

From: Dana Gould <councilorgould@cityofgearhart.com>
Sent: Tuesday, November 26, 2024 10:36 AM
To: Deanna Mancill <dmancill@msn.com>
Subject: Re: Turner weeping willow tree

Got it. I passed it on to the City to include in the packet I asked them to investigate for you. Hope you all have a great Thanksgiving!
Sent from my iPhone

On Nov 22, 2024, at 11:38 AM, Deanna Mancill <dmancill@msn.com> wrote:

Dana,

I have been gradually remembering things about the Pacific Paint store and how the storage building in the railroad right-of-way happened. It was approved by the Gearhart Planning Commission between 1996-1997. Can't access the old minutes. I do remember that Tom Wagner and I provided information to the city about Hullender excavating the railroad bed. It violated the Gearhart excavation/fill ordinance by removing more than 50 cubic yards. No problem. McNally issued an after-the-fact permit!

Mike Sopko, tax lot 200, still owned the Turner property in 1993. Sopko signed the Consent to Annexation papers to Gearhart. Turners got title in 1994? They got handed a failed septic system.

The Great Flood of 1996 created huge problem for Hullender, Turner and the Mancill. Hullender raised his property around three feet with additional outside fill, with all the runoff sloped southward. Turner rented a bobcat and removed a lot of fill from the railroad right-of-way, but only managed to raise the elevation 2 inches! Didn't think that through very good. We started building a berm from grass sod dug from our garden work.

Consequently, when the Turners needed a new septic system, they used the disturbed railroad right-of-way, but had to bring in special soil from Mohler Gravel, ending up costing \$12,000! (2001)

When Hullender replaced his septic system in 2016, he was required by the County Health Department (under Director McNickle) to provide a legal description of the area used for the drainfield. (railroad right-of-way)

As I study the Turner issue, I'm seeing a level of incompetence at the health department. Legally, from a land-use perspective, this whole thing requires a review.

Deanna Mancill

From: Dana Gould <councilorgould@cityofgearhart.com>
Sent: Monday, November 18, 2024 2:24 PM
To: Deanna Mancill <dmancill@msn.com>
Subject: Re: Turner weeping willow tree

Thanks, Deanna. I'll pass the info on to the folks looking into this for you at the city.
Sent from my iPhone

On Nov 15, 2024, at 11:52 AM, Deanna Mancill <dmancill@msn.com> wrote:

Hi Dana,

I filed the complaint with the County Health Department this morning. Let's see if they are even concerned with this matter.

You asked yesterday about whether the railroad was private or federal land grant. A "Homestead land grant for railroad application" refers to a historical process where a railroad company would apply to the federal government to receive large tracts of public land, known as a "land grant" to incentivize the construction of railroad lines through sparsely populated areas, often alongside the opportunity for individuals to claim smaller plots of land within those grants through the Homestead Act, allowing them to settle near the new railway lines.

I believe that happened in Clatsop County, and especially with the Clara Stanley tract in my area. When the railroad was built, none of the adjacent property owners had any title to that land. The railroad company paid taxes for their tracks, etc. When Burlington Northern abandoned the railroad, taxes stopped being paid and Clatsop County was going to foreclose.

Clatsop County took over the DEQ on-site septic program around 2015 or so. If the Turners had combined their tax lots, it would have been in the 2015-2021 timeframe.

When CKI surveyed for Turners in 2009, I was surprised at the drawing not showing the railroad right-of-way. A research starts at the tax assessor's office for the history of that particular piece of land. But it should also include going through the Circuit Court records, something that Scott Cooter failed to do. Pretty insufficient survey!

Deanna Mancill

RE: Mancill complaint about Turner septic issues

From Lucas Marshall <lmarshall@co.clatsop.or.us>
Date Thu 10/20/2022 3:34 PM
To 'Deanna Mancill' <dmancill@msn.com>
Cc Annette Brodigan <ABrodigan@co.clatsop.or.us>

📎 1 attachments (183 KB)

Clatsop County Operation and Maintenance Requirements for Pressurized Systems.pdf;

Deanna,

Thank you for reaching out with concerns regarding potential septic issues on a neighboring property. The neighboring property's septic system was installed in 2001, at a time when O&M contracts were not required by DEQ in the State of Oregon. Since 2014, operation & maintenance contracts have been required by DEQ and Clatsop County for all pressurized systems permitted. While tree roots and blackberries can cause potential issues for septic systems, there is not a State of Oregon DEQ rule in place that addresses these specifically. If you have concerns about tree roots crossing property lines, installing a root barrier may help to protect your property. In the event of a system failure, the property owners will be required to replace their system and a maintenance contract will be required moving forward. Please let me know if you have any questions or additional information.

Thanks

*Lucas Marshall, REHST
Environmental Health Supervisor
Environmental Health/Onsite Septic Program
Clatsop County Dept. of Public Health
820 Exchange St., Suite 100
Astoria, OR 97103
Phone: (503)-338-3687
Email: lmarshall@co.clatsop.or.us*

*Clatsop County Environmental Health link:
<https://www.co.clatsop.or.us/publichealth/page/environmental-health>*

*Onsite Septic Program link:
<https://www.co.clatsop.or.us/publichealth/page/onsite-septic-system-program>*

From: Deanna Mancill <dmancill@msn.com>
Sent: Wednesday, October 19, 2022 10:14 AM
To: Environmental Health <EnvHealth@co.clatsop.or.us>
Subject: Mancill complaint about Turner septic issues

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I haven't heard back about the correspondence I sent in regards to the Turner septic system. My biggest concern is the weeping willow tree roots creeping towards my sewer pipe leading to my drainfield. I have contacted my insurance agent for coverage in case the line breaks. I also think if there is no action from the county, I will have to manually dig out the roots on my property to protect my sewer line.

My husband and I are both senior citizens and immune system compromised. Last January, our basement flooded and the Turners failed septic system contributed contaminated water into the mix. My family's public health should be considered.

DEQ do's and don't include not planting trees around your septic system, which includes the septic tank and drainfield. The weeping willow has the most invasive root system of all the trees. To get rid of it, the tree gets cut down and then the root ball and roots are dug out. The Turner sewer pipe is within 3-5 feet of the tree trunk. Just because Clatsop County public health officials took over the program, doesn't mean DEQ rules don't apply.

Jeffrey Lebo, Complete Septic, told Rose Turner that the tree and blackberries were causing unseen damage to the septic system on June, 2021. The tree has grown several feet since that time. And the recommended setback is 50 feet for trees from the system, otherwise your system is damaged.

This is an urgent situation that needs to be acted on. Thank you.

Deanna Mancill
2945 Hwy 101 North
Seaside, Oregon 97138

Telephone: (503)738-3021

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Re: Robert Turner septic system and weeping willow tree complaint

From Deanna Mancill <dmancill@msn.com>

Date Tue 11/15/2022 3:56 PM

To Lucas Marshall <lmarshall@co.clatsop.or.us>; chadsweet@cityofgearhart.com
<chadsweet@cityofgearhart.com>

You had called my attention to the fact the Turners had combined their two tax lots #200 and #1604 into one tax lot, therefore voiding the easement agreement with the DEQ. Did the DEQ sign off on this?

Chapter 340 still applies to onsite septic systems. The Turner DEQ permit specifies that all setback requirements apply, regardless of whether the easement is voided. There are mandatory Oregon DEQ setback requirements including a ten-foot utility setback for sewer lines, etc. The weeping willow tree is still detrimental to the Turner and Mancill septic systems.

I am trying to protect my new septic system from unnecessary harm and not impact the groundwater resources in south Gearhart. I did not believe that the Clatsop County Public Health Department would want anyone's system to fail.

Sincerely,

Deanna Mancill
2945 Hwy 101 North
Gearhart, Oregon 97138

Telephone: (503)738-3021

From: Lucas Marshall <lmarshall@co.clatsop.or.us>

Sent: Tuesday, November 15, 2022 2:17 PM

To: 'Deanna Mancill' <dmancill@msn.com>

Cc: Environmental Health <EnvHealth@co.clatsop.or.us>; 'chadsweet@cityofgearhart.com'
<chadsweet@cityofgearhart.com>

Subject: RE: Robert Turner septic system and weeping willow tree complaint

Deanna,

Easements are required whenever utilities or septic systems cross property lines. In 2001, the Turner's combined lots # 200 and 1604 into one lot (200) which effectively voided the easement agreement as no property lines were crossed once combined. Your visual description indicates that the neighboring septic system is impacted by a tree and blackberries but is not indicative of system failure at this time. It is in your neighbors best interest to properly maintain their septic system; potentially avoiding a costly system replacement in the future. As mentioned, once their system fails they will be required to replace it. Please let me know if you have any questions.

Thanks

Lucas Marshall, REHST
Environmental Health Supervisor
Environmental Health/Onsite Septic Program
Clatsop County Dept. of Public Health
820 Exchange St., Suite 100
Astoria, OR 97103
Phone: (503)-338-3687
Email: lmmarshall@co.clatsop.or.us

Clatsop County Environmental Health link:
<https://www.co.clatsop.or.us/publichealth/page/environmental-health>

Onsite Septic Program link:
<https://www.co.clatsop.or.us/publichealth/page/onsite-septic-system-program>

From: Deanna Mancill <dmancill@msn.com>
Sent: Tuesday, November 15, 2022 1:37 PM
To: Environmental Health <EnvHealth@co.clatsop.or.us>; Lucas Marshall <lmmarshall@co.clatsop.or.us>; chadsweet@cityofgearhart.com
Subject: Re: Robert Turner septic system and weeping willow tree complaint

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My letter written two weeks ago about the Turner failing septic system has not been addressed. The issue I had focused on was the Easement, Covenant and Servitude agreement the Turners had executed with the DEQ in 2001. I had a similar agreement with the DEQ dated 1999 when I had replaced my septic system.

The Department of Environmental Quality, Chapter 340, covers the specifics of this agreement. This is a utility easement and covenant against conflicting uses. Exception 11, (a) accommodates the parts of the system, including a 10-foot setback surrounding the areas for future repair or replacement, that lie beyond the property line of the facility served and must allow entry by the grantee, successor, or assigns to install, maintain and repair the system.

(A and B) allowing the state's officers, agents, employees and representatives to enter and inspect, including by excavation that portion of the system, including setbacks on the servient lot or parcel and agreeing not to put that portion of lot or parcel to a conflicting use. (C) the utility easement reserves the property against conflicting use.

Initial and replacement area must not be subject to activity that is likely, in the opinion of the agent, to adversely affect the soil or the functioning of the system. This may include but is not limited to vehicular traffic, covering the area with asphalt or concrete, filling, cutting or other soil modification.

Operation and maintenance, owners must operate and maintain their systems in compliance with all permit conditions and applicable requirements and must not create a public health hazard or pollute public waters.

My real concern at this time is the weeping willow tree that is twenty feet away from my sewer line which was placed 10 feet away from my property line. The tree's root system will extend 90 feet from the trunk of the tree. The Turners in 2010 planted the tree within a few feet of their sewer line, which is a violation of their DEQ agreement. The septic system is not functioning properly. The laterals on the sand filter have not been flushed in twenty-one years, and the septic tank not pumped often enough.

I have had to update my homeowners insurance to cover my sewer line in the event it gets damaged. The sewer line replacement would be considered a major repair, costing me thousands of dollars.

Please find the attached Chapter 340 document link explaining about the on-site wastewater treatment systems for your reference. In all the years I've surveyed property, I have not seen trees planted on the top of a sewer line.

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=238217>

Oregon Secretary of State Administrative Rules

Oregon State Archives • 800 Summer Street NE • Salem, OR 97310 Phone: 503-373-0701 • Fax: 503-373-0953 • Adminrules.Archives@sos.oregon.gov

secure.sos.state.or.us

Sincerely,

Deanna Mancill
2945 Hwy 101 North
Gearhart, Oregon 97138

Telephone: (503)738-3021

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4-5 years combined tax lots 2. Did she invalidate easements Septic drain RR right of way

Same Owner Easement Release Instructions



The Same Owner Easement form used by all field offices to site a system or a portion thereof onto adjacent property under the same ownership may establish an agreement and covenant between the Grantor and the State of Oregon through the Department of Environmental Quality.

Such an easement can not be released except through an action by the Department. The Regional Division Administrator must sign the easement release form. Before the Regional Division Administrator will sign the form, all documents related to releasing the easement must be in order, and must be passed through a short chain of review within the Department.

What documents must be assembled?

1. One copy of the original (and current) easement;
2. Written statement from the Legal Entity (e.g., City, County or Sanitary District) assuring the sewer connection has been made. If other than a sewer connection the property owner must provide a written statement describing why the easement is no longer needed;
3. The completed original easement release form.

Where are these documents to be sent?

The property owner is to send the documents to the Agent in the appropriate County within the region. The documents will be reviewed, and verification that the easement should be vacated will be made. The Agent will forward the documents with a written statement that the easement should be vacated to the appropriate DEQ regional lead staff listed below. Once the DEQ regional lead staff person is satisfied that all is in order, they will forward all documents and a summary report to their manager or Regional Division Administrator for approval. Once the Regional Division Administrator signs the easement release form, all documents will be returned to the DEQ regional lead staff person. The DEQ regional lead staff person will return the original easement release form to the Agent and make copies of these documents for the Department file record. The Agent will return the original easement release form to the property owner and make a copy for their file record.

DEQ Onsite Program Regional Lead Staff Contact:

Jessica Joye phone: 503-378-5033 email: joye.jessica@deq.state.or.us

14 year old fence.

When she combined did she eliminate RR Right of way Search that transportation plan maintains RR roads and fire lanes Deanna says she cant pay septic.

STATE OF OREGON

RELEASE OF EASEMENTS

For adequate consideration, THE STATE OF OREGON, through the OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, hereby releases to _____, any and all claims and rights that said STATE or DEPARTMENT has or may have in and through the following recorded easement:

1. An easement, including the terms and provisions thereof,

to use, to possess, or to enforce promises or covenants concerning the use or possession of the following real property:

DATED this _____ day of _____, 20__.

STATE OF OREGON By: _____

Western Region Administrator
Oregon Department of Environmental Quality

The foregoing instrument was acknowledged before me this _____ day of _____, 20 __, by _____, who is the _____ of _____ on behalf of the State of Oregon.

