2



Hold Distances

(Robillard & Wilson, 2013)

Option 3



Hold first call and Found monument

(Robillard & Wilson, 2013)

5. Call for direction or distance

1. Cardinal Directions

.....thence North 20 rods; thence West 20 rods...

2. General Directions/Distances

.....thence northerly about 20 chains.....

(Robillard & Wilson, 2013)

6. Area or Surface

Except where area expressly states the intentions of the parties to a deed, area is presumed as subordinate to other considerations

1. Exceptions

.....the South 5 acres of Lot 13.....

2. Area is a calculation based upon the bearings and distances.

(Robillard & Wilson, 2013)

7. Coordinates

1. Coordinates are computed from measurements of distances and angles
2. Quality of coordinates is a function of the least significant number of the measurements being used.
3. Coordinates can be the only element, and be controlling.

(Robillard & Wilson, 2013)

General Rules for Construing Descriptions

Section 12.01
Title Handbook



TICOR TITLE™

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- A. If the language is sufficient to identify the property, the description is a good one, and inconsistencies or even errors may be ignored.
- B. Indefinite particulars in a description do not invalidate definite particulars.
- C. Boundaries or monuments are paramount to lines or angles, if the latter are inconsistent with the former.

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- D. Lines are paramount to angles
 1. Distances over directions
 2. When the two are inconsistent

- E. A map is paramount to other particulars that are inconsistent, if it appears that the parties acted with reference to the map.

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- F. When a road or non-navigable stream of water is the boundary in a deed, in the absence of an expression of intent to the contrary, the title to the center line of the or thread of the stream is conveyed (unless title is held by a party other than the grantor).

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- G. When tide water is the boundary in a deed, the title to the ordinary high-water mark is conveyed.
- H. When a navigable lake or stream, where there is no tide, is the boundary, the title to the edge at low-water mark is conveyed.

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- I. Where there are conflicting descriptions of the same property, the more definite one should be given preference.
- J. A detailed metes & bounds description will control over a general one.

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- K. An inaccurate statement as to acreage in a description may be ignored, unless the language of the deed shows that only a specific quantity of land was intended to be conveyed.

(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- L. United States Government surveys control and the section lines, corners, and monuments established thereby are conclusive.
- M. A reference to another deed or map has the effect of incorporating in the deed, the instrument referred to.

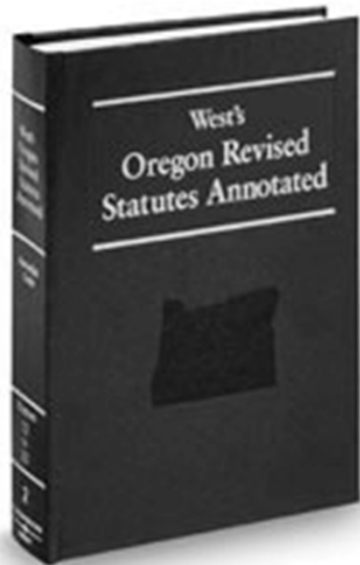
(Title Insurance and Trust Company, 1979)

General Rules for Construing Descriptions

- N. If, in a description, there is a conflict between a number (of a lot, block, tract, etc.) as spelled out and as referred to in figures, the spelled out work will prevail over the figures.

(Title Insurance and Trust Company, 1979)

Rules for construing description of real property O.R.S. 93.310



Oregon Revised Statute, 93.310 (2013).

Rules for construing description of real property O.R.S. 93.310

The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful, and there are no other sufficient circumstances to determine it

1. Where there are certain definite and ascertained particulars in the description, the addition of others, which are indefinite, unknown or false, does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application.

Rules for construing description of real property O.R.S. 93.310

2. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles or surfaces, the boundaries or monuments are paramount.
3. Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

Rules for construing description of real property O.R.S. 93.310

4. When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road, or the thread of the stream, are included in the conveyance, except where the road or bed of the stream is held under another title.

