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DOUGLAS COUNTY  
CIRCUIT COURT

9 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
10 FOR THE COUNTY OF DOUGLAS  
11 Probate Department

12 In the Matter of the )  
13 ) Case No. 12CV 2980 PB  
14 MILDRED KANIPE )  
15 TESTAMENTARY TRUST. ) GENERAL JUDGMENT  
16 )  
17 )  
18 )

19 The matter came before the Court on the petition of Wells Fargo Bank, N.A., trustee of  
20 the Mildred Kanipe Testamentary Trust, for a general judgment terminating the trust and vesting  
21 all of the trustee's right, title, and interest in the trust corpus in the sole beneficiary, Douglas  
22 County.

23 The Court finds as follows.

- 24 1. The petition is made pursuant to ORS 130.050, 130.200, ORS 130.205, ORS  
25 130.210, and ORS 130.215.
- 26 2. The Attorney General consents to the petition, as required by law.
- 27 3. Douglas County, the sole beneficiary, consents to the petition.
- 28 4. The trust originated from the estate of Mildred Kanipe. Miss Kanipe died July 13,  
29 1983. Her estate was probated in this Court as case W83-154. In the probate and in accord with  
30 her Will, the ranch property now known as Mildred Kanipe Memorial Park ("Kanipe Park") was  
31 given to Douglas County.

1 5. The Will includes a provision that reads, "No timber shall be cut or harvested  
2 except as may be necessary and cutting then only upon a sustained yield basis with all revenue  
3 from timber cutting used by the County in capital improvements upon this park." The Will  
4 further provides that if the County violates this or any other condition of the gift to any degree,  
5 the gift shall automatically terminate and title to Kanipe Park shall vest in the trustee.

6 6. Kanipe Park consists of a contiguous 1,089-acre parcel of mixed oak woodland,  
7 pasture, and conifer forest located about 5 miles northeast of Oakland, Oregon, and is described  
8 as the Southeast quarter of Section 12, Township 24 South, Range 5 West of the Willamette  
9 Meridian; Section 13, Township 24 South, Range 5 West of the Willamette Meridian; the  
10 Northwest quarter, and that part of the Southwest quarter lying West of County Road 50,  
11 Elkhead Road, of Section 18, Township 24 South, Range 4 West of the Willamette Meridian;  
12 and that part of the North Half of the North Half of Section 19 lying West of County Road 50,  
13 Elkhead Road, Township 24 South, Range 4 West of the Willamette Meridian, Douglas County,  
14 Oregon.

15 7. The residue of the estate is held in trust by petitioner. The trust holds  
16 approximately \$120,000 in funds and a springing executory interest in Kanipe Park, should the  
17 county violate the terms of the Will. The springing executory interest will expire in July 2013  
18 pursuant to ORS 105.770.

19 8. Miss Kanipe executed her Will in 1981, at a time when Douglas County was  
20 comparatively well-funded financially by federal timber receipts. In the decades following,  
21 timber receipts fell precipitously. A federal safety net program was enacted by the Congress to  
22 partially replace dwindling timber receipts, but its funding has also declined and is scheduled to  
23 terminate. The county no longer has the funding necessary to preserve, restore, improve,  
24 administer, maintain, or operate Kanipe Park at the level contemplated in the Will and at the  
25 level required to protect the historic buildings. The dairy barn has collapsed, and the remaining  
26 buildings urgently need renovation.

27 9. The Will indicates that Miss Kanipe's primary purpose was to create a public park  
28 in perpetuity, a "living museum" of her homestead which included the oldest dairy barn in the  
29 State of Oregon, a pioneer schoolhouse, and her homestead built around 1850.

30 10. The county can no longer financially maintain and operate the park under the  
31 current arrangement due to the drastic reduction in federal funds that comprised a major portion  
32 of the county budget. If the trustee were to get the park back because the county no longer could  
33 operate the park or because the county violated the terms of the Will, the trustee would probably  
34 sell the property for development. This alternative would be clearly undesirable under the Will.  
35 These circumstances were not anticipated by the testatrix.