Notary Public for Oregon
My commission expires: _____

EASEMENT, COVENANT AND SERVITUDE

WHEREAS Robert Rose Turner ("GRANTOR") is the owner of the

DEPT. OF ENVIRONMENTAL QUALITY
RECEIVED

two lots (or parcels) of real property located in Clatsop County, Oregon;

APR 24 2001

Lot I: 610-10CA-200 AND 1604

NORTH COAST BRANCH OFFICE
WARRENTON

Lot II:

610-10CA-200

WHEREAS GRANTOR has applied to the State of Oregon through its Department of Environmental Quality ("State" or "GRANTEE") for a permit to construct an individual on-site sewage disposal system ("permit") on Lot I intended to serve Lot II; and

WHEREAS Oregon Administrative Rules 340-71-130(11)(b) requires GRANTOR to execute an easement and covenant in favor of the State as a condition precedent to issuance of a permit authorizing the construction of a system on one lot intended to serve another lot;

EASEMENT

NOW THEREFORE, in consideration of the issuance of the permit to GRANTOR by the State, GRANTOR hereby conveys to the State, its successors and assigns, a perpetual non-exclusive easement in, upon, and running with Lots I and II allowing the state's officers, agents, employees and representatives to enter and inspect, including by excavation, the on-site sewage disposal system on Lots I and II. This easement shall be terminated at such time as use of the individual on-site sewage system has ceased because the structures on Lot II are fully served by an adequate public sanitary sewer system or an alternative on-site sewage system located elsewhere. Upon request and a determination that adequate alternative service is available and in use, the State shall execute a recordable document terminating the easement.

COVENANTS

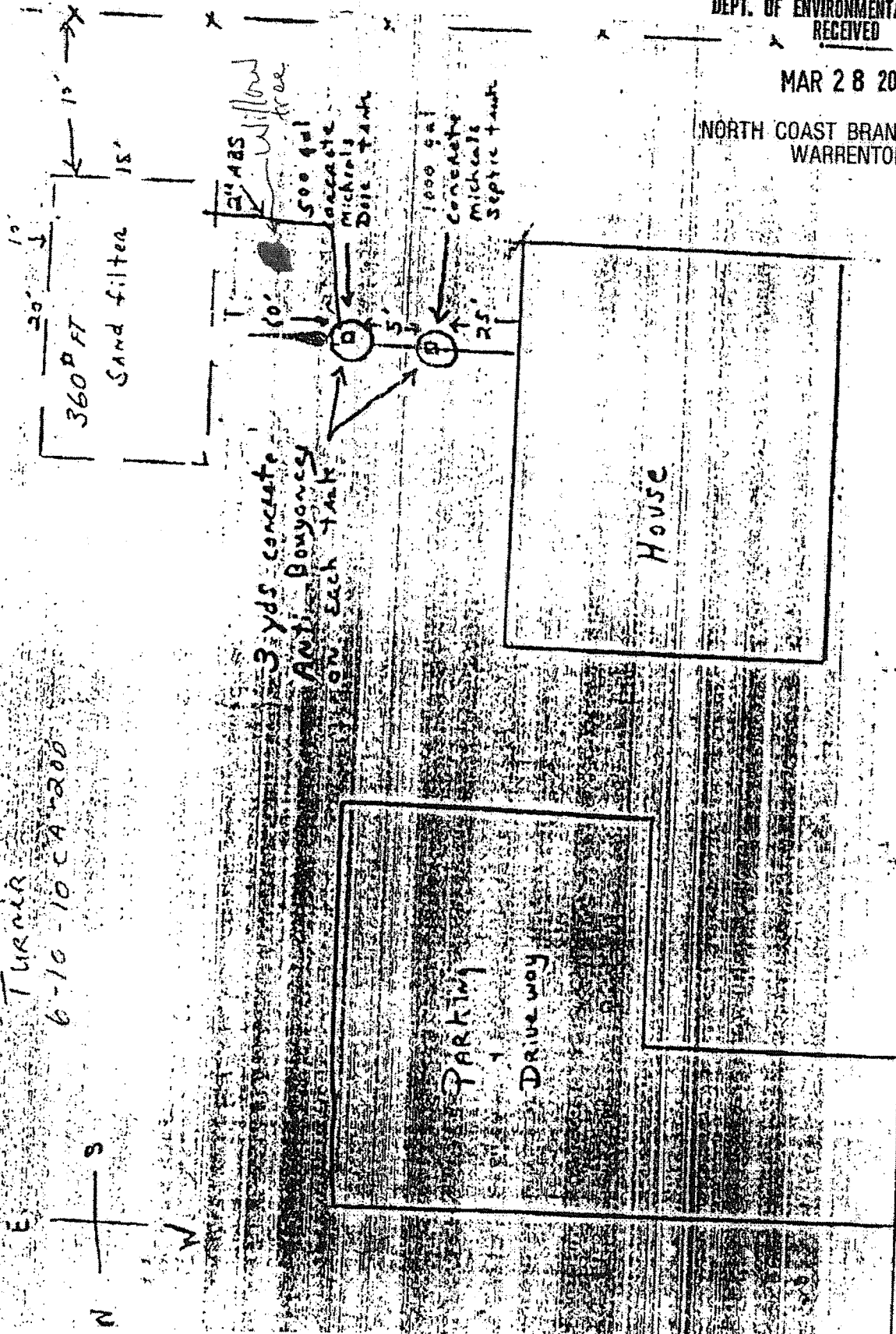
GRANTOR covenants and agrees not to convey any interest in either Lot I or Lot II that results in the severance of the common ownership of Lots unless and until GRANTOR has granted or reserved a utility easement on Lot I benefiting Lot II. Said easement shall be nonexclusive, perpetual and appurtenant and shall be in a form acceptable to the State. The utility easement shall include the following terms:

1. Owners of Lot II may use Lot I for purposes of installing, operating and maintaining a drainfield and related facilities for an individual on-site sewage disposal system.
2. Lot I shall not be put to any use which would be detrimental to the permitted system or contrary to any law (including an administrative rule) applicable to the permitted system.

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MAR 28 2001

NORTH COAST BRANCH OFFICE
WARRENTON



Turner
6-10-10 CA-200

Highway 101

Federal Railroad Rights of Way

May 3, 2006 RL32140

During the drive to settle the western portion of the United States, Congress sought to encourage expansion of railroads, at first through generous grants of rights of way and lands to the great transcontinental railroads between 1862 and 1871, and later through the enactment of a general right of way statute. The 1875 General Railroad Right of Way Act permitted railroads to obtain a 200-foot federal right of way by running tracks across public lands. Some railroads also obtained rights of way through private purchase or through the exercise of state or federal powers of eminent domain. Therefore, all railroad rights of way are on federal lands, and the property interest of a railroad in a right of way may vary. The courts have characterized the interest held by a railroad pursuant to a federally granted right of way variously: as a "limited fee" in the case of a land grant right of way, or as an easement in the case of a right of way under the 1875 Act. As railroads closed rail lines, questions arose as to the disposition of the lands within the former rights of way. Many individual instances were resolved in separate legislation. In 1922, Congress enacted a general law to provide that federal railroad rights of way on federal lands become the property of the adjacent landowner or municipality through which the right of way passed. This law is unclear in several respects -- for example, as to what procedures are sufficient to constitute an abandonment of a right of way, and on what authority Congress could provide for the establishment of highways within the right of way after abandonment of the rail line. In 1983, what is popularly known as the Rails to Trails Act, Congress opted to bank rail corridors, keeping them available for possible future use as railroads and making them available for interim use as recreation trails. Some cases have held that Rails to Trails results in takings of private property when non-federal easements were involved. In the context of federal rights of way, recent cases have held that the federal government did not retain any interest in federal railroad rights of way when the underlying lands were conveyed into private ownership, and therefore if an abandoned rail corridor is held for interim trail use, compensation is owed the adjacent landowners. However, Congress has legislated numerous times over the years regarding federal railroad rights of way, as though Congress believed it had continuing authority over their ultimate disposition. Issues may continue to arise surrounding the disposition of federal railroad rights of way, possibly involving, for example, the authority of Congress over the rights of way, the nature of the interest held by the railroad, the validity of attempts by the railroad to convey all or part of that interest, and disputes between adjacent landowners over permissive entitlements to lands within a particular right of way. This report discusses the history of federal railroad rights of way and some of the cases addressing them. It will be updated from time to time as circumstances warrant.

[Download PDF \(/files/20060503_RL32140_715cd79b55428f106d1591203e9e2d193ade3d23\)](/files/20060503_RL32140_715cd79b55428f106d1591203e9e2d193ade3d23)

[Download EPUB \(/reports/RL32140.epub\)](/reports/RL32140.epub)

1960s, railroads faced increasing competition from trucking companies, and costly federal regulations made it even more difficult for the railroads to compete. In fact, nearly a quarter of the nation's railroad lines were operating under bankruptcy by the early 1970s.

The Staggers Rail Act, passed in 1980, deregulated the railroads and made it easier for them to abandon lines. Although railroads were then able to streamline their operations and diversify successfully, this deregulation also triggered a mass wave of rail line abandonments. Before deregulation, 38,000 miles of track were abandoned in the 45 years from 1930 to 1975. Yet, in the next 15 years until 1990, railroads abandoned nearly double that amount—65,000 miles—in only a third of the time.

In the early 1980s, Congress became concerned about the dramatic decline in the nation's railroad infrastructure. With so many railroads abandoning corridors, it became apparent to Congress that something needed to be done to preserve the nation's rail system for future transportation uses. In 1983, Congress amended Section 8(d) of the National Trails System Act to create a program to preserve rail corridors (called "railbanking"), through which corridors that would otherwise be abandoned can be preserved for future rail use by converting them to interim trails. The old, inactive railroad route survives but is re-purposed for other—potentially temporary—trail uses.

Opponents of railbanking have unsuccessfully challenged the constitutionality of the railbanking provisions of the National Trails System Act. In 1990, the Supreme Court unanimously ruled, in the case of *Preseault v. United States*, that preserving a corridor for future rail use through railbanking is a legitimate exercise of governmental power. This decision protects a railroad's legal right to transfer all forms of its ownership, including easements, to a trail group. A more thorough examination of the legal issues that often arise with railbanked corridors, as well as an overview of how some of those issues have been resolved, can be found in RTC's **Rails-to-Trails Conversions: A Legal Review**.

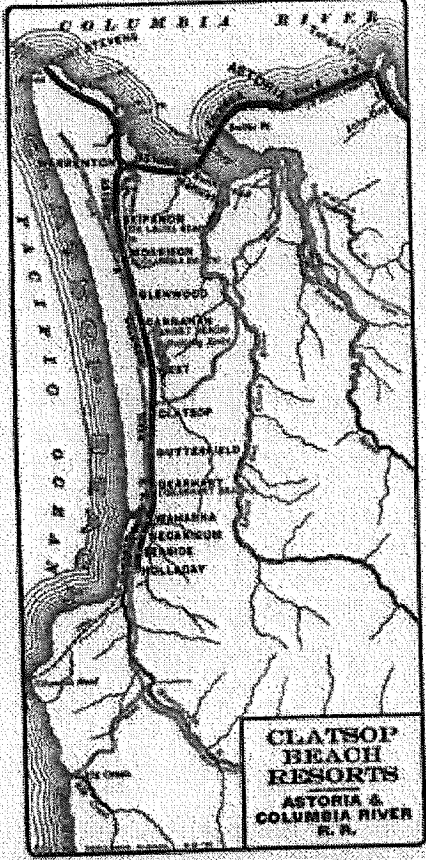
Opponents also periodically attempt to stop implementation of the railbanking provisions through legislative restrictions on trail development. RTC remains vigilant

RAIL BANKING MCT Goshen TRAIL

Weekend Break: The great railroad boom

By Julia Triezenberg For The Astorian
Aug 13, 2021

ASTORIA & COLUMBIA RIVER RAILROAD



CLATSOP BEACH RESORTS
ASTORIA & COLUMBIA RIVER R. R.

CLATSOP BEACH

ON THE
PACIFIC OCEAN

Many people visit the "PACIFIC COAST" without seeing the PACIFIC OCEAN, in all its majestic grandeur.

The great Pacific is jealous of its coast, presenting few clear beaches easy of approach, but the best of all, **CLATSOP BEACH**, is reached and skirted for miles by the Astoria & Columbia River Railroad, with parlor car trains from Portland along the Columbia River and through Astoria—that city in the romantic history of which the flags of Spain, France, Russia, Britain and America mingle, over which Astor's men and Hudson's Bay men wrangled, and which was objective to Lewis and Clark.

No one should fail to take this short and interesting trip to **CLATSOP BEACH**, an all-year resort, and stay a day, a week or a month, the memory of which will last with life.

CLATSOP BEACH AND ASTORIA EXCURSIONS

Low round-trip excursion fares from Portland:

Astoria, Saturday and Sunday, returning Monday	\$3.00
Clatsop Beach Points, Saturday and Sunday, returning Monday	3.00
Clatsop Beach Points, daily, first six months	4.00
Clatsop Beach Points, five round-trip commutation tickets, first six months	13.00

A. & C. R. trains arrive at and depart from Grand Central Station, Portland.

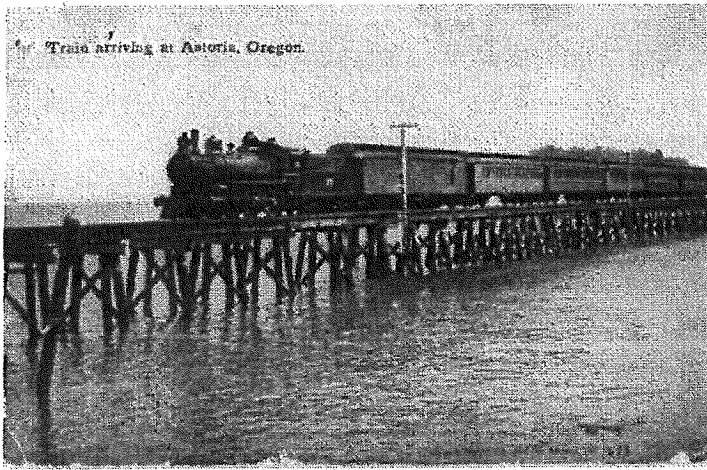
See schedules on opposite pages.

Illustrated booklet and folder, descriptive of mountain and seaside resorts tributary to the Astoria & Columbia River Railroad sent free upon application to W. E. Conant, General Freight and Passenger Agent, Portland, Oregon. A postcard will do.

An advertisement for the Astoria & Columbia River Railroad.



For years, 19th-century Astorians dreamed of a railroad that would connect their town to the rest of the country. Although Astoria was situated at the mouth of the Columbia River, most shipping traffic ended its journey in Portland.



A postcard with one of Astoria's many trains pulling into town.

Columbia River Maritime Museum

Throughout the better part of the 1800s, Astorians believed that a railroad's construction would transform their town into the booming port it was meant to be.

As transcontinental rail lines expanded west, Portland was once again establishing itself as the terminus for this type of travel. James J. Hill's Northern Pacific line technically ended in Goble, so Astoria was once again stranded.

hands.

Its residents took matters into their own

William Reid was originally contracted to oversee the construction of the Astoria & South Coast Railway, which connected Astoria to Seaside.

However, Reid's relationship with his employers eventually fell apart, and Astorians had to figure out yet another way to connect the coast with the rest of Oregon.

A businessman from Montana named Andrew Hammond was hired to finish what had been started. Instead of continuing south along the coast, Hammond built rail along the Columbia River. He connected Astoria with the Goble line, establishing the Astoria & Columbia River Railroad in 1898.