Rules for construing description of real property O.R.S. 93.310

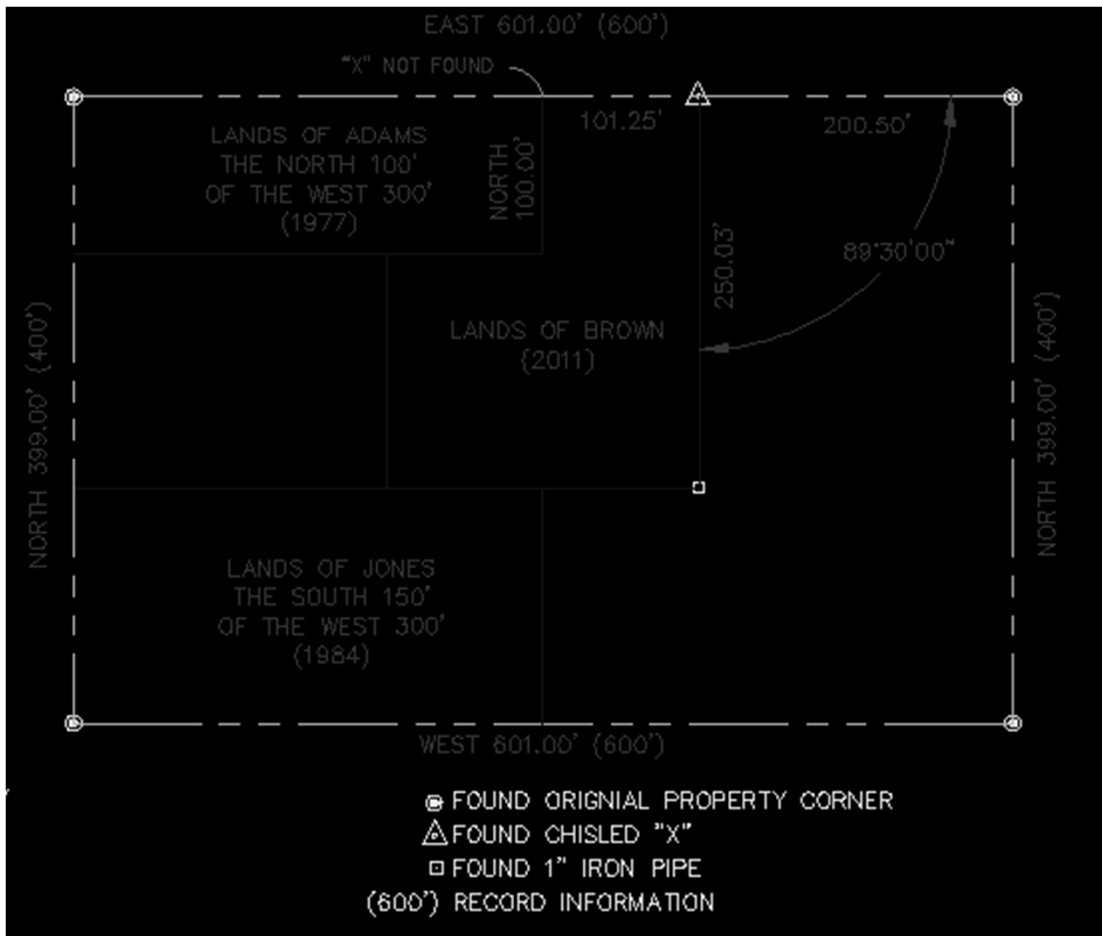
5. When tidewater is the boundary, the rights of the grantor to low watermark are included in the conveyance, and also the right of this state between high and low watermark.

Rules for construing description of real property O.R.S. 93.310

6. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appears that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Rules for construing description of real property O.R.S. 93.310

- Sample problem



Beginning at a chiseled "X" from which the Northeast corner of the Smith land bears East 200 feet; thence South at right angles, 250 feet to a one-inch iron pipe; thence West 100 feet to the Northeast corner of the lands of Jones; thence along the Northerly line of Jones, 101 feet; thence North 150 feet; thence East 100 feet; thence North 100 feet on the a chiseled "X" on the North line of the lands of Smith; thence East 100 feet to the point of beginning.

Black, H. C., Nolan, J. R., Connolly, M. J., & West Publishing Company. (Eds.). (1979). Black's law dictionary: Definitions of the terms and phrases of American and English jurisprudence, ancient and modern
Definitions of Surveying and Associated Terms (Rev. ed.). (2005). Gaithersburg, MD: American Congress on Surveying and Mapping.

Robillard, W., & Wilson, D. (2013). *Brown's Boundary Control and Legal Principles* (Seventh ed.). Hoboken, New Jersey: John Wiley & Sons.

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Title Insurance and Trust Company. (1979). *Title Handbook*. Los Angeles: Title Insurance and Trust Company.

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