36 11. The conditions of the gift to the county plausibly prohibit logging for any purpose  
37 except as necessary, and restrict all logging proceeds to capital improvements. A violation "to  
38 any degree" of this condition results in reversion of the ranch to the trust. This restricts the  
39 county from obtaining funds from sustained-yield logging to preserve, restore, improve,

1 administer, maintain, or operate the park. This is an unreasonable restriction on the use of the  
2 trust property and it is a restraint on alienation of the property interest in the timber.

3 12. It is likely that the county will conduct logging in Kanipe Park. All logging will  
4 be conducted in accordance with the principles of sustained yield management articulated in  
5 Miss Kanipe's Will and in compliance with the Oregon Forest Practices Act. Logging will be  
6 conducted only as needed for the preservation, restoration, improvement, administration,  
7 maintenance, and operation of Kanipe Park. Logging plans will be designed on the  
8 characteristics of individual timber stands and the principles of ecosystem restoration, fire  
9 protection, aesthetics, wildlife and riparian values, and non-native plant control.

10 13. The trust currently generates about \$4,000 in income per year. Maintenance for  
11 the park currently is estimated at \$22,000 per year. The cost of the minimum restoration needed  
12 to preserve the historic buildings on site is estimated at \$43,000. There is no timber income and  
13 interest income is insufficient to manage the park at the level that prudent historic preservation  
14 requires.

15 14. The current trust arrangement results in waste because the historic buildings are  
16 sinking into irreparable degradation, owing to the lack of funds. The lack of a funding base will  
17 eventually result in converting the park to private uses. This is contrary to the purposes of the  
18 trust. It is wasteful to the trustee's executory interest in the historic buildings to allow their  
19 irreparable degradation.

20 15. The value of the trust property is insufficient to justify the cost of administration,  
21 particularly in view of the value of the ranch property which the trust funds are supposed to be  
22 sufficient to maintain.

23 16. The trust should be terminated. The trust property should be distributed to  
24 Douglas County, to be used solely for the preservation, restoration, improvement, administration,  
25 maintenance, and operation of Kanipe Park. Douglas County is the sole charitable beneficiary of  
26 the trust. Terminating the trust and distributing the trust property to the county is consistent with  
27 the testatrix's charitable purposes.

28 17. The trustee concluded that the value of the trust property is insufficient to justify  
29 the cost of administration. The trustee requests court approval of the exercise of the trustee's  
30 authority to terminate the trust pursuant to ORS 130.215(1).

31 18. In terminating the trust, the trustee would use trust funds to pay its termination fee  
32 of \$1,000, preparation of final tax returns, any taxes due, and closing attorney fees and costs.

33 Now therefore, it is ORDERED and ADJUDGED:

34 1. The trust established under the Will and estate of Mildred Kanipe in favor of  
35 Douglas County for Kanipe Park is declared terminated. The trustee's exercise of its authority to  
36 terminate the trust is approved.

1           2. All right, title, and interest in the trust property is declared vested in Douglas  
2 County. The springing executory interest in Kanipe Park which would come into effect if any  
3 timber were "cut or harvested except as necessary and cutting then only upon a sustained yield  
4 basis with all revenue from timber cutting used by the County in capital improvements upon this  
5 park" is terminated as a result of this vesting.

6           3. The use of the trust property and any timber harvest proceeds from logging in  
7 Kanipe Park shall be limited to the preservation, restoration, capital improvements,  
8 administration, maintenance, and operation of Kanipe Park.

9           4. Revenue from logging in Kanipe Park shall be used only for the preservation,  
10 restoration, improvement, administration, maintenance, and operation of Kanipe Park.

11           5. All logging in Kanipe Park shall be conducted in compliance with the Oregon  
12 Forest Practices Act and in accordance with the principles of sustained yield management, taking  
13 into account individual stand characteristics, ecosystem restoration, fire protection, aesthetics,  
14 wildlife and riparian values, and non-native plant control.

15           6. The trustee is authorized to deed all its right, title, and interest in Kanipe Park to  
16 Douglas County.

17           7. The trustee is authorized to use trust funds to pay its termination fee of \$1,000,  
18 preparation of final tax returns, any taxes due, and closing attorney fees and costs.

19           Date: August 2, 2012

**George W. Ambrosini**

JUDGE

**George W. Ambrosini**

22 Submitted by:

23 Stephen Mountainspring, OSB #903468  
24 Attorney for Petitioner