'Some travelers reported that when the train crossed over Young's Bay, they would draw their shades or grip their seats until it was over, the same way nervous airplane passengers might before they take off.'

At last, Astorians were linked to the rest of the country in a totally different way. One promotional piece boasted, "A railroad, speeding ahead of the drifting Columbia River to the sea, or gliding back up its toilsome currents, was a dream of nearly half a century."

Business boomed as tourists from Portland flocked to the coast during the summer. Seaside was one of the most popular destinations.

In the early 1900s, Seaside's population during the off-season was around 500. At its peak during the summer months, that number could range anywhere between 5,000 to 10,000 people.

Now Portlanders who had struggled to get to their vacation by boat or horse-drawn carriage could make a trip to the coast in just under five hours. Weekend excursion trains took businessmen to the coast to visit their families and would get them back to Portland in time for work on Monday morning.

During the railroad's peak, the trip from Portland to Seaside was meant to be luxurious. Parlor cars held lounges with velvety upholstered chairs, as well as folding chairs that could be taken to the observation decks outside.

It wasn't always pleasant, though. Some travelers reported that when the train crossed over Youngs Bay, they would draw their shades or grip their seats until it was over, the same way nervous airplane passengers might before they take off.

Passenger service declined over the first half of the 20th century until it came to a halt in the 1950s. During that time, companies exchanged hands through multiple mergers and acquisitions, including Burlington Northern's takeover of Astoria & Columbia River Railroad, Great Northern Railway and the Spokane, Portland & Seattle Railway.

Burlington Northern sold off what was left of the Astoria line in the 1990s. You can still see glimpses of this once-thriving industry all along the coast, including on the Astoria Riverfront Trolley, which runs along the Astoria Riverwalk.

Julia Triezenberg is an educator at the Columbia River Maritime Museum.

Julia Triezenberg

Museum Educator



(/)


A project of the
Oregon Historical
Society

(<http://www.OHS.org>)



Astoria and Columbia River Railroad


By [Greg Gordon \(/about/authors/231/\)](/about/authors/231/).

Email 


(mailto:?subject=Astoria and Columbia River Railroad&body=https://www.oregonencyclopedia.org/articles/astoria_and_columbia_river_railroad/)

PDF 

(/articles/astoria_and_columbia_river_railroad/pdf/)

Facebook 

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View on Timeweb 

(https://oregontimeweb.org/timeline/oep/astoria_and_columbia_river_railroad_693)

Ever since Astoria was founded at the mouth of the Columbia River ([/articles/columbia_river/](#)) in 1811, residents dreamed of their town becoming a booming port. Once ships crossed the treacherous bar at the river's mouth, however, the vessels simply continued to Portland ([/articles/portland/](#)). Townspeople, persuaded that a railroad could transform Astoria into the entrepôt to the Northwest, began agitating for a line as early as 1853. Five years later, the Oregon territorial legislature granted a charter for a railroad from Astoria to Eugene ([/articles/eugene/](#)). It was the first of many failed attempts.

Finally, in 1883, with the coming of the transcontinental railroad to the West, Astoria assumed that they would be connected to the rest of the nation. By the time the Northern Pacific reached Portland, however, the railroad was financially overextended and stopped fifty-eight miles short, at Goble, effectively making Portland the western terminus of the line.

As a result, Astorians were faced with creating their own incentives to entice a railroad builder, and they offered a cash bonus for a capitalist to take on construction. Promoter William Reid took the bait and began grading a roadbed from Astoria south along the coast. He hoped to connect to Ben Holladay's Oregon & California (O&C) rail line at Hillsboro ([/articles/hillsboro/](#)). By the mid-1880s, the O&C line ran south from Portland to Roseburg ([/articles/roseburg/](#)), and would soon reach the California border near the city of Klamath Falls.

Reid was backed by railroad tycoon C.P. Huntington, but the deal fell through when Astorians attempted to dump Reid in favor of Huntington. Nonetheless, Reid had completed a line from Astoria to Seaside. Although in financial limbo, the line was now in a position to run up the Nehalem River to Portland or down the coast to connect to the Oregon Pacific railroad line that T. Egerton Hogg was then building between Corvallis ([/articles/corvallis/](#)) and Newport ([/articles/newport/](#)).

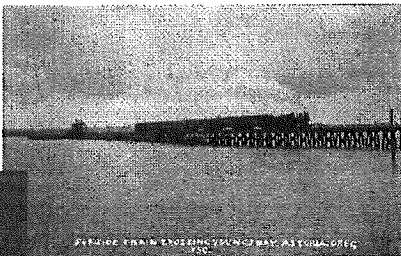
During the 1890s, Astoria residents heaped subsidy upon subsidy on the promise of a railroad, offering thousands of acres of prime real estate plus \$300,000 to lure an investor to bring a line to the town. Six attempts between 1892 and 1894, however, failed to secure enough capital. Then, in December 1894, Astoria city leaders accepted a proposal from Montana businessman Andrew B. Hammond ([/articles/hammond/](#)), who had both the construction experience and the financial backing to complete the job. Instead of the Nehalem route, Hammond decided to follow the Columbia River to Goble. Finally, after half a century of anticipation, the Astoria and Columbia River Railroad (A&CR) line was completed in May 1898.

Although the Astorians were banking on freight traffic, the tourist trade from Portland to the coastal resorts proved to be a mainstay of the A&CR. The railroad was immediately popular with Portlanders who sought to escape the summer heat. Special weekend service was known as the "Daddy Train," as businessmen could leave Portland on Saturday, spend the weekend with their families vacationing on the coast, and be back at work on Monday morning. The emerging middle class, with its increased leisure time, coincided with the new rail access to form the beginning of a major tourism industry along the Oregon coast. During the next six years, the population of Seaside tripled.

In the end, it was the timber industry that benefited the most from the A&CR, as the railroad now accessed the forests of the Oregon Coast Range that, according to the *Oregonian*, had been "shut off by an impenetrable wall" of rugged mountains and twisting river valleys." By 1910, Astoria had 15,000 people, and its lumber mills were running day and night, producing more than 263 million board feet of lumber a year, almost all of it for export. The railroad and logging operations allowed neighboring Columbia County's population to nearly double from 6,237 in 1900 to 10,580 ten years later.

With the A&CR posting yearly profits, Hammond (/articles/hammond_andrew_b_1848_1934_/#.XgvMaBdKg1g) began playing railroad magnets E.H. Harriman of the Union (/articles/union/) Pacific and James J. Hill (/articles/hill_james_j_1838_1916_/#.XgvMgxdKg1g) of the Northern Pacific against each other and repeatedly announced expansion plans that threatened their domination of the Oregon market. Although Hammond had offered the Astoria line to Harriman a few years earlier for \$4 million, he increased the price to \$5 million in 1907. Hill snapped up the deal. The following year, Hill completed the Spokane Portland & Seattle Railway (SP&S), which over the next few years absorbed the A&CR.

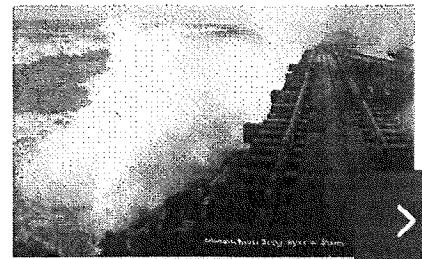
By the 1990s, after serving Astoria for nearly a century, the old A&CR was abandoned or sold off by the Burlington Northern Railroad, which had absorbed the SP&S.



Seaside train crossing Young's Bay, 1912 . Image Seaside train crossing Young's Bay, 1912
 Courtesy Oregon State Univ. Libraries, williams:g_cr



Astoria municipal docks, 1918.
 Astoria municipal docks, 1918
 Courtesy Oregon State Univ. Libraries, williams:g_cr



Columbia River jetty, 1910.
 Columbia River jetty, 1910
 Courtesy Oregon State Univ. Libraries, williams:g_cr

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF CLATSOP

83 5031

3 MARGARET L. MANSPEAKER, MICHAEL T.)
4 SOPKO and CHERYL D. SOPKO, husband)
and wife, and PHILIP L. MANCILL and)
5 DEANNA L. MANCILL, husband and wife)

NO. CC 83-382

AUG 18 1983

6 Plaintiffs,)

ORDER OF DEFAULT
AND DECREE

7 vs.)

8 BURLINGTON NORTHERN, INC., a cor-)
9 poration organized and existing)
under the laws of the State of)
10 Delaware, SPOKANE, PORTLAND &)
SEATTLE RAILWAY COMPANY, a corpora-)
11 tion organized and existing under)
the laws of the State of Washington)
12 CLATSOP COUNTY, OREGON, a political)
subdivision of the State of Oregon,)
13 UNITED STATES NATIONAL BANK OF)
OREGON, a national banking associa-)
14 tion, and STATE OF OREGON, repre-)
sented and acting by the Director)
of Veterans' Affairs,)

15 Defendants.)

AUG 18 4 03 PM '83

16 The above entitled matter having come on regularly before the
17 Court on the 18 day of August, 1983, based upon the Motion of
18 Plaintiffs' attorney for default and for an Order and Decree of
19 this Court, and the Court having fully reviewed the documents on
20 file herein and being fully advised in the premises, it is
21 therefore

22 ORDERED, that Defendants and each of them be and hereby
23 are declared to be in default as they have been duly served or
24 accepted service of process and have failed to file Answers;
25 and it is further

26 ORDERED AND DECREED that said Defendants and each of them be
Page One, Decree.

CAMPBELL, MOREG & CANESA, P.C.
ATTORNEYS AT LAW
44 BROADWAY • P.O. BOX 17
SEASIDE OREGON 97138
TELEPHONE 738-4348

1 and hereby are enjoined and all persons claiming through them
 2 are enjoined from asserting any estate, title or interest in said
 3 real property which is the subject of this suit, or any part thereof,
 4 claimed by the Plaintiffs, save and except for any and all real
 5 property tax liens or personal property tax liens reduced to
 6 warrant attributable to the property by Oregon State statutes by
 7 Defendant, Clatsop County, Oregon, and further save and except any
 8 superior interest as shown of record of the United States National
 9 Bank of Oregon, or the State of Oregon, represented and acting by
 10 the Director of Veterans' Affairs, if any there be; and it is
 11 further

12 ORDERED AND DECREED that any and all real property taxes,
 13 liens or personal property tax liens by Clatsop County, Oregon,
 14 shall be and are hereby determined to have priority and be
 15 unaffected by this Order of Default and Decree; and it is
 16 further

17 ORDERED AND DECREED that any and all superior property
 18 interests of record in the property which exists prior to the
 19 Plaintiffs' acquisition of their original property adjacent to
 20 the subject property or as the result of encumbrance by the
 21 Plaintiffs of their interest in the property adjacent to the
 22 subject property, shall have priority and be unaffected by this
 23 Order of Default and Decree; and it is further

24 ORDERED AND DECREED that:

25 1. Plaintiff, MARGARET L. MANSPEAKER is hereby determined
 26 to be the owner and entitled to possession of the following real
 Page Two, Decree.

1 property:

2 A tract of land in Section 10, Township 6 North, Range 10 West,
3 Willamette Meridian, Clatsop County, Oregon, being the West one-
4 half of even width of that portion of that 60 foot strip of land
5 described in Deed from John and Clara Stanley to the Astoria and
6 South Coast Railway Company, recorded December 19, 1888, at Book
7 13, page 60, Clatsop County, Oregon, Deed Records, and being
8 bounded on the North and South by the Easterly extension of the
9 North and South lines of that property described in Deed to
10 William J. Manspeaker and Margaret L. Manspeaker, recorded May
11 10, 1967, in Book 292, page 37, Clatsop County, Oregon, Deed
12 Records;

13 Also described in Paragraph I of the Complaint on file
14 herein,

15 free of any claim, estate, title or interest of said Defendants,
16 and each of them and from any person claiming through or
17 under said Defendants and each of them, except as hereinabove
18 otherwise provided and the title of Plaintiffs as to the
19 said Defendants and each of them, save and except as herein
20 otherwise provided, be and hereby is quieted; and it is
21 further

22 2. Plaintiffs, MICHAEL T. SOPKO and CHERYL D. SOPKO,
23 husband and wife, as to the Defendants and each of them,
24 save and except as hereinabove stipulated, are hereby determined
25 to be the owners and entitled to possession of the following real
26 property:

27 A tract of land in Section 10, Township 6 North, Range 10 West,
28 Willamette Meridian, Clatsop County, Oregon, being the West one-
29 half of even width of that portion of that 60 foot strip of land
30 described in Deed from John and Clara Stanley to the Astoria and
31 South Coast Railway Company, recorded December 19, 1888, at Book
32 13, page 60, Clatsop County, Oregon, Deed Records, and being
33 bounded on the North and South by the Easterly extension of the
34 North and South lines of that parcel described in Deed to Michael
35 T. Sopko and Cheryl D. Sopko, recorded September 19, 1973, at

Page Three, Decree.

1 Book 386, page 415, Clatsop County, Oregon, Deed Records;

2 Also described in Paragraph II of the Complaint on file herein,
3 free of any claim, estate, title or interest of said Defendants, and
4 each of them, and from any person claiming through or under said
5 Defendants and each of them, except as hereinabove otherwise provide
6 and the title of Plaintiffs as to said Defendants and each of them,
7 save and except as herein otherwise provided, be and hereby is
8 quieted; and it is further

9 3. ORDERED AND DECREED that Plaintiffs, PHILIP L. MANCILL
10 and DEANNA L. MANCILL, husband and wife, as to the Defendants and
11 each of them, save and except as hereinabove stipulated, are
12 hereby determined to be the owners and entitled to possession of
13 the following real property:

14 A tract of land in Section 10, Township 6 North, Range 10 West,
15 Willamette Meridian, Clatsop County, Oregon, being the West one-
16 half of even width of that portion of that 60 foot strip of land
17 described in Deed from John and Clara Stanley to the Astoria and
18 South Coast Railway Company, recorded December 19, 1888, at Book
19 13, page 06, Clatsop County, Oregon, Deed Records, and being bounded
20 on the North and South by the Easterly extension of the North and
21 South lines of that property described in Deed to Philip L. Mancill
22 and Deanna L. Mancill, recorded December 2, 1980, at Book 541, page
23 361, Clatsop County, Oregon, Deed Records;

24 Also described in Paragraph III of the Complaint on file herein,
25 free of any claim, estate, title or interest of said Defendants,
26 and each of them, and from any person claiming through or
under said Defendants and each of them, except as hereinabove
otherwise provided, and the title of Plaintiffs to said
Defendants and each of them, save and except as herein
otherwise provided, be and hereby is quieted; and it is

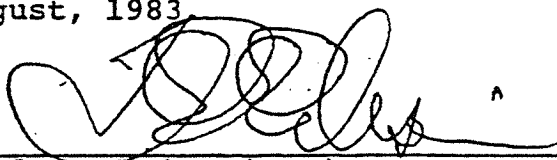
Page Four, Decree.

83 5035

1 further

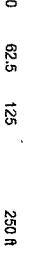
2 ORDERED AND DECREED that each party shall bear their own
3 costs, disbursements and attorney's fees.

4 DATED this 18 day of August, 1983.

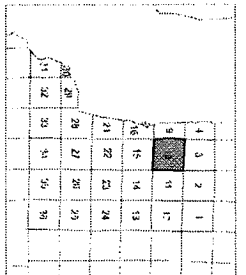
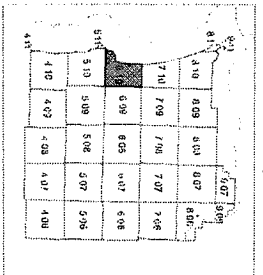
5 
6
7 Judge of the Circuit Court.

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CAMPBELL, MOBERG & CANESSA, P.C.
ATTORNEYS AT LAW
843 BROADWAY • P.O. BOX 37
SEASIDE, OREGON 97138
TELEPHONE 738-4188



Scale 1:1,200



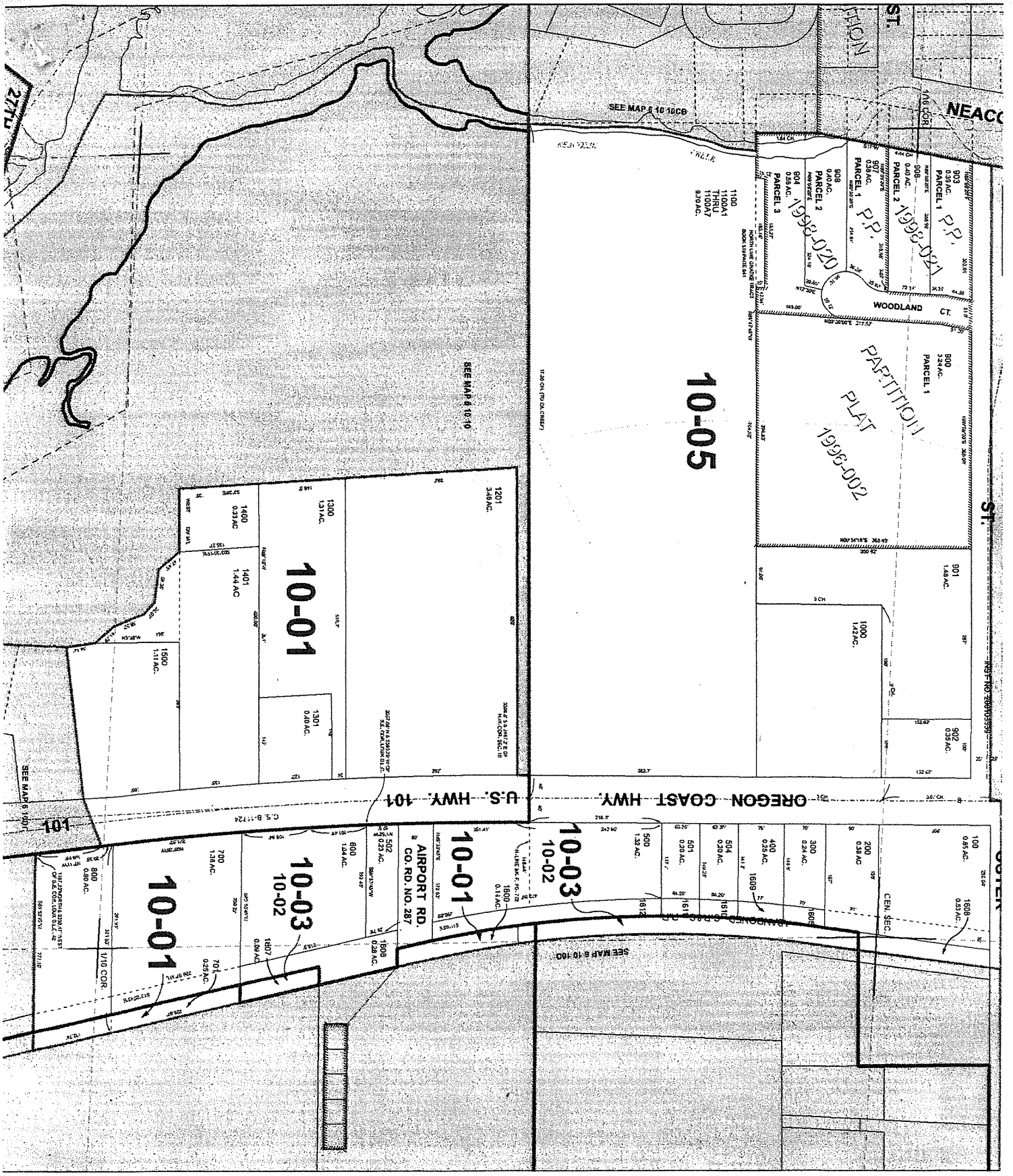
CANCELLED TAX LOT NUMBERS			
503	808	912	1801
800	910	1802	1804
805	911	1200	1813
			1803



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.clatsop.or.us

This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse or misinterpretation.

PLOT DATE: 11/22/2023
6 10 10 CA



AN AMENDED SURVEY OF TL 300, 6-10-10CA, FOR PHILIP & DEANNA MANCILL. SW 1/4, SECTION 10, T6N, R10W, WM., CLATSOP COUNTY, GEARHART, OREGON.

SCALE: AS INDICATED

DATE: DEC. 28, 1987

SURVEY NO. 289

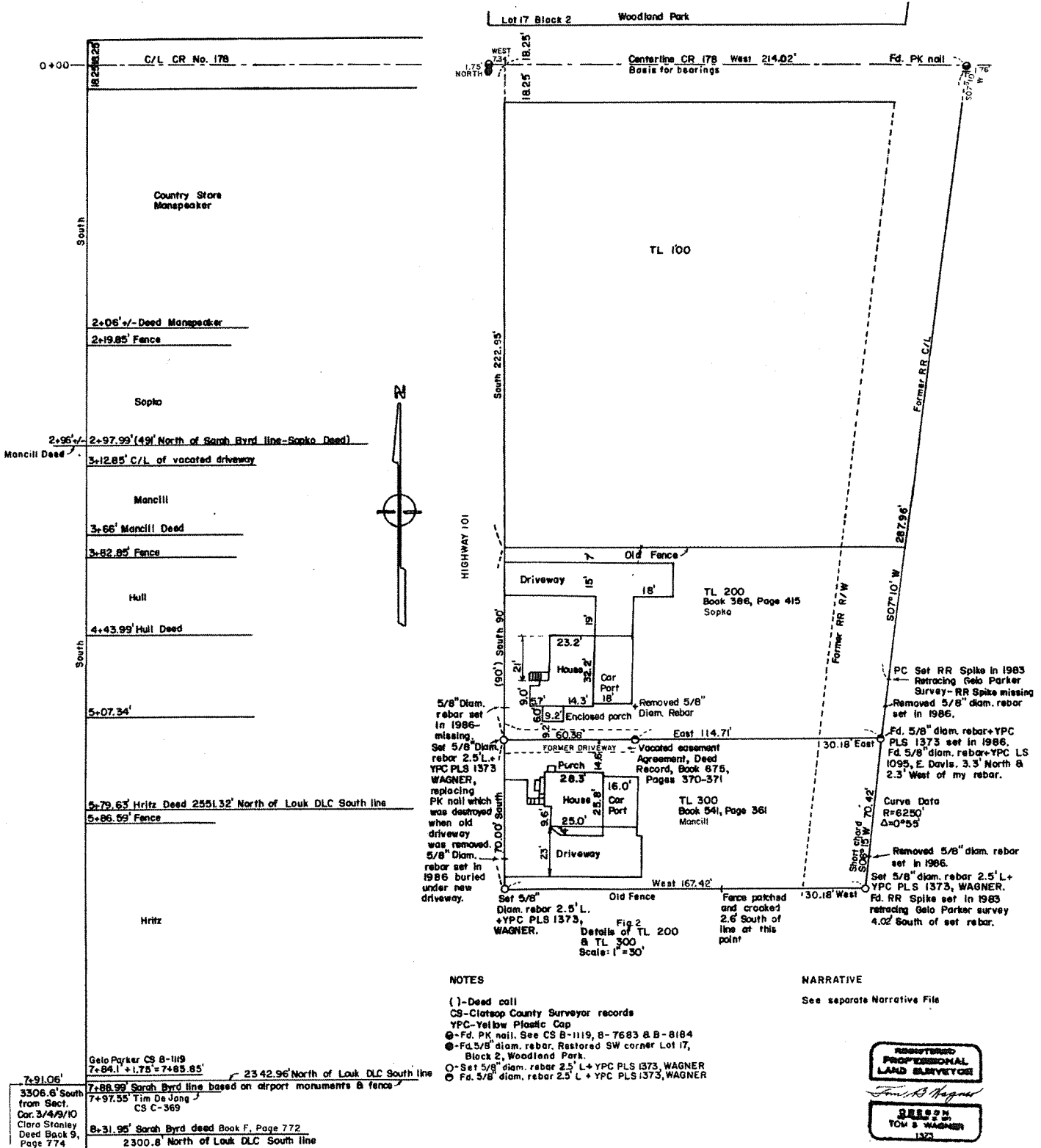
CLATSOP SURVEYING & ENGINEERING
TOM B. WAGNER, 1569 S. FRANKLIN ST., SEASIDE, OREGON 97138

REFERENCES—OTHER THAN THOSE SHOWN ON THE DRAWINGS
WOODLAND PARK ADDITION TO GEARHART PARK, PLAT BOOK 7, PAGE 27
TOM B. WAGNER SURVEY, CS A-7455
TOM B. WAGNER SURVEY, CS B-7683
OSHD HIGHWAY DRAWING

ASSISTANT—DEANNA MANCILL

EQUIPMENT—FRANKE THEODOLITE, MODEL 6020AIE
BENCHMARK SURVEYOR II ELECTRONIC DISTANCE METER
STEEL TAPES, 12' & 100'

CS B R-704



NOTES

- (-)-Dead call
- CS-Clatsop County Surveyor records
- YPC-Yellow Plastic Cap
- Fd. PK nail. See CS B-1119, B-7683 & B-8184
- Fd. 5/8" diam. rebar. Restored SW corner Lot 17, Block 2, Woodland Park.
- Set 5/8" diam. rebar 2.5' L + YPC PLS 1373, WAGNER
- Fd. 5/8" diam. rebar 2.5' L + YPC PLS 1373, WAGNER

NARRATIVE

See separate Narrative File

REGISTERED PROFESSIONAL LAND SURVEYOR

TOM B. WAGNER
1572

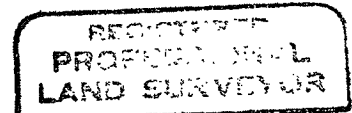
CLATSOP COUNTY SURVEYOR RECEIVED
FEB 2, 1988
FILED 2-16-88 R-H
ASTORIA, OREGON

7-91.06'
3306.6' South from Sect. Cor. 3/4/9/10 Clara Stanley Deed Book 9, Page 774
7-84.1' + 1.75' = 7-85.85'
7-88.99' Sarah Byrd line based on airport monuments & fence
7-97.55' Tim De Jong CS C-369
8-31.95' Sarah Byrd deed Book F, Page 772
2300.8' North of Louk DLC South line

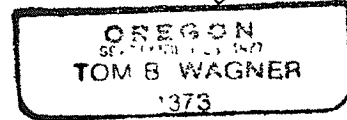
Fig. 1 Property line data along Highway 101
Scale: 1"=50'

CS B-8704

Narrative File
Page 1 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 28, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138



Tom B. Wagner



NARRATIVE

PURPOSE. Due to conflicts in the property descriptions for the adjoining properties of the Mancills and the Sopkos my survey, CS B-8380, is amended to accept the centerline of the common driveway as the boundary between the two properties. This shifts the boundary line 14.86' South of the Sopko deed description.

BASIS FOR BEARINGS. The centerline of County Road No. 178, established by Gelo Parker in 1919 called West, was the basis for bearings. This centerline is marked on the East end of the road by a found 3/8" diameter iron pipe set by Gelo Parker and a found PK nail located 1.75' North of the found 5/8" diameter rebar marking the original SW corner of Lot 17, Block 2, Woodland Park.

PROCEDURE. To understand the property description conflicts and why my CS B-8380 survey has been amended, a review of the train of ownerships of the tract of land bordered on the North by County Road No. 178, the former Burlington Northern Railroad Right of Way on the East, the North Boundary of the Sarah Byrd tract on the South and Highway 101 on the West is provided.

The said tract was originally part of the J. J. Louk Donation Land Claim. Philip Gearhart later obtained title to the Louk Donation Land Claim. In Nov. 1879 Philip Gearhart provided title to his daughter, Sarah Byrd, the South 34.86 chains (2300.8'), of the Louk Donation Land Claim, Deed Record Book F, Page 772.

On Aug. 25, 1884 John W. Gearhart sold to Clara S. Stanley a tract of land, the Southwest corner being 50 chains, 10 links (3306.6') South and 35 chains, 60 links (2349.6') East of the Northwest corner of Section 10, T6N, R10W, WM. This tract extended North 11 chains, 88 links (784.1'). The property exchange is described in Deed Record, Book 9, Page 774. This Deed description makes no mention of adjoining the North boundary of the Sarah Byrd tract. It should be noted that the Clara S. Stanley North boundary later became the South boundary of Woodland Park Addition to Gearhart Park in 1911. A 60' wide railroad right of way was created through the Clara S. Stanley tract before the turn of the century described in Deed Record, Book 32, Page 140. H. M. Button acquired title to the Clara S. Stanley tract and in turn sold it to George Hawes except for the railroad right of way, Deed Record Book 98, Page 38.

When County Road No. 178 was created, 20' was dedicated from the

CS# B-8704

Narrative File
Page 2 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 28, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Tom B. Wagner

OREGON
SINCE 1932
TOM B. WAGNER
1973

from the South boundary of Woodland Park and 16.5' was obtained from property owners adjoining the South boundary of Woodland Park.

George Hawes had his property surveyed on Nov. 1, 1921 by Gelo Parker. This survey accepted the Clara S. Stanley property description, which extended South 784.1' from the original South boundary of Woodland Park. On a line running East 1064.8' Gelo Parker found two monuments on a fence line which he identified as the North boundary of the Sarah Byrd tract.

On Aug. 10, 1926 George Hawes died. On Aug. 1, 1927 the courts awarded his wife, L. Mildred Hawes and his daughter, Mildred Hawes, his estate, Deed Record, Book 122, Page 284. Prior to Oct. 18, 1941 J. J. Johanns married George Hawes' daughter, Mildred.

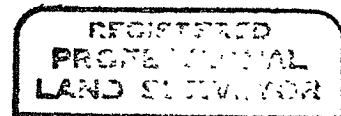
Johanns proceeded to partition the acquired tract of land between County Road No. 178 and the Sarah Byrd North Boundary. Some of the descriptions were written starting at the centerline of County Road No. 178 and some from the Sarah Byrd North Boundary. Johanns built 3 houses on 3 of the lots currently owned by Sopko, Mancill and Hull. On June 30, 1948 Johanns sold TL 200 to Robert Fraser, Deed Record, Book 200, Page 600. This deed contained an easement for a common driveway for the two houses on TL 200 and TL 300. This easement indicated the property line between these two Tax Lots was the centerline of the said driveway.

On Dec. 16, 1952 Johanns sold the property on TL 300 to Deyo McLendon, Deed Record, Book 220, Page 264. The Deed description contained the same driveway easement provisions as Deed Record, Book 200, Page 600. These two easements indicate the intent was for the property line to exist on the centerline of the described common driveway. Deyo McLendon told me that he rented the house on TL 300 prior to purchasing the property from Johanns and the driveway centerline was understood to be the property line separating TL 200 and TL 300.

The June 17, 1941 survey CS C-369 by Tim De Jong for Dr. Nellie Byrd placed a 1" diameter bridge bolt on what he considered to be the North boundary of the Sarah Byrd tract. Apparently he based it on two found iron pipes located on the West side of Highway 101.

CS# B-8704

Narrative File
Page 3 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 1, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138



Tom B. Wagner

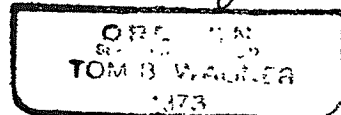


Fig. 1 of my survey shows the relationship of the various surveys in the vicinity of the Sarah Byrd North boundary line. The fence line and monuments marking the boundary between Bayview Transit Mix and the Oregon Aeronautical Airport measured 787.24' from the centerline of County Road No. 178. The Gelo Parker survey, CS B-1119, shows $784.1' + 1.75' = 785.85'$ from the centerline of County Road No. 178.

The Clara Stanley Deed described this line as 3306.6' South of the Northwest corner of Section 10. I measured 3303.50' to the current fence line. The ship bolt monument set in survey CS C-369 is located 10.56' South of the current fence line. I have not accepted the ship bolt monument as representing the North boundary of the Sarah Byrd tract as there is considerably more evidence that it was located further North.

The current fence line measures 2342.96' North of the South boundary of the Louk Donation Land Claim. The Deed calls for 2300.8'.

Two conflict problems existed between the Sopko and the Mancill properties. One problem was solved by vacating the common driveway and constructing two new driveways. The Sopko driveway is now located along the North boundary of their property and the Mancill driveway is located along the South boundary of their property.

The Sopko property has senior rights over the Mancill property as it was created at an earlier date. Deed Record, Book 386, Page 415, has a call of 491' North of the Sarah Byrd North boundary to the South line of the Sopko property. Starting at the current fence line representing the North boundary of the Sarah Byrd tract places the Sopko property line along side the South side of their house. This was not the intension of Johanns when he created the lots.

The second conflict was solved by making use of the easement information, both the verbally expressed intent from Deyo McLendon and the written intent of Deed Book 386, Page 415 and Deed Book 541, Page 363, concerning the location of the intended boundary line. My amended survey locates the boundary between

CS# B-8704

Narrative File
Page 4 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 1, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, OR 97138

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Tom B. Wagner

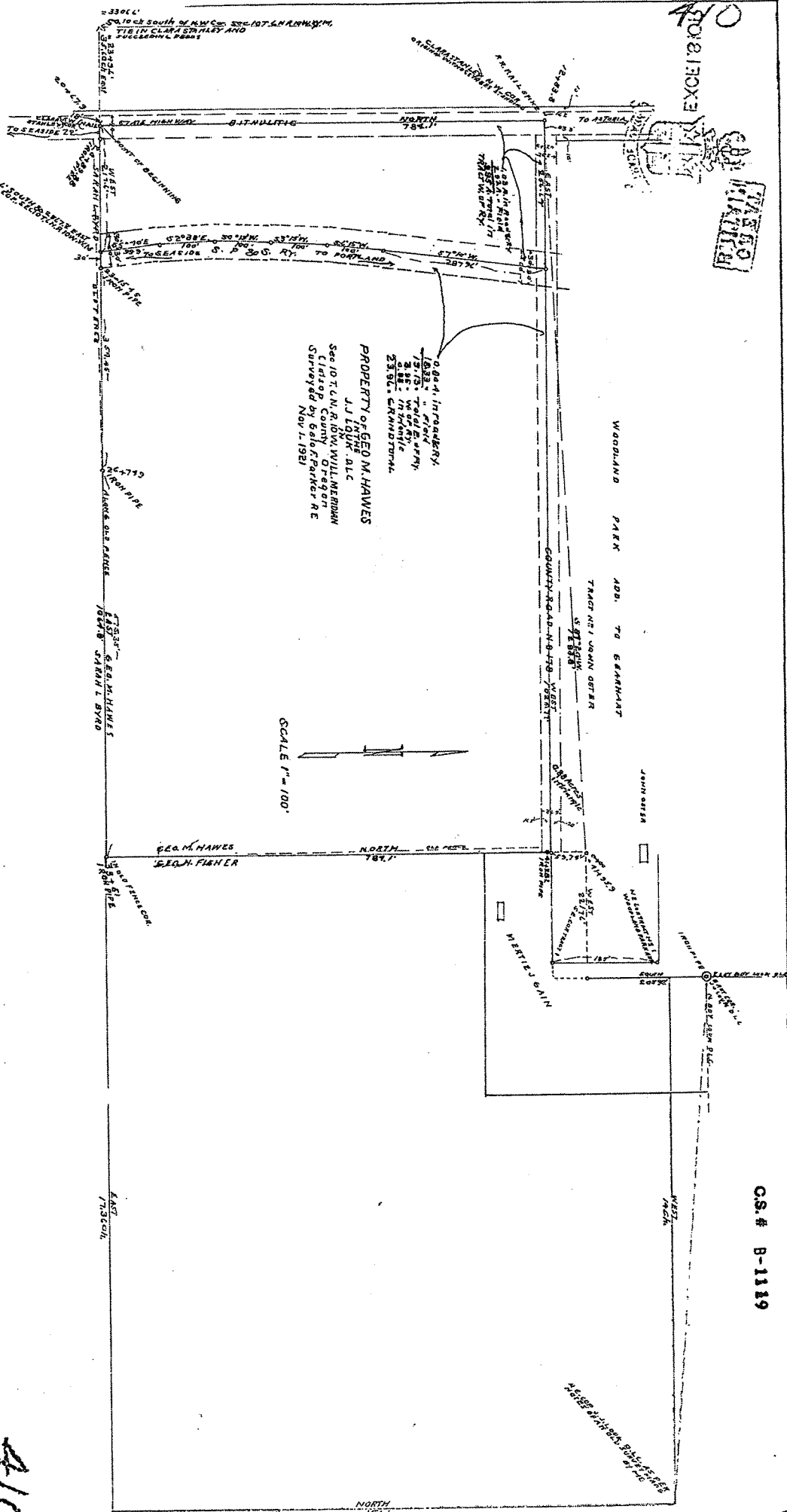
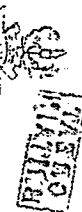
OREGON
REGISTERED 1977
TOM B. WAGNER
1373

the Sopko property and the Mancill property on the former driveway centerline, which I monumented in my first survey as a reference line. The monuments I set on the line adjoining the Sopko house have been removed as well as those I set on the South boundary.

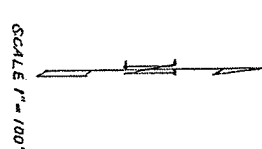
The Mancill South boundary was set 70' to the South of their North boundary (Deed call). This line falls on a fence line separating TL 300 and TL 400. The former railroad right of way centerline was established from my retracement survey of the railroad centerline surveyed by Gelo Parker survey, CS B-1119, which I did on Nov. 24, 1983 and monumented with railroad spikes. Currently the railroad roadbed is occupied by heavy equipment from Bayview Transit Mix.

CS# B-8704

1502130X3



PROPERTY OF SEAN HAWES
J.J. LOTT, D.L.C.
Sec. 10 T. 1 N. R. 10 W. WILLAMETTE
CLATSOP COUNTY OREGON
Surveyed by Gale F. Parker R.E.
Nov. 1, 1981



CS. # B-1119

Field Book 45P.4
410

November 11, 2024

Gearhart City Council and Mayor Smith
Chad Sweet
698 Pacific Way
Gearhart, Oregon 97138

Re: Turner Weeping Willow Tree

Dear Mayor Smith, City Council and Chad Sweet:

Please find in this packet my correspondence to Jessica Joye, DEQ, and to Lucas Marshall, Clatsop County Health Department.

From the evidence found in the public record, I do not believe the Turners could legally combine their TL 200 with TL 1604 (abandoned railroad right-of-way.) In addition, the Gearhart Zoning Ordinance and ORS 92.017 would prohibit this without a land-use review.

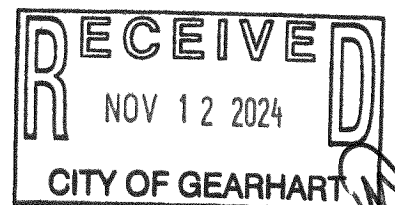
Please enter this letter and attached information into the public record. Thank you.


Sincerely,

Deanna Mancill

Deanna Mancill
2945 Hwy 101 North
Gearhart, Oregon 97138


e-mail: dmancill@msn.com



 Outlook

Fw: Property owned by Robert Turner, 2959 Hwy 101 North, Seaside, Oregon 6-10-10CA, TL 200 &1604

From Deanna Mancill <dmancill@msn.com>
Date Mon 11/11/2024 1:54 PM
To jessica.joye@deq.oregon.gov <jessica.joye@deq.oregon.gov>

 3 attachments (20 MB)

Turner Easement.pdf; Turner Railroad Tax Lot.pdf; Turner Septic Legal Finding.pdf;

From: Deanna Mancill <dmancill@msn.com>
Sent: Sunday, November 10, 2024 11:46 AM
To: jessica.joye@deq.stateoregon.gov <jessica.joye@deq.stateoregon.gov>
Subject: Property owned by Robert Turner, 2959 Hwy 101 North, Seaside, Oregon 6-10-10CA, TL 200 &1604

Jessica Joye
4026 Fairview Industrial Dr. SE
Salem, Oregon 97302

Re: Easement, Covenant and Servitude Agreement between Robert Turner and DEQ dated April 24, 2001

Dear Ms. Joye:

The servitude agreement is very specific about not doing anything detrimental to the permitted system or contrary to any law applicable to the permitted system.

In 2010, the Turners planted a weeping willow tree very close to their sewer line. It was only 3' tall. Today, it is over 35' tall.

The willow tree has a very extensive root system and it has trespassed at least 6' into my property. My septic sewer pipe is 10' from my property line. In 2019, I had installed a brand-new septic system. At the time, the tree was only 15' tall.

As part of an earlier 1999 septic system replacement, I had signed an Easement, Covenant and Servitude Agreement with the DEQ. I now have a septic system maintenance agreement with Complete Septic.

When Complete Septic came over for the annual inspection a couple of weeks ago, Jeffery Lebo was just shaking his head about the willow tree. Three years ago, he had warned the Turners about what the willow tree was doing to the septic system. The dosing tank was blocked with too much sludge.

I sent the Turners a certified letter on August 14, 2024 notifying them of their tree roots trespassing on my land. I informed them that any damage done to my septic system, I would hold them financially

responsible.

Mr. Lebo told me the sewer pipes, because they are glued together (100' long transport line), the root system would find any weakness and clog the pipe. The gray water would back up in the dosing tank. Fixing the system would take weeks.

My husband, Philip is a 100% disabled war veteran. We are both senior citizens, on a fixed income. Moving out of the house is not exactly a fair outcome for a problem we did not create. Paying another \$25,000 septic system is something we cannot afford.

In November 15, 2022, I e-mailed Lucas Marshall, Clatsop County Environmental Health, about the Easement Agreement and my concern about what that tree would do to my system.

Mr. Marshall wrote back that because the Turners combined the two tax lots into one, that the Easement agreement was void and not enforceable. I asked whether the DEQ signed off on it. Our communication stopped.

In this packet, includes the Same Owner Easement Release Instructions, Release of Easements, and the Easement, Covenant and Servitude Agreement signed by the Turners.

The following history, with corresponding evidence calls into question the legality of combining two tax lots without following Gearhart Zoning Ordinance or ORS 92.017.

Gearhart zoning definition: Lot measurement or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot is further divided, as provided by law. (ORS 92.017)

Oregon City zoning book:

Lot line adjustment procedure is used to relocate a single existing common property line between two abutting lots or lots of record. No additional lots or building sites may be created. Lot line abandonment eliminates a single existing common property line between two abutting lots or lots of record, combining them into a single lot.

Procedure required for this combination of lots: hiring a land surveyor and a new legal description.

It is a type 1, land use decision by the Gearhart Planning Department, who should have reviewed an application by the Turners. I asked Chad Sweet, Gearhart City Administrator, on November 6 during a city council meeting whether he had received anything from the Turners. He said no.

Clatsop County Assessment and Taxation requires a \$35 fee, and it strongly recommends contacting your local jurisdiction because combining tax lot lots may have an effect on future land-use. If you have a mortgage, failure to amend the legal description may result in a segregation of the combined lots if a default was to occur.

ORS 92.017 covers lawfully created units of land. TL 1604 is an abandoned railroad right-of-way. August 18, 1983, 83-5031, in the Circuit Court of the State of Oregon, issued a default judgment against Burlington Northern, Oregon Department of Veterans Affairs and United States National Bank of Oregon in favor of Margaret Manspeaker (TL 200) Michael Sopko and Cheryl Sopko, (TL 200) and Philip Mancill and Deanna Mancill (TL 300) 100

The parcel created for Sopko (Robert Turner) is described as follows:

A tract of land in Section 10, Township 6 North, Range 10 West, Willamette Meridian, Clatsop County, Oregon the West one-half of even width of that portion of that 60 foot strip of land described in Deed from John and Clara Stanley to the Astoria and South Coast Railway Company, recorded December 19, 1888 at Book 13, page 60, Clatsop County, Oregon, Deed Records, and being bounded on the North and South by the Easterly extension of the North and South lines of that parcel described in Deed to Michael T. Sopko and Cheryl D. Sopko, recorded September 19, 1973, at Book 386, page 415, Clatsop County, Oregon, Deed Records.

In simple language, Turner's tax lot 200 legal description never did include the railroad right-of-way at any time during the creation of the lot.

Burlington Northern abandoned the railroad right-of-way in 1978, and quit paying property taxes. In 1983, Clatsop County was going to foreclose on this land. By the decision of the Circuit Court handing a default judgment for the plaintiffs, the tax assessor assigned tax account numbers.

I have included in this letter a copy of my boundary survey done by Tom B. Wagner, dated December 28, 1987. It clearly shows the 30' railroad-right-way for the Sopko(Turner) and Mancill properties.

In the narrative Wagner provided, is an interesting thing. Clara Stanley, who granted the 60' of land for railroad, conveyed land to H.M. Button, and then to George Hawes (1921), except for the railroad right-of-way. At that point, the land was not sold to anyone. Seattle, Portland & Spokane Railroad had acquired title from Astoria and South Coast Railway Company. Burlington Northern got ownership later.

Clatsop County Webmaps dated 1/12/2023, shows the tax map for 6-10-10CA. The railroad right-of-way is still shown. The Turner's combining tax lots did nothing to eliminate the right-of-way.

In fact, because the railroad was part of the Federal right of way grant act, Congress retained a reversionary interest in abandoned railroads. They established the Rails to Trails for these purposes. The City of Gearhart's Transportation Plan has designated abandoned railroad property north of Pacific Way for their future bike/pedestrian uses.

In July, 2024 I addressed a letter to the DEQ, Portland address, that was never answered. A couple of weeks later, during a phone conversation with a DEQ person from Salem, she informed me that combining tax lots invalidated the Easement Agreement.

This letter serves as notice to the DEQ, Clatsop County Health Department and to the City of Gearhart, that combining tax lots into one is not in compliance of the Gearhart Zoning Ordinance or state law (ORS 92.017)

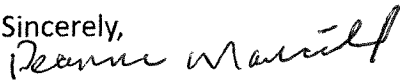
I have outlined the steps to Chad Sweet, Gearhart Administrator, about what needs to be done immediately. The weeping willow tree cannot be killed by just cutting it down. You have to drill holes into the trunk, use herbicides, which spreads into the root system. A ditch witch along their south property 40" deep will chop the roots coming into my yard. You cannot pull the tree out by its roots because it will tear out my sewer line.

At this time, I am not suggesting the Turners replace their failing septic system. The work is obviously a two-step process, that will take some time.

What I am trying to establish is the enforcement of the Easement, covenant, and servitude agreement. Because the easement is State of Oregon jurisdiction, I am requesting action from either the DEQ, Clatsop County, or the City of Gearhart.

Thank you for reviewing this matter.

Sincerely,



Deanna Mancill
2945 Hwy 101 North
Gearhart, Oregon 97138

e-mail: dmancill@msn.com

cc: Lucas Marshall, Clatsop County Health Department
City of Gearhart



State of Oregon
Department of
Environmental
Quality

Same Owner Easement Release Instructions

The Same Owner Easement form used by all field offices to site a system or a portion thereof onto adjacent property under the same ownership may establish an agreement and covenant between the Grantor and the State of Oregon through the Department of Environmental Quality.

Such an easement can not be released except through an action by the Department. The Regional Division Administrator must sign the easement release form. Before the Regional Division Administrator will sign the form, all documents related to releasing the easement must be in order, and must be passed through a short chain of review within the Department.

What documents must be assembled?

1. One copy of the original (and current) easement;
2. Written statement from the Legal Entity (e.g., City, County or Sanitary District) assuring the sewer connection has been made. If other than a sewer connection the property owner must provide a written statement describing why the easement is no longer needed;
3. The completed original easement release form.

Where are these documents to be sent?

The property owner is to send the documents to the Agent in the appropriate County within the region. The documents will be reviewed, and verification that the easement should be vacated will be made. The Agent will forward the documents with a written statement that the easement should be vacated to the appropriate DEQ regional lead staff listed below. Once the DEQ regional lead staff person is satisfied that all is in order, they will forward all documents and a summary report to their manager or Regional Division Administrator for approval. Once the Regional Division Administrator signs the easement release form, all documents will be returned to the DEQ regional lead staff person. The DEQ regional lead staff person will return the original easement release form to the Agent and make copies of these documents for the Department file record. The Agent will return the original easement release form to the property owner and make a copy for their file record.

DEQ Onsite Program Regional Lead Staff Contact:

Jessica Joye phone: 503-378-5033 email: joye.jessica@deq.state.or.us

STATE OF OREGON

RELEASE OF EASEMENTS

For adequate consideration, THE STATE OF OREGON, through the OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, hereby releases to _____, any and all claims and rights that said STATE or DEPARTMENT has or may have in and through the following recorded easement:

- 1. An easement, including the terms and provisions thereof,

to use, to possess, or to enforce promises or covenants concerning the use or possession of the following real property:

DATED this _____ day of _____, 20__.

STATE OF OREGON

By: _____

Western Region Administrator
Oregon Department of Environmental Quality

The foregoing instrument was acknowledged before me this _____ day of _____, 20 __, by _____, who is the _____ of _____ on behalf of the State of Oregon.

Notary Public for Oregon
My commission expires: _____

EASEMENT, COVENANT AND SERVITUDE

WHEREAS Robert Rose Turner ("GRANTOR")

DEPT. OF ENVIRONMENTAL QUALITY
RECEIVED

two lots (or parcels) of real property located in Clatsop County, Oregon;
APR 24 2001

Lot I: 610-10CA-200 AND 1604

NORTH COAST BRANCH OFFICE
WARRENTON

Lot II:

610-10CA-200

WHEREAS GRANTOR has applied to the State of Oregon through its Department of Environmental Quality ("State" or "GRANTEE") for a permit to construct an individual on-site sewage disposal system ("permit") on Lot I intended to serve Lot II; and

WHEREAS Oregon Administrative Rules 340-71-130(11)(b) requires GRANTOR to execute an easement and covenant in favor of the State as a condition precedent to issuance of a permit authorizing the construction of a system on one lot intended to serve another lot;

EASEMENT

NOW THEREFORE, in consideration of the issuance of the permit to GRANTOR by the State, GRANTOR hereby conveys to the State, its successors and assigns, a perpetual non-exclusive easement in, upon, and running with Lots I and II allowing the state's officers, agents, employees and representatives to enter and inspect, including by excavation, the on-site sewage disposal system on Lots I and II. This easement shall be terminated at such time as use of the individual on-site sewage system has ceased because the structures on Lot II are fully served by an adequate public sanitary sewer system or an alternative on-site sewage system located elsewhere. Upon request and a determination that adequate alternative service is available and in use, the State shall execute a recordable document terminating the easement.

COVENANTS

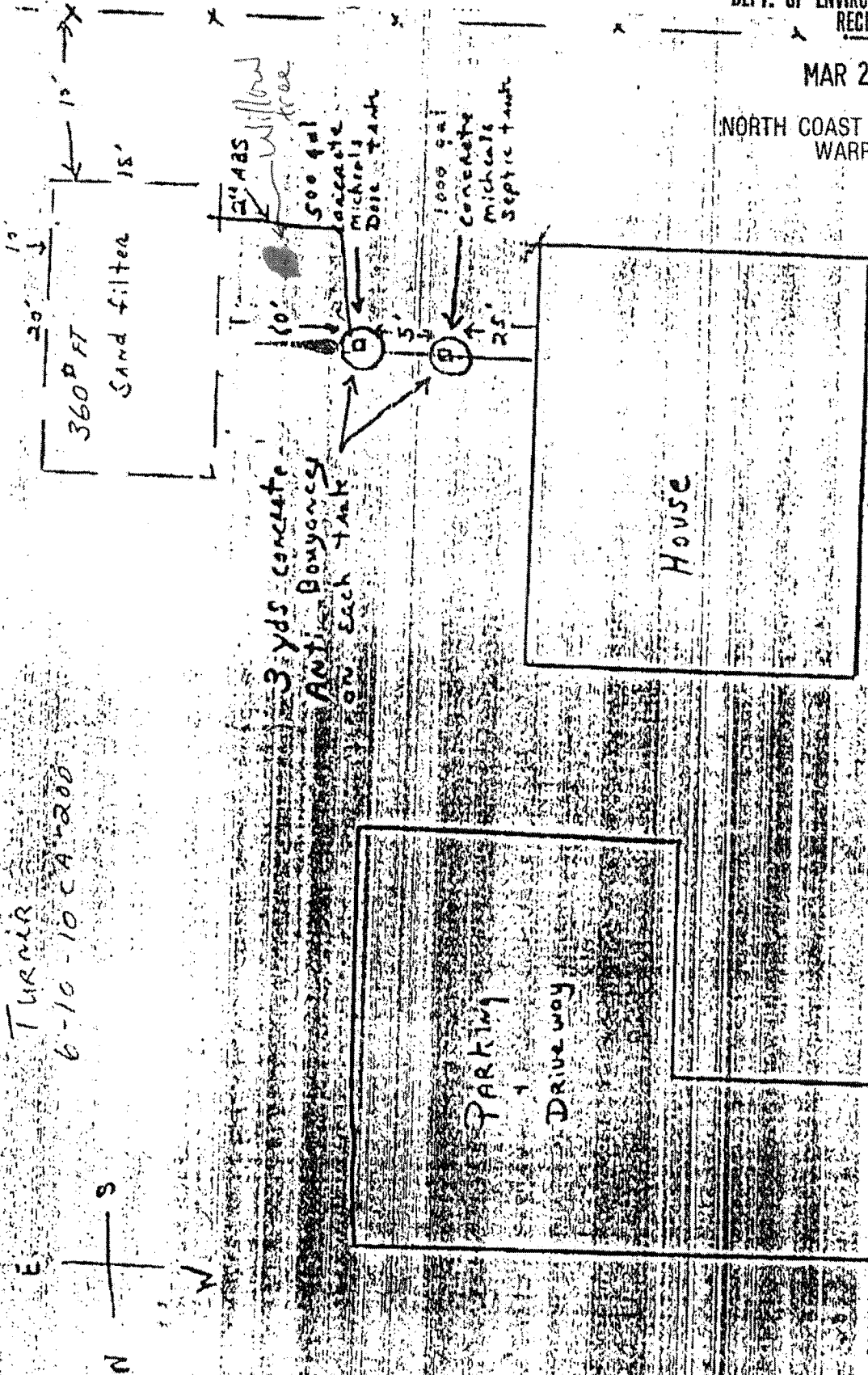
GRANTOR covenants and agrees not to convey any interest in either Lot I or Lot II that results in the severance of the common ownership of Lots unless and until GRANTOR has granted or reserved a utility easement on Lot I benefiting Lot II. Said easement shall be nonexclusive, perpetual and appurtenant and shall be in a form acceptable to the State. The utility easement shall include the following terms:

1. Owners of Lot II may use Lot I for purposes of installing, operating and maintaining a drainfield and related facilities for an individual on-site sewage disposal system.
2. Lot I shall not be put to any use which would be detrimental to the permitted system or contrary to any law (including an administrative rule) applicable to the permitted system.

DEPT. OF ENVIRONMENTAL QUALITY
RECEIVED

MAR 28 2001

NORTH COAST BRANCH OFFICE
WARRENTON



TURNER
6-10-10 CA 200

Highway 101

AN AMENDED SURVEY OF TL 300, 6-10-10CA, FOR PHILIP & DEANNA MANGILL SW 1/4, SECTION 10, T6N, R10W, WM., CLATSOP COUNTY, GEARHART, OREGON.

SCALE: AS INDICATED

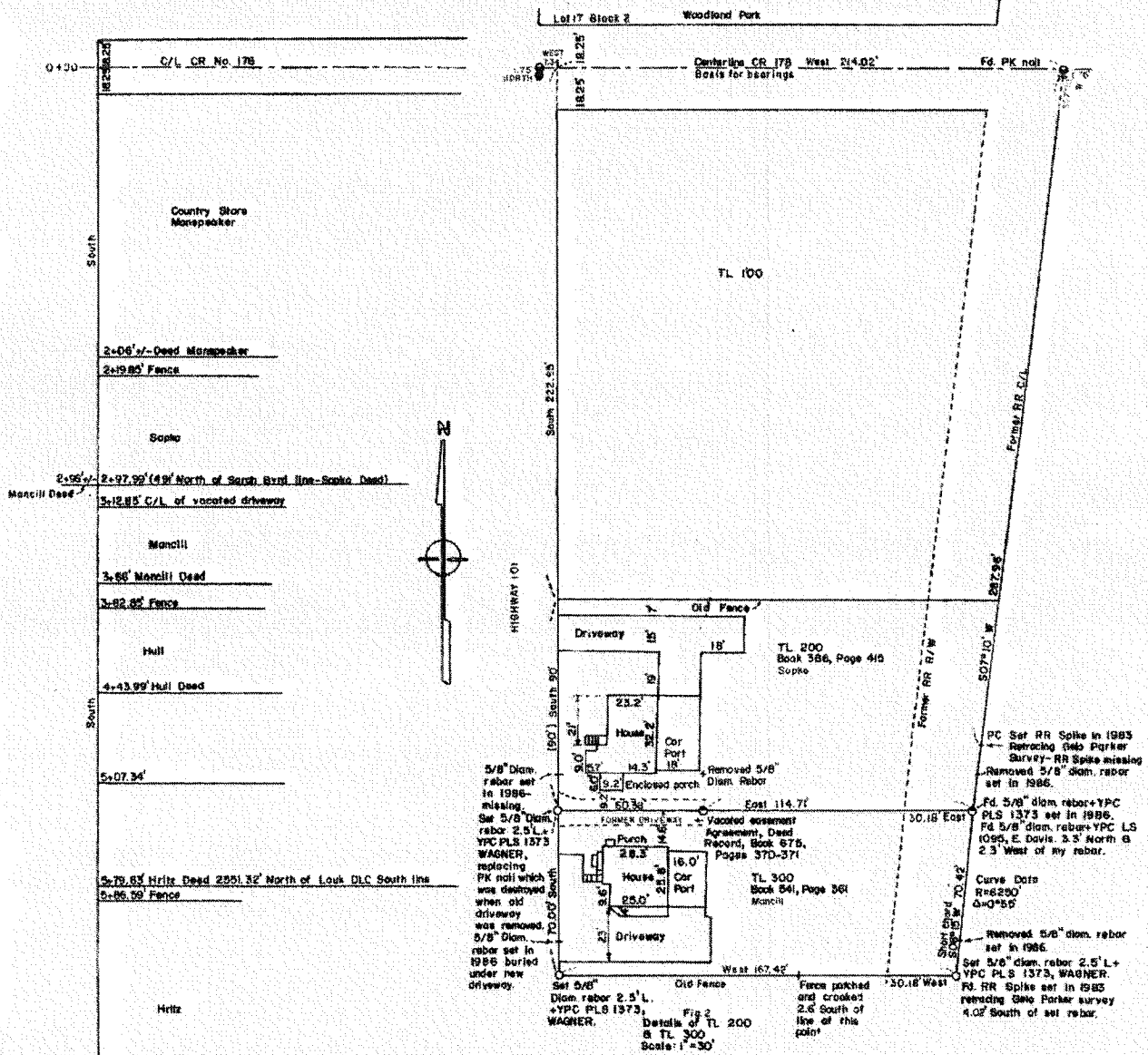
DATE: DEC. 28, 1987

SURVEY NO. 289

CLATSOP SURVEYING & ENGINEERING
TOM B. WAGNER, 1569 S. FRANKLIN ST., SEASIDE, OREGON 97138
ASSISTANT-DEANNA MANGILL
EQUIPMENT-FRANK THEODOLITE, MODEL 6020A1E
BENCHMARK SURVEYOR II ELECTRONIC DISTANCE METER
STEEL TAPES, 12' & 100'

REFERENCES-OTHER THAN THOSE SHOWN ON THE DRAWINGS
WOODLAND PARK ADDITION TO GEARHART PARK, PLAT BOOK 7, PAGE 27
TOM B. WAGNER SURVEY, CS 8-7455
TOM B. WAGNER SURVEY, CS 8-7993
DSHO HIGHWAY DRAWING

CS# R-8704



NOTES

- (-) Dead call
- CS-Clatsop County Surveyor records
- YPC-Yellow Plastic Cap
- ⊙-Fd. PK nail. See CS 8-1119, 8-7893 & 8-8184
- ⊙-2.5"/8" diam. rebar, Battered SW corner Lot 17, Block 2, Woodland Park
- ⊙-Set 5/8" diam. rebar 2.5' L+ YPC PLS 1373, WAGNER
- ⊙-2.5" diam. rebar 2.5' L + YPC PLS 1373, WAGNER

NARRATIVE

See separate Narrative File

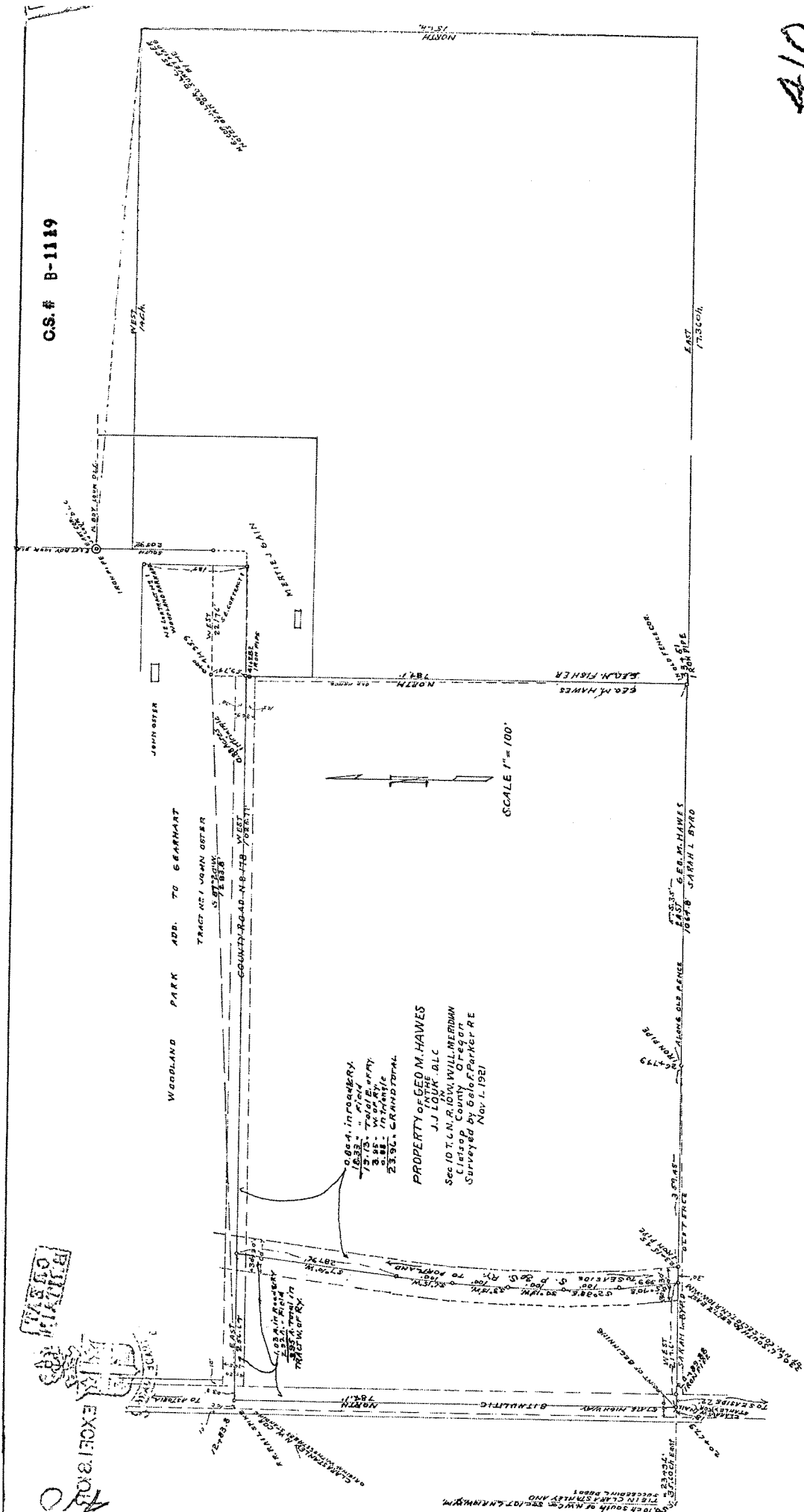
7+91.06' 3306.6' South from Sect. Cor. 3/4/9/10 Clara Stanley Deed Book 9, Page 774
7+88.99' Sarah Byrd line based on airport monuments & fence
7+97.55' Tim De Jong CS C-369
8+31.95' Sarah Byrd dead Book F, Page 772 2300.8' North of Louk DLC South line

Fig. 1 Property line data along Highway 101 Scale: 1"=30'

REGISTERED PROFESSIONAL LAND SURVEYOR
TOM B. WAGNER
1302

CLATSOP COUNTY SURVEYOR RECEIVED
FEB 2, 1988
FILED 2-16-88 R.H.
ASTORIA, OREGON

CS.# B-1119

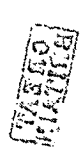


0.864. INFIRMERY
 1.532. - FISH
 2.888. - WOOD OTER
 3.888. - INFIRMERY
 23396. - CRANDALL

PROPERTY OF GED M. HAWES
 J.J. LOUK - D.L.C.

Sec 10 T. 12 N. R. 10 W. WILLAMETTE
 County Oregon
 Surveyed by Gelo F. Parker R.E.
 Nov. 1, 1921

SCALE 1" = 100'

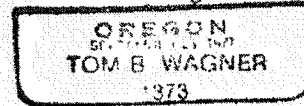
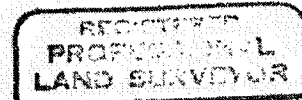


EXCEL 3000

A10
Field Book H.S.P.4

CS# B-8704

Narrative File
Page 1 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 28, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138



NARRATIVE

PURPOSE. Due to conflicts in the property descriptions for the adjoining properties of the Mancills and the Sopkos my survey, CS B-8380, is amended to accept the centerline of the common driveway as the boundary between the two properties. This shifts the boundary line 14.86' South of the Sopko deed description.

BASIS FOR BEARINGS. The centerline of County Road No. 178, established by Gelo Parker in 1919 called West, was the basis for bearings. This centerline is marked on the East end of the road by a found 3/8" diameter iron pipe set by Gelo Parker and a found PK nail located 1.75' North of the found 5/8" diameter rebar marking the original SW corner of Lot 17, Block 2, Woodland Park.

PROCEDURE. To understand the property description conflicts and why my CS B-8380 survey has been amended, a review of the train of ownerships of the tract of land bordered on the North by County Road No. 178, the former Burlington Northern Railroad Right of Way on the East, the North Boundary of the Sarah Byrd tract on the South and Highway 101 on the West is provided.

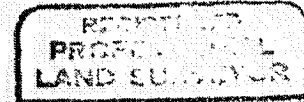
The said tract was originally part of the J. J. Louk Donation Land Claim. Philip Gearhart later obtained title to the Louk Donation Land Claim. In Nov. 1879 Philip Gearhart provided title to his daughter, Sarah Byrd, the South 34.86 chains (2300.8'), of the Louk Donation Land Claim, Deed Record Book F, Page 772.

On Aug. 25, 1884 John W. Gearhart sold to Clara S. Stanley a tract of land, the Southwest corner being 50 chains, 10 links (3306.6') South and 35 chains, 60 links (2349.6') East of the Northwest corner of Section 10, T6N, R10W, WM. This tract extended North 11 chains, 88 links (784.1'). The property exchange is described in Deed Record, Book 9, Page 774. This Deed description makes no mention of adjoining the North boundary of the Sarah Byrd tract. It should be noted that the Clara S. Stanley North boundary later became the South boundary of Woodland Park Addition to Gearhart Park in 1911. A 60' wide railroad right of way was created through the Clara S. Stanley tract before the turn of the century described in Deed Record, Book 32, Page 140. H. M. Button acquired title to the Clara S. Stanley tract and in turn sold it to George Hawes except for the railroad right of way, Deed Record Book 98, Page 38.

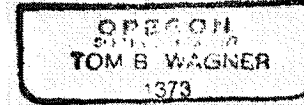
When County Road No. 178 was created, 20' was dedicated from the

CS# B-8704

Narrative File
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Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 28, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138



Tom B. Wagner



from the South boundary of Woodland Park and 16.5' was obtained from property owners adjoining the South boundary of Woodland Park.

George Hawes had his property surveyed on Nov. 1, 1921 by Gelo Parker. This survey accepted the Clara S. Stanley property description, which extended South 784.1' from the original South boundary of Woodland Park. On a line running East 1064.8' Gelo Parker found two monuments on a fence line which he identified as the North boundary of the Sarah Byrd tract.

On Aug. 10, 1926 George Hawes died. On Aug. 1, 1927 the courts awarded his wife, L. Mildred Hawes and his daughter, Mildred Hawes, his estate, Deed Record, Book 122, Page 284. Prior to Oct. 18, 1941 J. J. Johanns married George Hawes' daughter, Mildred.

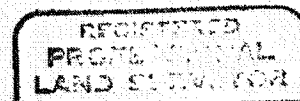
Johanns proceeded to partition the acquired tract of land between County Road No. 178 and the Sarah Byrd North Boundary. Some of the descriptions were written starting at the centerline of County Road No. 178 and some from the Sarah Byrd North Boundary. Johanns built 3 houses on 3 of the lots currently owned by Sopko, Mancill and Hull. On June 30, 1948 Johanns sold TL 200 to Robert Fraser, Deed Record, Book 200, Page 600. This deed contained an easement for a common driveway for the two houses on TL 200 and TL 300. This easement indicated the property line between these two Tax Lots was the centerline of the said driveway.

On Dec. 16, 1952 Johanns sold the property on TL 300 to Deyo McLendon, Deed Record, Book 220, Page 264. The Deed description contained the same driveway easement provisions as Deed Record, Book 200, Page 600. These two easements indicate the intent was for the property line to exist on the centerline of the described common driveway. Deyo McLendon told me that he rented the house on TL 300 prior to purchasing the property from Johanns and the driveway centerline was understood to be the property line separating TL 200 and TL 300.

The June 17, 1941 survey CS C-369 by Tim De Jong for Dr. Nellie Byrd placed a 1" diameter bridge bolt on what he considered to be the North boundary of the Sarah Byrd tract. Apparently he based it on two found iron pipes located on the West side of Highway 101.

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Narrative File
Page 3 of 4
Survey No. 289 (Amended)
SW 1/4, Section 10, T6N, R10W, WM.
Dec. 1, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, Oregon 97138



Tom B. Wagner

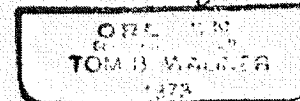


Fig. 1 of my survey shows the relationship of the various surveys in the vicinity of the Sarah Byrd North boundary line. The fence line and monuments marking the boundary between Bayview Transit Mix and the Oregon Aeronautical Airport measured 787.24' from the centerline of County Road No. 178. The Gelo Parker survey, CS B-1119, shows $784.1' + 1.75' = 785.85'$ from the centerline of County Road No. 178.

The Clara Stanley Deed described this line as 3306.6' South of the Northwest corner of Section 10. I measured 3303.50' to the current fence line. The ship bolt monument set in survey CS C-369 is located 10.56' South of the current fence line. I have not accepted the ship bolt monument as representing the North boundary of the Sarah Byrd tract as there is considerably more evidence that it was located further North.

The current fence line measures 2342.96' North of the South boundary of the Louk Donation Land Claim. The Deed calls for 2300.8'.

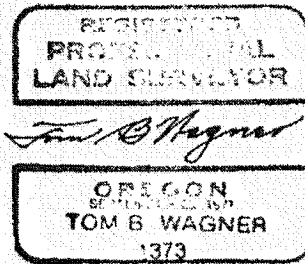
Two conflict problems existed between the Sopko and the Mancill properties. One problem was solved by vacating the common driveway and constructing two new driveways. The Sopko driveway is now located along the North boundary of their property and the Mancill driveway is located along the South boundary of their property.

The Sopko property has senior rights over the Mancill property as it was created at an earlier date. Deed Record, Book 386, Page 415, has a call of 491' North of the Sarah Byrd North boundary to the South line of the Sopko property. Starting at the current fence line representing the North boundary of the Sarah Byrd tract places the Sopko property line along side the South side of their house. This was not the intension of Johanns when he created the lots.

The second conflict was solved by making use of the easement information, both the verbally expressed intent from Deyo McLendon and the written intent of Deed Book 386, Page 415 and Deed Book 541, Page 363, concerning the location of the intended boundary line. My amended survey locates the boundary between

CS# B-8704

Narrative File
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SW 1/4, Section 10, T6N, R10W, WM.
Dec. 1, 1987
Clatsop Surveying & Engineering
Tom B. Wagner, 1569 S. Franklin St.
Seaside, OR 97138

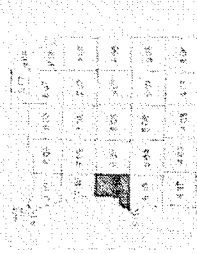


the Sopko property and the Mancill property on the former driveway centerline, which I monumented in my first survey as a reference line. The monuments I set on the line adjoining the Sopko house have been removed as well as those I set on the South boundary.

The Mancill South boundary was set 70' to the South of their North boundary (Deed call). This line falls on a fence line separating TL 300 and TL 400. The former railroad right of way centerline was established from my retracement survey of the railroad centerline surveyed by Gelo Parker survey, CS B-1119, which I did on Nov. 24, 1983 and monumented with railroad spikes. Currently the railroad roadbed is occupied by heavy equipment from Bayview Transit Mix.

CS# B-8704

0 62.5 125 250 F
Scale 1:1,200

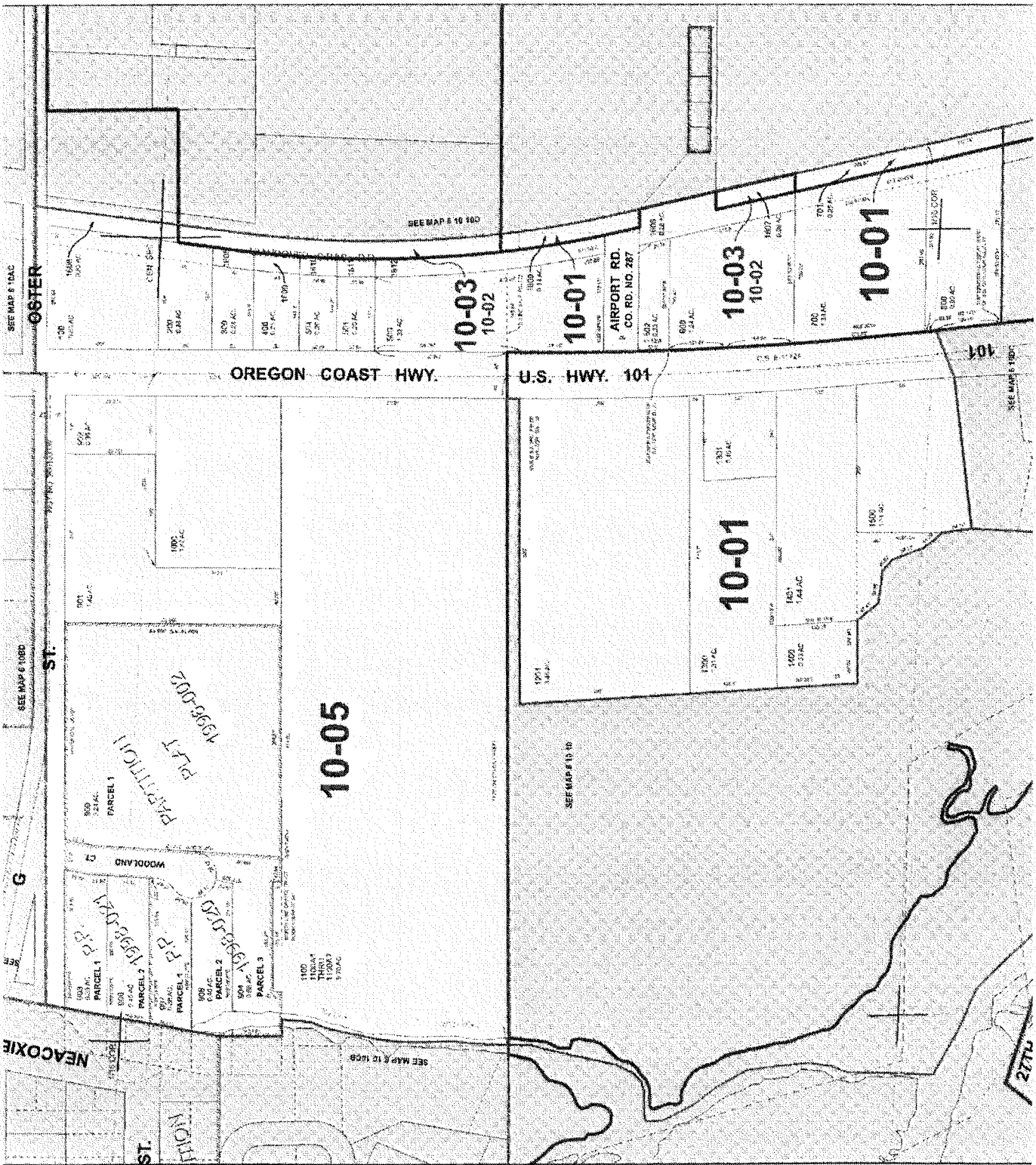


CANCELLED TAXLOT NUMBERS

800	808	812	820	1802
900	910	913	1801	1813
902	911	1400	1803	



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.clatsop.or.us
This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental services. It is not intended to be used for any other purpose without the express written consent of Clatsop County.



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

83 5031'

MARGARET L. MANSPEAKER, MICHAEL T.)
SOPKO and CHERYL D. SOPKO, husband)
and wife, and PHILIP L. MANCILL and)
DEANNA L. MANCILL, husband and wife)

Plaintiffs,)

vs.)

BURLINGTON NORTHERN, INC., a cor-)
poration organized and existing)
under the laws of the State of)
Delaware, SPOKANE, PORTLAND &)
SEATTLE RAILWAY COMPANY, a corpora-)
tion organized and existing under)
the laws of the State of Washington)
CLATSOP COUNTY, OREGON, a political)
subdivision of the State of Oregon,)
UNITED STATES NATIONAL BANK OF)
OREGON, a national banking associa-)
tion, and STATE OF OREGON, repre-)
sented and acting by the Director)
of Veterans' Affairs,)

Defendants.)

NO. CC 83-382 AUG 1 8 1983
ORDER OF DEFAULT
AND DECREE

AUG 18 4 03 PM '83

The above entitled matter having come on regularly before the Court on the 8 day of August, 1983, based upon the Motion of Plaintiffs' attorney for default and for an Order and Decree of this Court, and the Court having fully reviewed the documents on file herein and being fully advised in the premises, it is therefore

ORDERED, that Defendants and each of them be and hereby are declared to be in default as they have been duly served or accepted service of process and have failed to file Answers; and it is further

ORDERED AND DECREED that said Defendants and each of them be

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1 and hereby are enjoined and all persons claiming through them
 2 are enjoined from asserting any estate, title or interest in said
 3 real property which is the subject of this suit, or any part thereof,
 4 claimed by the Plaintiffs, save and except for any and all real
 5 property tax liens or personal property tax liens reduced to
 6 warrant attributable to the property by Oregon State statutes by
 7 Defendant, Clatsop County, Oregon, and further save and except any
 8 superior interest as shown of record of the United States National
 9 Bank of Oregon, or the State of Oregon, represented and acting by
 10 the Director of Veterans' Affairs, if any there be; and it is
 11 further

12 ORDERED AND DECREED that any and all real property taxes,
 13 liens or personal property tax liens by Clatsop County, Oregon,
 14 shall be and are hereby determined to have priority and be
 15 unaffected by this Order of Default and Decree; and it is
 16 further

17 ORDERED AND DECREED that any and all superior property
 18 interests of record in the property which exists prior to the
 19 Plaintiffs' acquisition of their original property adjacent to
 20 the subject property or as the result of encumbrance by the
 21 Plaintiffs of their interest in the property adjacent to the
 22 subject property, shall have priority and be unaffected by this
 23 Order of Default and Decree; and it is further

24 ORDERED AND DECREED that:

25 1. Plaintiff, MARGARET L. MANSPEAKER is hereby determined
 26 to be the owner and entitled to possession of the following real

Page Two, Decree.

1 property:

2 A tract of land in Section 10, Township 6 North, Range 10 West,
3 Willamette Meridian, Clatsop County, Oregon, being the West one-
4 half of even width of that portion of that 60 foot strip of land
5 described in Deed from John and Clara Stanley to the Astoria and
6 South Coast Railway Company, recorded December 19, 1888, at Book
7 13, page 60, Clatsop County, Oregon, Deed Records, and being
8 bounded on the North and South by the Easterly extension of the
9 North and South lines of that property described in Deed to
10 William J. Manspeaker and Margaret L. Manspeaker, recorded May
11 10, 1967, in Book 292, page 37, Clatsop County, Oregon, Deed
12 Records;

13 Also described in Paragraph I of the Complaint on file
14 herein,

15 free of any claim, estate, title or interest of said Defendants,
16 and each of them and from any person claiming through or
17 under said Defendants and each of them, except as hereinabove
18 otherwise provided and the title of Plaintiffs as to the
19 said Defendants and each of them, save and except as herein
20 otherwise provided, be and hereby is quieted; and it is
21 further

22 2. Plaintiffs, MICHAEL T. SOPKO and CHERYL D. SOPKO,
23 husband and wife, as to the Defendants and each of them,
24 save and except as hereinabove stipulated, are hereby determined
25 to be the owners and entitled to possession of the following real
26 property:

27 A tract of land in Section 10, Township 6 North, Range 10 West,
28 Willamette Meridian, Clatsop County, Oregon, being the West one-
29 half of even width of that portion of that 60 foot strip of land
30 described in Deed from John and Clara Stanley to the Astoria and
31 South Coast Railway Company, recorded December 19, 1888, at Book
32 13, page 60, Clatsop County, Oregon, Deed Records, and being
33 bounded on the North and South by the Easterly extension of the
34 North and South lines of that parcel described in Deed to Michael
35 T. Sopko and Cheryl D. Sopko, recorded September 19, 1973, at

Page Three, Decree.

1 Book 386, page 415, Clatsop County, Oregon, Deed Records;

2 Also described in Paragraph II of the Complaint on file herein,
3 free of any claim, estate, title or interest of said Defendants, and
4 each of them, and from any person claiming through or under said
5 Defendants and each of them, except as hereinabove otherwise provide
6 and the title of Plaintiffs as to said Defendants and each of them,
7 save and except as herein otherwise provided, be and hereby is
8 quieted; and it is further

9 3. ORDERED AND DECREED that Plaintiffs, PHILIP L. MANCILL
10 and DEANNA L. MANCILL, husband and wife, as to the Defendants and
11 each of them, save and except as hereinabove stipulated, are
12 hereby determined to be the owners and entitled to possession of
13 the following real property:

14 A tract of land in Section 10, Township 6 North, Range 10 West,
15 Willamette Meridian, Clatsop County, Oregon, being the West one-
16 half of even width of that portion of that 60 foot strip of land
17 described in Deed from John and Clara Stanley to the Astoria and
18 South Coast Railway Company, recorded December 19, 1888, at Book
19 13, page 06, Clatsop County, Oregon, Deed Records, and being bounded
20 on the North and South by the Easterly extension of the North and
21 South lines of that property described in Deed to Philip L. Mancill
22 and Deanna L. Mancill, recorded December 2, 1980, at Book 541, page
23 361, Clatsop County, Oregon, Deed Records;

24 Also described in Paragraph III of the Complaint on file herein,
25 free of any claim, estate, title or interest of said Defendants,
26 and each of them, and from any person claiming through or
under said Defendants and each of them, except as hereinabove
otherwise provided, and the title of Plaintiffs to said
Defendants and each of them, save and except as herein
otherwise provided, be and hereby is quieted; and it is

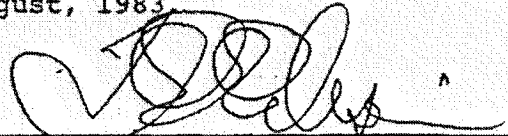
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1 further

83 5035

2 ORDERED AND DECREED that each party shall bear their own
3 costs, disbursements and attorney's fees.

4 DATED this 18 day of August, 1983.

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7 Judge of the Circuit Court

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Page Five, Decree.

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Federal Railroad Rights of Way

May 3, 2006 RL32140

During the drive to settle the western portion of the United States, Congress sought to encourage the expansion of railroads, at first through generous grants of rights of way and lands to the great transcontinental railroads between 1862 and 1871, and later through the enactment of a general right of way statute. The 1875 General Railroad Right of Way Act permitted railroads to obtain a 200-foot federal right of way by running tracks across public lands. Some railroads also obtained rights of way by private purchase or through the exercise of state or federal powers of eminent domain. Therefore, not all railroad rights of way are on federal lands, and the property interest of a railroad in a right of way may vary. The courts have characterized the interest held by a railroad pursuant to a federally granted right of way variously: as a "limited fee" in the case of a land grant right of way, or as an easement in the case of a right of way under the 1875 Act. As railroads closed rail lines, questions arose as to the disposition of the lands within the former rights of way. Many individual instances were resolved in separate legislation. In 1922, Congress enacted a general law to provide that federal railroad rights of way on federal lands become the property of the adjacent landowner or municipality through which the right of way passed. This law is unclear in several respects -- for example, as to what procedures are sufficient to constitute an abandonment of a right of way, and on what authority Congress could provide for the establishment of highways within the right of way after abandonment of the rail line. In 1988, in what is popularly known as the Rails to Trails Act, Congress opted to bank rail corridors, keeping them available for possible future use as railroads and making them available for interim use as recreational trails. Some cases have held that Rails to Trails results in takings of private property when non-federal easements were involved. In the context of federal rights of way, recent cases have held that the federal government did not retain any interest in federal railroad rights of way when the underlying lands were conveyed into private ownership, and therefore if an abandoned rail corridor is held for interim trail use, compensation is owed the adjacent landowners. However, Congress has legislated numerous times over the years regarding federal railroad rights of way, as though Congress believed it had continuing authority over their ultimate disposition. Issues may continue to arise surrounding the disposition of federal railroad rights of way, possibly involving, for example, the authority of Congress over the rights of way, the nature of the interest held by the railroad, the validity of attempts by the railroad to convey all or part of that interest, and disputes between adjacent landowners over perceived entitlements to lands within a particular right of way. This report discusses the history of federal railroad rights of way and some of the cases addressing them. It will be updated from time to time as circumstances warrant.

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1960s, railroads faced increasing competition from trucking companies, and costly federal regulations made it even more difficult for the railroads to compete. In fact, nearly a quarter of the nation's railroad lines were operating under bankruptcy by the early 1970s.

The Staggers Rail Act, passed in 1980, deregulated the railroads and made it easier for them to abandon lines. Although railroads were then able to streamline their operations and diversify successfully, this deregulation also triggered a mass wave of rail line abandonments. Before deregulation, 38,000 miles of track were abandoned in the 45 years from 1930 to 1975. Yet, in the next 15 years until 1990, railroads abandoned nearly double that amount—65,000 miles—in only a third of the time.

In the early 1980s, Congress became concerned about the dramatic decline in the nation's railroad infrastructure. With so many railroads abandoning corridors, it became apparent to Congress that something needed to be done to preserve the nation's rail system for future transportation uses. In 1983, Congress amended Section 8(d) of the National Trails System Act to create a program to preserve rail corridors (called "railbanking"), through which corridors that would otherwise be abandoned can be preserved for future rail use by converting them to interim trails. The old, inactive railroad route survives but is re-purposed for other—potentially temporary—trail uses.

Opponents of railbanking have unsuccessfully challenged the constitutionality of the railbanking provisions of the National Trails System Act. In 1990, the Supreme Court unanimously ruled, in the case of *Preseault v. United States*, that preserving a corridor for future rail use through railbanking is a legitimate exercise of governmental power. This decision protects a railroad's legal right to transfer all forms of its ownership, including easements, to a trail group. A more thorough examination of the legal issues that often arise with railbanked corridors, as well as an overview of how some of those issues have been resolved, can be found in RTC's **Rails-to-Trails Conversions: A Legal Review**.

Opponents also periodically attempt to stop implementation of the railbanking provisions through legislative restrictions on trail development. RTC remains vigilant

Railbanking MCT Goshen Trail